SEC. ___. ADDITION OF EUROPEAN UNION ORGANIZATIONS WITH WHICH THE PRESIDENT MAY ENTER INTO COOPERATIVE PROJECTS.

(a) AMENDMENT TO ARMS EXPORT CONTROL ACT.—Section 27 of the Arms Export Control Act (22 U.S.C. 2767) is amended—

(1) in subsection (a)—

(A) by striking "Organization or with" and inserting "Organization,"; and

(B) by striking "Organization." and inserting "Organization, or the European Union, including the European Defence Agency, the European Commission, and the Council of the European Union, and their suborganizations.";

(2) in subsection (b)(1)—

(A) in the matter preceding subparagraph (A)—

(i) by striking "Organization or with" and inserting "Organization,";

(ii) by striking "that Organization," and inserting "that Organization, or the European Union, including the European Defence Agency, the European Commission, and the Council of the European Union, and their suborganizations,"; and

(ii) by inserting "and European Union" before "member countries"; and

(B) in subparagraph (C)—

(i) by striking "Organization or a" and inserting "Organization, a"; and

(ii) by inserting ", or the European Union, including the European Defence Agency, the European Commission, and the Council of the European Union, and their suborganizations" after "subsidiary of such organization"; and

(3) in subsection (g), by inserting "or a European Union member country" before ", section".

(b) AMENDMENT TO TITLE 10, UNITED STATES CODE.—Section 2350a(a)(2) of title 10, United States Code, is amended by adding after subparagraph (E) the following new subparagraph:

"(F) The European Union, including the European Defence Agency, the European Commission, and the Council of the European Union, and their suborganizations.".

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

Section-by-Section Analysis

The United States must be able to pursue information sharing and potential cooperative projects with the European Union (EU) and member countries to maintain a strong transatlantic relationship at the government, industry, and academic levels to meet common threats and to maintain consonance with NATO activities and interoperability of systems. In March 2021, President Biden reaffirmed the United States commitment to revitalize and raise the level of ambition of the U.S.-EU relationship. Similarly, Secretary of State Blinken and High Representative of the European Union for Foreign Affairs and Security Policy/Vice-President of the European Commission Borrell committed to support the fullest possible involvement of the United States in EU defense initiatives. The United States is not a member of the EU and does not have a formal voice in the defense requirements discussions within the EU. In addition, European defense and security development efforts are increasingly being established under EU-managed efforts.

The U.S. Government (USG) engagement with the EU and its subordinate organizations is to establish a foundation for cooperation across defense and security matters, in line with USG and Department of Defense (DoD) policies to enhance our ability to work collaboratively with allies and partners. This legislation would authorize the President to pursue cooperative projects

under section 27 of the Arms Export Control Act (22 U.S.C. 2767) and section 2350a of title 10, United States Code (relating to cooperative research and development agreements with other countries), with the EU and its suborganizations that will be responsible for defense research and development. This would allow the authority for Research, Development, Test, and Evaluation (RDT&E) cooperation to be done under cooperative projects and programs that are either managed under EU defense initiatives (including Permanent Structured Cooperation (PESCO) and European Defence Fund (EDF) projects) or are part of a project/program of which the U.S. and EU organizations are both intended participants. Although section 27 of the Arms Export Control Act (22 U.S.C. 2767) provides authorities for concurrent production and procurements that may be utilized in the future, the primary focus for this proposal is on the authorities related to RDT&E cooperation, including potential procurement of articles or services to support RDT&E activities.

This legislative proposal does not change the manner in which international agreements are currently developed or approved. This legislation does not contravene or undermine U.S. commitments to the North Atlantic Treaty Organization (NATO), which remains the prime forum for U.S. transatlantic security, but, instead, helps to ensure coherence of activities to contribute towards NATO and European Security commitments. Currently, the DoD is working to join formally the information sharing components of the Military Mobility PESCO project to ensure coherence with Military Mobility activities under NATO. There is strong desire by EU member countries and DoD to pursue more collaborative participation in other projects. However, additional collaboration is not possible without the proposed amendments to U.S. authorities to pursue armaments cooperation where the EU is a participant or contributor.

As the EU continues to establish new initiatives for defense cooperation, particularly for research and development of new systems and platforms, the need to establish this framework is critical to continue and grow transatlantic cooperation with European partners. U.S.-EU cooperation is necessary to promote interoperability and system commonality, pursuit of best technological solutions (in particular those from U.S. sources), and coherence and duplication avoidance between EU and NATO activities, as expressed in the Joint NATO-EU Declarations of 2016 and 2018.

The legislation includes authorization for the major EU organizations and their suborganizations, as defense initiatives are not managed by a single organization. Current EU initiatives include projects and proposals with EU funds or funded solely by EU member countries and approved by an EU body. Major initiatives include EDF (projects with EU grant funds and managed by the European Commission), PESCO (projects managed by the Council of the European Union, can include EDF funding and European Defence Agency support), and the European Space Programme (projects managed by the European Space Agency).

To protect sensitive and classified information, the United States is a party to the General Security of Military Information Agreement (GSOMIA) with the EU, established on April 30, 2007. DoD will ensure that U.S. information and technology will be protected and shared only as agreed in the international agreement and consistent with the GSOMIA. Project proponents will coordinate with respective DoD technology security and legal offices during project development and during pre-negotiations. The execution of future cooperative programs with

the EU will use existing Department of State-approved international agreement language for technology and information security clauses, with the addition of any further controls required. These agreements will be coordinated/approved in the same manner as other agreements under these authorities. This coordination/approval process includes Department of State and DoD technology security organizations.

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

Changes to Existing Law: This proposal would amend section 27 of the Arms Export Control Act (22 U.S.C. 2767) and section 2350a of title 10, United States Code, as follows:

SEC. 27. AUTHORITY OF PRESIDENT TO ENTER INTO COOPERATIVE PROJECTS WITH FRIENDLY FOREIGN COUNTRIES.—

(a) The President may enter into a cooperative project agreement with the North Atlantic Treaty ~~Organization or with~~ Organization, one or more member countries of that ~~Organization.~~ Organization, or the European Union, including the European Defence Agency, the European Commission, and the Council of the European Union, and their suborganizations.

(b) As used in this section—

(1) the term "cooperative project" in the case of an agreement with the North Atlantic Treaty ~~Organization or with~~ Organization, one or more member countries of ~~that Organization,~~ that Organization, or the European Union, including the European Defence Agency, the European Commission, and the Council of the European Union, and their suborganizations, means a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to further the objectives of standardization, rationalization, and interoperability of the armed forces of North Atlantic Treaty Organization and European Union member countries which provides—

(A) for one or more of the other participants to share with the United States the costs of research on and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(B) for concurrent production in the United States and in another member country of a defense article jointly developed in accordance with subparagraph (A); or

(C) for procurement by the United States of a defense article or defense service from another member country or for procurement by the United States of munitions from the North Atlantic Treaty ~~Organization or a~~ Organization, a subsidiary of such organization, or the European Union, including the European Defence Agency, the European Commission, and the Council of the European Union, and their suborganizations;

(2) the term "cooperative project", in the case of an agreement entered into under subsection (j), a jointly managed arrangement, described in a written agreement among

the parties, which is undertaken in order to enhance the ongoing multinational effort of the participants to improve the conventional defense capabilities of the participants and which provides—

(A) for one or more of the other participants to share with the United States the costs of research on and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(B) for concurrent production in the United States and in the country of another participant of a defense article jointly developed in accordance with subparagraph (A); or

(C) for procurement by the United States of a defense article or defense service from another participant to the agreement; and

(3) the term "other participant" means a participant in a cooperative project other than the United States.

(c) Each agreement for a cooperative project shall provide that the United States and each of the other participants will contribute to the cooperative project its equitable share of the full cost of such cooperative project and will receive an equitable share of the results of such cooperative project. The full costs of such cooperative project shall include overhead costs, administrative costs, and costs of claims. The United States and the other participants may contribute their equitable shares of the full cost of such cooperative project in funds or in defense articles or defense services needed for such cooperative project. Military assistance and financing received from the United States Government may not be used by any other participant to provide its share of the cost of such cooperative project. Such agreements shall provide that no requirement shall be imposed by a participant for worksharing or other industrial or commercial compensation in connection with such agreement that is not in accordance with such agreement.

(d) The President may enter into contracts or incur other obligations for a cooperative project on behalf of the other participants, without charge to any appropriation or contract authorization, if each of the other participants in the cooperative project agrees (1) to pay its equitable share of the contract or other obligation, and (2) to make such funds available in such amounts and at such times as may be required by the contract or other obligation and to pay any damages and costs that may accrue from the performance of or cancellation of the contract or other obligation in advance of the time such payments, damages, or costs are due.

(e)(1) For those cooperative projects entered into on or after the effective date of the International Security and Development Cooperation Act of 1985, the President may reduce or waive the charge or charges which would otherwise be considered appropriate under section 21(e) of this Act in connection with sales under sections 21 and 22 of this Act when such sales are made as part of such cooperative project, if the other participants agree to reduce or waive corresponding charges.

(2) Notwithstanding provisions of section 21(e)(1)(A) and section 43(b) of this Act, administrative surcharges shall not be increased on other sales made under this Act in order to

compensate for reductions or waivers of such surcharges under this section. Funds received pursuant to such other sales shall not be available to reimburse the costs incurred by the United States Government for which reduction or waiver is approved by the President under this section.

(f) Not less than 30 days before a cooperative project agreement is signed on behalf of the United States, the President shall transmit to the Speaker of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, the chairman of the Committee on Foreign Relations of the Senate, and the chairman of the Committee on Armed Services of the Senate, a numbered certification with respect to such proposed agreement, setting forth—

(1) a detailed description of the cooperative project with respect to which the certification is made;

(2) an estimate of the quantity of the defense articles expected to be produced in furtherance of such cooperative project;

(3) an estimate of the full cost of the cooperative project, with an estimate of the part of the full cost to be incurred by the United States Government, including an estimate of the costs as a result of waivers of section 21(e)(1)(A) and 43(b) of this Act, for its participation in such cooperative project and an estimate of that part of the full costs to be incurred by the other participants;

(4) an estimate of the dollar value of the funds to be contributed by the United States and each of the other participants on behalf of such cooperative project;

(5) a description of the defense articles and defense services expected to be contributed by the United States and each of the other participants on behalf of such cooperative project;

(6) a statement of the foreign policy and national security benefits anticipated to be derived from such cooperative project; and

(7) to the extent known, whether it is likely that prime contracts will be awarded to particular prime contractors or that subcontracts will be awarded to particular subcontractors to comply with the proposed agreement.

(g) In the case of a cooperative project with a North Atlantic Treaty Organization country <u>or a European Union member country</u>, section 36(b) of this Act shall not apply to sales made under section 21 or 22 of this Act and to production and exports made pursuant to cooperative projects under this section, and section 36(c) of this Act shall not apply to the issuance of licenses or other approvals under section 38 of this Act, if such sales are made, such production and exports ensue, or such licenses or approvals are issued, as part of a cooperative project.

(h) The authority under this section is in addition to the authority under sections 21 and 22 of this Act and under any other provision of law.

(i)(1) With the approval of the Secretary of State and the Secretary of Defense, a cooperative agreement which was entered into by the United States before the effective date of the amendment to this section made by the International Security and Development Cooperation Act of 1985 and which meets the requirements of this section as so amended may be treated on and after such date as having been made under this section as so amended.

(2) Notwithstanding the amendment made to this section made by the International Security and Development Cooperation Act of 1985, projects entered into under the authority of this section before the effective date of that amendment may be carried through to conclusion in accordance with the terms of this section as in effect immediately before the effective date of that amendment.

(j)(1) The President may enter into a cooperative project agreement with any friendly foreign country not a member of the North Atlantic Treaty Organization under the same general terms and conditions as the President is authorized to enter into such an agreement with one or more member countries of the North Atlantic Treaty Organization if the President determines that the cooperative project agreement with such country would be in the foreign policy or national security interests of the United States.

(2) Not later than January 1 of each year, the President shall submit to the Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and Foreign Affairs of the House of Representatives a report specifying (A) the countries eligible for participation in such a cooperative project agreement under this subsection, and (B) the criteria used to determine the eligibility of such countries.

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10 U.S. Code § 2350a. Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries

(a) Authority To Engage in Cooperative R&D Projects.-(1) The Secretary of Defense may enter into a memorandum of understanding (or other formal agreement) with one or more countries or organizations referred to in paragraph (2) for the purpose of conducting cooperative research and development projects on defense equipment and munitions.
(2) The countries and organizations with which the Secretary may enter into a memorandum of agreement (or other formal agreement) under paragraph (1) are as follows:
(A) The North Atlantic Treaty Organization.
(B) A NATO organization.
(C) A member nation of the North Atlantic Treaty Organization.
(D) A major non-NATO ally.
(E) Any other friendly foreign country.
(F) The European Union, including the European Defence Agency, the European Commission, and the Council of the European Union, and their suborganizations.

(3) If such a memorandum of understanding (or other formal agreement) is with a country referred to in subparagraph (E) of paragraph (2), such memorandum (or agreement) may go into effect only after the Secretary submits to the Committees on Armed Services and on Foreign Relations of the Senate and to the Committees on Armed Services and on International Relations of the House of Representatives a report with respect to the proposed memorandum (or agreement) and a period of 30 days has passed after the report has been submitted.

(b) Requirement That Projects Improve Conventional Defense Capabilities.-(1) The Secretary of Defense may not enter into a memorandum of understanding (or other formal agreement) to conduct a cooperative research and development project under this section unless the Secretary determines that the proposed project will improve, through the application of emerging technology, the conventional defense capabilities of the North Atlantic Treaty Organization or the common conventional defense capabilities of the United States and a country or organization referred to in subsection (a)(2).

(2) The authority of the Secretary to make a determination under paragraph (1) may only be delegated to the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, or the Under Secretary of Defense for Research and Engineering.

(c) Cost Sharing.-
(1) Except as provided in paragraph (2), each cooperative research and development project entered into under this section shall require sharing of the costs of the project (including the costs of claims) between the participants on an equitable basis.
(2) A cooperative research and development project may be entered into under this section under which costs are shared between the participants on an unequal basis if the Secretary of Defense, or an official specified in subsection (b)(2) to whom the Secretary delegates authority under this paragraph, makes a written determination that unequal cost sharing provides strategic value to the United States or another participant in the project.
(3) For purposes of this subsection, the term "cost" means the total value of cash and non-cash contributions.

(d) Restrictions on Procurement of Equipment and Services.-(1) In order to assure substantial participation on the part of countries and organizations referred to in subsection (a)(2) in cooperative research and development projects, funds made available for such projects may not be used to procure equipment or services from any foreign government, foreign research organization, or other foreign entity.
(2) A country or organization referred to in subsection (a)(2) may not use any military or economic assistance grant, loan, or other funds provided by the United States for the purpose of making the contribution of that country or organization to a cooperative research and development program entered into with the United States under this section.

(e) Cooperative Opportunities.-(1) In order to ensure that opportunities to conduct cooperative research and development projects are considered at an early point during the formal development review process of the Department of Defense in connection with any planned project of the Department, opportunities for such cooperative research and development shall be addressed in the acquisition strategy for the project.

(2) A cooperative opportunities discussion referred to in paragraph (1) shall consider the following:
(A) Whether or not a project similar to the one under consideration by the Department of Defense is in development or production by any country or organization referred to in subsection (a)(2) or NATO organizations.
(B) If a project similar to the one under consideration by the Department of Defense is in development or production by one or more countries and organizations referred to in subsection (a)(2), an assessment as to whether that project could satisfy, or could be modified in scope so as to satisfy, the military requirements of the project.
(C) An assessment of the advantages and disadvantages with regard to program timing, developmental and life cycle costs, technology sharing, and Rationalization, Standardization, and Interoperability (RSI) of seeking to structure a cooperative development program with one or more countries and organizations referred to in subsection (a)(2) or NATO organizations.
(D) A recommendation to the milestone decision authority as to whether the Department of Defense should explore the feasibility and desirability of a cooperative development program with one or more countries and organizations referred to in subsection (a)(2) or NATO organizations.

[(f) Repealed. Pub. L. 108–136, div. A, title X, §1031(a)(17), Nov. 24, 2003, 117 Stat. 1597 .]

(g) Side-by-Side Testing.-(1) It is the sense of Congress-
(A) that the Secretary of Defense should test covered equipment, munitions, and technologies to determine the ability of such covered equipment, munitions, and technologies to satisfy United States military requirements or to correct operational deficiencies; and
(B) that while the testing of nondevelopmental items and items in the late state of the development process are preferred, the testing of such covered equipment, munitions, and technologies may be conducted to determine procurement alternatives.

(2) The Secretary of Defense may acquire covered equipment, munitions, and technologies for the purpose of conducting the testing described in that paragraph.
(3) The use of side-by-side testing under this subsection may be considered to be the use of competitive procedures for purposes of chapter 137 of this title, when procuring items within 5 years after an initial determination that the items have been successfully tested and found to satisfy United States military requirements or to correct operational deficiencies.
(4) Covered Equipment, Munitions, and Technologies Defined.-In this subsection, the term "covered equipment, munitions, and technologies" means-
(A) conventional defense equipment, munitions, and technologies manufactured and developed by countries referred to in subsection (a)(2); and
(B) conventional defense equipment, munitions, and technologies manufactured and developed domestically.

(h) Secretary To Encourage Similar Programs.-The Secretary of Defense shall encourage member nations of the North Atlantic Treaty Organization, major non-NATO allies, and other friendly foreign countries to establish programs similar to the one provided for in this section.

(i) Definitions.-In this section:

(1) The term “cooperative research and development project” means a project involving joint participation by the United States and one or more countries and organizations referred to in subsection (a)(2) under a memorandum of understanding (or other formal agreement) to carry out a joint research and development program-
(A) to develop new conventional defense equipment and munitions; or
(B) to modify existing military equipment to meet United States military requirements.
(2) The term “major non-NATO ally” means a country (other than a member nation of the North Atlantic Treaty Organization) that is designated as a major non-NATO ally for purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.
(3) The term “NATO organization” means any North Atlantic Treaty Organization subsidiary body referred to in section 2350(2) of this title and any other organization of the North Atlantic Treaty Organization.

SEC. ___. AIR FORCE FORCE STRUCTURE.

(a) A-10 MINIMUM INVENTORY REQUIREMENT.—

(1) Section 134 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328), as amended by the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81), is further amended in subsection (d) by striking "171" and inserting "153".

(2) Section 142(b)(2) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 755) is amended by striking "171" and inserting "153".

(b) MODIFICATION OF LIMITATION ON AVAILABILITY OF FUNDS FOR DESTRUCTION OF A-10 AIRCRAFT IN STORAGE STATUS.—Section 135(a) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2039) is amended by striking "the report required under section 134(e)(2)" and inserting "a report that includes the information described in section 134(e)(2)(C)".

(c) INVENTORY REQUIREMENTS FOR AIR REFUELING TANKER AIRCRAFT.—

(1) Section 135(a) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 134 Stat. 3431) is amended by striking "412" and inserting "400".

(2) Section 137(b)(1) of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81; 135 Stat. 1576) is amended by striking "18" and inserting "31".

(d) JSTARS FORCE PRESENTATION REQUIREMENT.—Section 147 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1670) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsection (g) as subsection (f).

(e) TOTAL AIRCRAFT INVENTORY REQUIREMENTS.—Section 9062 of title 10, United States Code, is amended—

(1) in subsection (i)(1)—

(A) by striking "1,970" and inserting "1,800"; and

(B) by striking "1,145 and inserting "900" ; and

(2) in subsection (j), by striking "479" and inserting "455" each place it appears in paragraphs (1) and (2).

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

Section-by-Section Analysis

This proposal would authorize the Air Force to make necessary force structure changes over the future-years defense program (FYDP).

Subsection (a) of this proposal would amend FY16 and FY17 NDAA minimum inventory requirements for the A-10 aircraft. The FY16 NDAA states the "Secretary of the Air Force (SecAF) shall ensure the Air Force maintains a minimum of 171 A–10 aircraft designated as primary mission aircraft inventory. The FY17 NDAA states the "Secretary of the Air Force shall ensure the Air Force maintains a minimum of 171 A–10 aircraft designated as primary mission aircraft inventory" until both the Director of Operational Test and Evaluation (DOT&E) and SecAF submit reports regarding F-35 vs A-10 performance. DOT&E report requirements are twofold: 1) the results and findings of F-35 Initial Operational Test & Evaluation (IOT&E), and 2) the results of a comparison test examining the capabilities of the F-35A and A-10C in conducting close air support (CAS), combat search and rescue (CSAR), and forward air controller airborne (FAC-A) missions. SecAF report requirements include three components: 1) views on the F-35 IOT&E report, 2) a plan for addressing deficiencies and corrective actions identified in the IOT&E report, and 3) short-term and long-term strategies for preserving USAF capability in CAS, CSAR, and FAC-A missions.

Subsection (a) of this proposal seeks to modify these requirements based upon delays in F-35 IOT&E. DOT&E is unable to complete the IOT&E portion of their report due to delays in the F-35 Joint Simulator Environment (JSE), thus delaying completion of both DOT&E and SecAF requirements. This proposal allows the USAF to begin divesting A-10 aircraft and continue force modernization efforts congruent with the *2018 National Defense Strategy's* "Build a More Lethal Joint Force" line of effort.

Section 134(e)(1)(A) of the FY17 NDAA requires DOT&E to submit a report including the results and findings of the IOT&E of the F-35 aircraft program. This portion of DOT&E's report faces continued delays due to challenges building a threat-representative JSE for the F-35. IOT&E efforts paused in 2019 due to JSE complications and are estimated to continue through 2022. The IOT&E portion of the report cannot be completed until F-35 performance in the JSE is evaluated. Prior to the COVID-19 pandemic, DOT&E estimated the IOT&E portion of the report to be complete no earlier than mid-2021. Effects of the pandemic will likely delay this report even further.

Section 134(e)(1)(B) requires DOT&E to submit a report including the results of a comparison test examining the capabilities of the F-35A and A-10C in CAS, CSAR, and FAC-A missions. This test utilized "matched pair" trials in which both aircraft conducted scenarios in the same airspace, with the same friendly forces, against the same threat types and targets, and at the same time of day or night to the maximum extent possible. Both aircraft employed their best available weapons configurations and executed Service-approved tactics. DOT&E began the comparison test in July 2018 and completed it in March 2019. DOT&E has the data required to complete the comparison test portion of their report and is prepared to present to Congress in a timely fashion pending de-coupling it from the IOT&E results.

Sections 134(e)(2)(A) and 134(e)(2)(B) direct the Secretary of the Air Force to provide views and corrective actions for the IOT&E portion of DOT&E's report. As the IOT&E report is delayed due to the aforementioned circumstances, SecAF is unable to complete these reports in the near future. Section 134(e)(2)(C) directs SecAF to provide short-term and long-term strategies for preserving CAS, CSAR, and FAC-A capabilities for the Air Force. Based in large part upon the DOT&E report of the F-35A and A-10C comparison test, SecAF is able to complete this requirement.

The USAF FY23 President's Budget calls for the decrement of 21 A-10s in FY23, to right size fleet to 260 total aircraft inventory. Under existing FY17 NDAA language, F-35 IOT&E delays will prevent the Air Force from executing these necessary force structure requirements. This proposal permits the Air Force to build a more lethal force and meet the intent of the FY17 NDAA while accounting for unforeseen delays in F-35 IOT&E.

The A-10 is the Air Force's least capable fighter in contested environments and the oldest airframe in the fighter fleet. While it remains a formidable and cost-effective platform to counter violent extremism in the near term, its age, lack of multi-role or homeland defense capability, and lack of survivable characteristics limit usefulness in the coming years. FY23 divestment is

focused on transitioning Fort Wayne Air National Guard from A-10s to F-16s, resulting in a reduction from 171 A-10 primary mission aircraft inventory to 153.

Subsection (b) of this proposal would amend FY17 restrictions on the use of appropriated funds to scrap, destroy, or otherwise dispose of any potential donor A–10 aircraft until both the DOT&E and the Secretary of the Air Force's reports are complete, as discussed for subsection (a) above. The retirement of legacy of aircraft is not only about reducing the cost. Existing A-10 manpower and resources are required to transfer to the new weapon systems. Preventing retirement of A-10 aircraft will prevent repurposing of these resources. This will further delay force capability and lethality improvements against peer adversaries

Subsection (c) of this proposal would amend FY21 NDAA primary mission aircraft inventory requirements on air refueling tanker aircraft. Section 135(a) of the FY21 NDAA requires that, until October 1, 2025, the Secretary of the Air Force maintain not less than 412 tanker aircraft based on primary mission aircraft inventory of the Air Force. This proposal requests modification of the number of required tanker aircraft to 400.

Subsection (c) of this proposal seeks to modify this requirement based on the need to modernize and accelerate toward the USAF future force design. The FY23 President's Budget maintains aerial refueling total aircraft inventory at or above 455; we prioritized continuous recapitalization of KC-135s (now visible in the FYDP) and therefore accepted a small amount of risk in current capacity. The DAF currently has four units in KC-46 conversion and a typical unit has 2-3 years to complete transition. Units cannot fly and maintain two sets of tanker aircraft at fully operationally capable levels.

The Department of the Air Force and United States Transportation Command (USTRANSCOM) have continued to expand the KC-46 Interim Capability Release, and have just approved two 5th Generation aircraft (F-35 and F-22) for KC-46 operations. Realigning theater-assigned tanker aircraft based on changes to United States Central Command (USCENTCOM) posture, adding additional availability based on improvements to Mission Capable Rates, adding additional funds for Air Reserve Component participation, and utilizing the KC-46 when possible to fill operational taskings all combine to make substantially more tanker aircraft available for daily taskings. This should allow additional retirements in FY23.

The FY22 NDAA allowed the Secretary of the Air Force to divest up to 18 KC-135s during the period 27 December 2021 to 1 October 2023. The FY23 President's Budget calls for the divestment of an additional 13 KC-135s (maintaining 362 total aircraft inventory and 340 primary mission aircraft inventory) in FY23. This proposal requests to increase the FY22 authorized divestment from 18 to 31. This proposal permits the Air Force to fill daily requirements while building a more lethal force by continuing to recapitalize our aging KC-135 fleet with new aircraft.

Subsection (d) of this proposal rescinds the requirement for a minimum number of E-8 Joint Surveillance Target Attack Radar System (JSTARS) aircraft to be provided to geographic combatant commanders through the Intelligence, Surveillance, and Reconnaissance Global Force

Management Allocation Process. This requirement is no longer needed because the Secretary of Defense (SECDEF) has identified a capability with sufficient capacity to replace the current fleet of 16 E-8 JSTARS aircraft in a manner that meets geographic combatant commander requirements. SECDEF has certified the replacement capability delivers capabilities that are comparable or superior to the capabilities delivered by the JSTARS aircraft. SECDEF has notified the Chairman and Ranking members of the four congressional defense committees of the planned aircraft retirement.

Subsection (e) of this proposal seeks to modify the required total aircraft inventory of fighter aircraft of not less than 1,970 aircraft down to 1,800 and a total primary mission aircraft inventory (combat-coded) of not less than 900 fighter aircraft. It also seeks to modify the required total aircraft inventory of air refueling tanker aircraft of not less than 479 aircraft down to 455, as discussed in the analysis for subsection (c), above.

The Air Force strategy is to develop a fighter force that transitions from seven to four platforms, focusing on Next Generation Air Dominance (NGAD), F-35, and modernized F-15 and F-16 aircraft. To expedite this transition and free up manpower and resources, we must down-size current fighter aircraft inventories and find the right balance of capability and capacity. The capability we need in the future force is unaffordable at the quantities required to satisfy current NDAA fighter minimums. Accepting capacity as a solution to national security regardless of capability mix or affordability, puts us on a path of compounding risk we may be unable to recover from. We must reduce our oldest and least relevant fighter aircraft or substantially increase funding for the Air Force.

These air refueling tanker aircraft reductions support the USAF's mandate to maximize investment in modernization priorities to meet the threats of peer adversaries.

Resource Information: The resources impacted by this proposal will be included within the Fiscal Year (FY) 2023 President's Budget request as savings that will be reinvested to support other programs. If this proposal is not supported, funding will need to be restored in the FY23 Defense Appropriations Bill to maintain the current A-10, tanker, and JSTARS fleet size. Funding requirements by budget line item will be provided upon request to both appropriations and authorization committees in coordination with OSD(C).

SAVINGS - RESOURCE IMPACT ($MILLIONS)*									
Program	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element**
A-10	55.405	110.81	172.5	177.43	179.1	Multiple	Multiple	Multiple	Multiple
KC-135	41	112.4	177.3	166.6	148.1	Multiple	Multiple	Multiple	Multiple
JSTARS	117.7	150.4	355.5	338.5	334.8	Multiple	Multiple	Multiple	Multiple

** Savings numbers provided are designed to answer the specific question in the paragraph above, without context for our greater divestment strategy. For example, the cost in the table shows what divesting A-10s from Fort Wayne in FY23 would cost to keep, plus mods required in the late years to keep them flying. These numbers reflect best estimates, due to uncertainty in various operating costs, and will need to be adjusted if this proposal is rejected.*

Changes to Existing Law: This proposal would amend section 142 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 755), section 134 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328), section 147 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1670), section 135 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283), section 137 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81), and section 9062 of title 10, United States Code, as follows:

Section 142 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 755):

SEC. 142. PROHIBITION ON AVAILABILITY OF FUNDS FOR RETIREMENT OF A-10 AIRCRAFT.

(a) PROHIBITION ON AVAILABILITY OF FUNDS FOR RETIREMENT.—Except as provided by section 141, none of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2016 for the Air Force may be obligated or expended to retire, prepare to retire, or place in storage or on backup aircraft inventory status any A–10 aircraft.

(b) ADDITIONAL LIMITATIONS ON RETIREMENT.—

(1) IN GENERAL.—Except as provided by section 141, and in addition to the limitation in subsection (a), during the period before December 31, 2016, the Secretary of the Air Force may not retire, prepare to retire, or place in storage or on backup flying status any A–10 aircraft.

(2) MINIMUM INVENTORY REQUIREMENT.—The Secretary of the Air Force shall ensure the Air Force maintains a minimum of ~~171~~153 A–10 aircraft designated as primary mission aircraft inventory.

(c) PROHIBITION ON AVAILABILITY OF FUNDS FOR SIGNIFICANT REDUCTIONS IN MANNING LEVELS.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2016 for the Air Force may be obligated or expended to make significant reductions to manning levels with respect to any A–10 aircraft squadrons or divisions.

(d) ADDITIONAL LIMITATION ON SIGNIFICANT REDUCTIONS IN MANNING LEVELS.—In addition to the limitation in subsection (c), during the period before December 31, 2016, the Secretary of the Air Force may not make significant reductions to manning levels with respect to any A–10 aircraft squadrons or divisions.

(e) STUDY ON REPLACEMENT CAPABILITY REQUIREMENTS OR MISSION PLATFORM FOR THE A–10 AIRCRAFT.—

(1) INDEPENDENT ASSESSMENT REQUIRED.—

(A) IN GENERAL.—The Secretary of the Air Force shall commission an appropriate entity outside the Department of Defense to conduct an assessment of the required capabilities or mission platform to replace the A–10 aircraft. This assessment would represent preparatory work to inform an analysis of alternatives.

(B) ELEMENTS.—The assessment required under subparagraph (A) shall include each of the following:

(i) Future needs analysis for the current A–10 aircraft mission set to include troops-in-contact/close air support, air interdiction, strike control and reconnaissance, and combat search and rescue support in both contested and uncontested battle environments. At a minimum, the needs analysis should specifically address the following areas:

(I) The ability to safely and effectively conduct troops-in-contact/danger close missions or missions in close proximity to civilians in the presence of the air defenses found with enemy ground maneuver units.

(II) The ability to effectively target and destroy moving, camouflaged, or dug-in troops, artillery, armor, and armored personnel carriers.

(III) The ability to engage, target, and destroy tanks and armored personnel carriers, including with respect to the carrying capacity of armor-piercing weaponry, including mounted cannons and missiles.

(IV) The ability to remain within visual range of friendly forces and targets to facilitate responsiveness to ground forces and minimize re-attack times.

(V) The ability to safely conduct close air support beneath low cloud ceilings and in reduced visibilities at low airspeeds in the presence of the air defenses found with enemy ground maneuver units.

(VI) The capability to enable the pilot and aircraft to survive attacks stemming from small arms, machine guns, man-portable air-defense systems, and lower caliber anti-aircraft artillery organic or attached to enemy ground forces and maneuver units.

(VII) The ability to communicate effectively with ground forces and downed pilots, including in communications jamming or satellite-denied environments.

(VIII) The ability to execute the missions described in subclauses (I), (II), (III), and (IV) in a GPS- or satellite-denied environment with or without sensors.

(IX) The ability to deliver multiple lethal firing passes and sustain long loiter endurance to support friendly forces throughout extended ground engagements.

(X) The ability to operate from unprepared dirt, grass, and narrow road runways and to generate high sortie rates under these austere conditions.

(ii) Identification and assessment of gaps in the ability of existing and programmed mission platforms in providing required capabilities to conduct missions specified in clause (i) in both contested and uncontested battle environments.

(iii) Assessment of operational effectiveness of existing and programmed mission platforms to conduct missions specified in clause (i) in both contested and uncontested battle environments.

(iv) Assessment of probability of likelihood of conducting missions requiring troops-in-contact/close air support operations specified in clause (i) in contested environments as compared to uncontested environments.

(v) Any other matters the independent entity or the Secretary of the Air Force determines to be appropriate.

(2) REPORT.—

(A) IN GENERAL.—Not later than September 30, 2016, the Secretary of the Air Force shall submit to the congressional defense committees a report that includes the assessment required under paragraph (1).

(B) FORM.—The report required under subparagraph (A) may be submitted in classified form, but shall also contain an unclassified executive summary and may contain an unclassified annex.

(3) NONDUPLICATION OF EFFORT.—If any information required under paragraph (1) has been included in another report or notification previously submitted to the congressional defense committees by law, the Secretary of the Air Force may provide a list of such reports and notifications at the time of submitting the report required under paragraph (2) instead of including such information in such report.

Section 134 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328), as amended by the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81):

SEC. 134. PROHIBITION ON AVAILABILITY OF FUNDS FOR RETIREMENT OF A-10 AIRCRAFT.

(a) Prohibition on Availability of Funds for Retirement.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2017 for the Air Force may be obligated or expended to retire, prepare to retire, or place in storage or on backup aircraft inventory status any A-10 aircraft.

(b) Additional Limitation on Retirement.—In addition to the prohibition in subsection (a), the Secretary of the Air Force may not retire, prepare to retire, or place in storage or on backup aircraft inventory status any A-10 aircraft until a period of 90 days has elapsed following the date on which the Secretary submits to the congressional defense committees a report that includes the information described in subsection (e)(2)(C).

(c) Prohibition on Significant Reductions in Manning Levels.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2017 for the Air Force may be obligated or expended to make significant reductions to manning levels with respect to any A-10 aircraft squadrons or divisions.

(d) Minimum Inventory Requirement.—The Secretary of the Air Force shall ensure the Air Force maintains a minimum of ~~171~~153 A-10 aircraft designated as primary mission aircraft inventory until a period of 90 days has elapsed following the date on which the Secretary submits to the congressional defense committees the report under subsection (e)(2).

(e) Reports Required.—

(1) The Director of Operational Test and Evaluation shall submit to the congressional defense committees a report that includes--

(A) the results and findings of the initial operational test and evaluation of the F-35 aircraft program; and

(B) a comparison test and evaluation that examines the capabilities of the F-35A and A-10C aircraft in conducting close air support, combat search and rescue, and forward air controller airborne missions.

(2) Not later than 180 days after the date of the submission of the report under paragraph (1), the Secretary of the Air Force shall submit to the congressional defense committees a report that includes--

(A) the views of the Secretary with respect to the results of the initial operational test and evaluation of the F-35 aircraft program as summarized in the report under paragraph (1), including any issues or concerns of the Secretary with respect to such results;

(B) a plan for addressing any deficiencies and carrying out any corrective actions identified in such report; and

(C) short-term and long-term strategies for preserving the capability of the Air Force to conduct close air support, combat search and rescue, and forward air controller airborne missions.

(f) Special Rule.—

(1) Subject to paragraph (2), the Secretary of the Air Force may carry out the transition of the A-10 unit at Fort Wayne Air National Guard Base, Indiana, to an F-16 unit as described by the Secretary in the Force Structure Actions map submitted in support of the budget of the President for fiscal year 2017 (as submitted to Congress under section 1105(a) of title 31, United States Code).

(2) Subsections (a) through (e) shall apply with respect to any A-10 aircraft affected by the transition described in paragraph (1).

Section 135 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2039):

SEC. 135. LIMITATION ON AVAILABILITY OF FUNDS FOR DESTRUCTION OF A-10 AIRCRAFT IN STORAGE STATUS.

(a) LIMITATION.—None of the funds authorized to be appropriated by this Act or otherwise made available for the Air Force for fiscal year 2017 or any fiscal year thereafter may be obligated or expended to scrap, destroy, or otherwise dispose of any potential donor A–10 aircraft until the date on which the Secretary of the Air Force submits to the congressional defense committees ~~the report required under section 134(e)(2)~~ a report that includes the information described in section 134(e)(2)(C).

(b) NOTIFICATION AND CERTIFICATION.—Not later than 45 days before taking any action to scrap, destroy, or otherwise dispose of any A–10 aircraft in any storage status in the 309th Aerospace Maintenance and Regeneration Group, the Secretary of the Air Force shall—

(1) notify the congressional defense committees of the intent of the Secretary to take such action; and

(2) certify that the A–10 aircraft subject to such action does not have serviceable wings or other components that could be used to prevent the permanent removal of any active inventory A–10 aircraft from flyable status.

(c) PLAN TO PREVENT REMOVAL A–10 AIRCRAFT FROM FLYABLE STATUS.—The Secretary of the Air Force shall—

(1) include with the materials submitted to Congress in support of the budget of the Department of Defense for fiscal year 2018 (as submitted with the budget of the President

under section 1105(a) of title 31, United States Code) a plan to prevent the permanent removal of any active inventory A–10 aircraft from flyable status due to unserviceable wings or any other required component during the period covered by the future years defense plan submitted to Congress under section 221 of title 10, United States Code; and

(2) carry out such plan to prevent the permanent removal of any active inventory A–10 aircraft from flyable status.

(d) POTENTIAL DONOR A–10 AIRCRAFT DEFINED.—In this section, the term ''potential donor A–10 aircraft'' means any A–10 aircraft in any storage status in the 309th Aerospace Maintenance and Regeneration Group that has serviceable wings or other components that could be used to prevent any active inventory A–10 aircraft from being permanently removed from flyable status due to unserviceable wings or other components.

Section 147 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) as amended by the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 134 Stat. 3433):

SEC. 147. LIMITATION ON AVAILABILITY OF FUNDS FOR RETIREMENT OF E–8 JSTARS AIRCRAFT.

(a) LIMITATION ON AVAILABILITY OF FUNDS FOR RETIREMENT.—Except as provided in subsection (b), none of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2019 or any subsequent fiscal year for the Air Force may be obligated or expended to retire, or prepare to retire, any E–8 Joint Surveillance Target Attack Radar System aircraft until the date on which the Secretary of the Defense certifies to the congressional defense committees that—

(1) the Secretary has identified—

(A) a capability with sufficient capacity to replace the current fleet of 16 E–8 Joint Surveillance Target Attack Radar System aircraft in a manner that meets global combatant command requirements; and

(B) potential global basing locations for such capability; and

(2) such replacement capability delivers capabilities that are comparable or superior to the capabilities delivered by such aircraft.

(b) EXCEPTION.—The limitation in subsection (a) shall not apply to individual E–8C Joint Surveillance Target Attack Radar System aircraft that the Secretary of the Air Force determines, on a case-by-case basis, to be no longer mission capable because of mishaps, other damage, or being uneconomical to repair.

(c) CERTIFICATION REQUIRED.—Not later than March 1, 2019, the Secretary of Defense, on a nondelegable basis, shall certify to the congressional defense committees that—

(1) the Secretary of the Air Force is taking all reasonable steps to ensure the legacy E–8C Joint Surveillance Target Radar System aircraft that the Air Force continues to operate meet all safety requirements;

(2) the Secretary of the Air Force has developed and implemented a funding strategy to increase the operational and maintenance availability of the legacy E–8C Joint Surveillance Target Radar System aircraft that the Air Force continues to operate;

(3) the Advanced Battle-Management System acquisition and fielding strategy is executable and that sufficient funds will be available to achieve all elements of the System as described in the Capability Development Document for the System; and

(4) in coordination with each separate geographic combatant commander, that the Secretary of the Air Force is implementing defined and measurable actions to meet the operational planning and steady-state force presentation requirements for Ground-Moving Target Indicator intelligence and Battle-Management, Command and Control towards a moderate level of risk until the Advanced Battle Management System delivers equivalent capability.

(d) GAO REPORT AND BRIEFING.—

(1) REPORT REQUIRED.—Not later than March 1, 2020, the Comptroller General of the United States shall submit to the congressional defense committees a report on Increment I, Increment 2, and Increment 3 of the 21st Century Advanced Battle Management System of Systems capability of the Air Force. The report shall include a review of—

(A) the technologies that compose the capability and the level of maturation of such technologies;

(B) the resources budgeted for the capability;

(C) the fielding plan for the capability;

(D) any risk assessments associated with the capability; and

(E) the overall acquisition strategy for the capability.

(2) INTERIM BRIEFING.—Not later than March 1, 2019, the Comptroller General of the United States shall provide to the Committees on Armed Services of the House of Representatives and the Senate a briefing on the topics to be covered by the report under paragraph (1), including any preliminary data and any issues or concerns of the Comptroller General relating to the report.

(e) AIR FORCE REPORT.—Not later than February 5, 2019, the Secretary of the Air Force shall submit to the congressional defense committees a report on the legacy fleet of E–8C Joint Surveillance Target Attack Radar System aircraft that includes—

(1) the modernization and sustainment strategy, and associated costs, for the airframe and mission systems that will be used to maintain the legacy fleet of such aircraft until the planned retirement of the aircraft; and (2) a plan that will provide combatant commanders with an increased level of E–8C force support.

~~(f) E–8C FORCE PRESENTATION REQUIREMENT.—~~

~~(1) IN GENERAL.—Beginning not later than October 1, 2020, and until the retirement of the E–8C aircraft fleet, the Secretary of the Air Force shall provide not fewer than 6~~ 4 ~~dedicated E–8C aircraft each fiscal year for allocation to the geographical combatant commanders through the Intelligence, Surveillance, and Reconnaissance Global Force Management Allocation Process.~~

~~(2) EXCEPTION.—If the Secretary of the Air Force is unable to meet the requirements of paragraph (1), the Secretary of Defense, on a nondelegable basis, may waive the requirements for a fiscal year and shall provide to the congressional defense committees a notice of waiver issuance and justification.~~

(~~g~~f) AIR FORCE BRIEFING REQUIREMENT.—Beginning not later than October 1, 2018, and on a quarterly basis thereafter, the Secretary of the Air Force shall provide to the congressional defense committees a program update briefing on the Advanced Battle-Management System of the Air Force, and all associated technologies.

Section 135 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283) as amended by the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81):

SEC. 135. INVENTORY REQUIREMENTS FOR AIR REFUELING TANKER AIRCRAFT.

(a) IN GENERAL.--During the period beginning on the date of the enactment of this Act and ending on October 1, 2025, the Secretary of the Air Force shall maintain not less than ~~412~~ 400 tanker aircraft based on Primary Mission Aircraft Inventory (PMAI) of the Air Force.

(b) PROHIBITION ON RETIREMENT OF KC-135 AIRCRAFT.—Except as provided in subsection (d), during the period beginning on the date of the enactment of this Act and ending on October 1, 2023, the Secretary of the Air Force may not retire, or prepare to retire, any KC-135 aircraft.

(c) KC-135 AIRCRAFT FLEET MANAGEMENT.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2021 for the Air Force may be obligated or expended to reduce the number of KC-135 aircraft designated as primary mission aircraft inventory.

(d) EXCEPTIONS.—The requirement in subsection (b) shall not apply to an aircraft otherwise required to be maintained by that subsection if the Secretary of the Air Force—

(1) at any time during the period beginning on the date of the enactment of this Act and ending on October 1, 2023, determines, on a case-by-case basis, that such aircraft is no longer mission capable due to mishap or other damage, or being uneconomical to repair; or

(2) during fiscal year 2023, certifies in writing to the congressional defense committees, not later than 30 days before the date of divestment of such aircraft, that the Air Force can meet combatant command tanker aircraft requirements by leveraging Air National Guard and Air Force Reserve capacity with increased Military Personnel Appropriation (MPA) Man-day Tours to the reserve force.

(e) PRIMARY MISSION AIRCRAFT INVENTORY DEFINED.--In this section, the term "primary mission aircraft inventory" has the meaning given that term in section 9062(i)(2)(B) of title 10, United States Code.

Section 137 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81; 135 Stat. 1576):

SEC. 137. INVENTORY REQUIREMENTS AND LIMITATIONS RELATING TO CERTAIN AIR REFUELING TANKER AIRCRAFT.

(a) REPEAL OF MINIMUM INVENTORY REQUIREMENTS FOR KC–10A AIRCRAFT.—[amended section 135 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283)]

(b) LIMITATION ON RETIREMENT OF KC–135 AIRCRAFT.—

(1) LIMITATION.—Notwithstanding section 135 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283) and except as provided in paragraph (2), the Secretary of the Air Force may not retire more than ~~18~~31 KC–135 aircraft during the period beginning on the date of the enactment of this Act and ending on October 1, 2023.

(2) EXCEPTION.—The limitation in paragraph (1) shall not apply to individual KC–135 aircraft that the Secretary of the Air Force determines, on a case-by-case basis, to be no longer mission capable because of mishaps, other damage, or being uneconomical to repair.

(c) PROHIBITION ON REDUCTION OF KC–135 AIRCRAFT IN PMAI OF THE RESERVE COMPONENTS.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2022 for the Air Force may be obligated or expended to reduce the number of KC–135 aircraft designated as primary mission aircraft inventory within the reserve components of the Air Force.

(d) PRIMARY MISSION AIRCRAFT INVENTORY DEFINED.—In this section, the term ''primary mission aircraft inventory'' has the meaning given that term in section 9062(i)(2)(B) of title 10, United States Code..

Title 10, United States Code
§9062. Policy; composition; aircraft authorization

(a) It is the intent of Congress to provide an Air Force that is capable, in conjunction with the other armed forces, of-

(1) preserving the peace and security, and providing for the defense, of the United States, the Commonwealths and possessions, and any areas occupied by the United States;

(2) supporting the national policies;

(3) implementing the national objectives; and

(4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.

(b) There is a United States Air Force within the Department of the Air Force.

(c) In general, the Air Force includes aviation forces both combat and service not otherwise assigned. It shall be organized, trained, and equipped primarily for prompt and sustained offensive and defensive air operations. It is responsible for the preparation of the air forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Air Force to meet the needs of war.

(d) The Air Force consists of-

(1) the Regular Air Force, the Air National Guard of the United States, the Air National Guard while in the service of the United States, and the Air Force Reserve;

(2) all persons appointed or enlisted in, or conscripted into, the Air Force without component; and

(3) all Air Force units and other Air Force organizations, with their installations and supporting and auxiliary combat, training, administrative, and logistic elements; and all members of the Air 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.

(e) Subject to subsection (f) of this section, chapter 911 of this title, and the strength authorized by law pursuant to section 115 of this title, the authorized strength of the Air Force is 70 Regular Air Force groups and such separate Regular Air Force squadrons, reserve groups, and supporting and auxiliary regular and reserve units as required.

(f) There are authorized for the Air Force 24,000 serviceable aircraft or 225,000 airframe tons of serviceable aircraft, whichever the Secretary of the Air Force considers appropriate to carry out this section. This subsection does not apply to guided missiles.

(g)(1) Effective October 1, 2011, the Secretary of the Air Force shall maintain a total aircraft inventory of strategic airlift aircraft of not less than 301 aircraft. Effective on the date that is 45 days after the date on which the report under section 141(c)(3) of the National Defense Authorization Act for Fiscal Year 2013 is submitted to the congressional defense committees, the Secretary shall maintain a total aircraft inventory of strategic airlift aircraft of not less than 275 aircraft.

(2) In this subsection:

(A) The term "strategic airlift aircraft" means an aircraft-

(i) that has a cargo capacity of at least 150,000 pounds; and

(ii) that is capable of transporting outsized cargo an unrefueled range of at least 2,400 nautical miles.

(B) The term "outsized cargo" means any single item of equipment that exceeds 1,090 inches in length, 117 inches in width, or 105 inches in height.

[(h) Repealed. Pub. L. 116–283, div. A, title I, §132(b), Jan. 1, 2021, 134 Stat. 3430 .]

(i)(1) During the period beginning on October 1, 2017, and ending on October 1, 2026, the Secretary of the Air Force shall maintain a total aircraft inventory of fighter aircraft of not less than ~~1,970~~ 1,800 aircraft, and a total primary mission aircraft inventory (combat-coded) of not less than ~~1,145~~ 900 fighter aircraft.

(2) In this subsection:

(A) The term "fighter aircraft" means an aircraft that-

(i) is designated by a mission design series prefix of F– or A–;

(ii) is manned by one or two crewmembers; and

(iii) executes single-role or multi-role missions, including air-to-air combat, air-to-ground attack, air interdiction, suppression or destruction of enemy air defenses, close air support, strike control and reconnaissance, combat search and rescue support, or airborne forward air control.

(B) The term "primary mission aircraft inventory" means aircraft assigned to meet the primary aircraft authorization to a unit for the performance of its wartime mission.

(j)(1) Except as provided in paragraph (2), effective October 1, 2019, the Secretary of the Air Force shall maintain a total aircraft inventory of air refueling tanker aircraft of not less than ~~479~~ 455 aircraft.

(2) The Secretary of the Air Force may reduce the number of air refueling tanker aircraft in the total aircraft inventory of the Air Force below ~~479~~ 455 only if-

(A) the Secretary certifies to the congressional defense committees that such reduction is justified by the results of the mobility capability and requirements study conducted under section 144(b) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91); and

(B) a period of 30 days has elapsed following the date on which the certification is made to the congressional defense committees under subparagraph (A).

(3) In this subsection:

(A) The term “air refueling tanker aircraft” means an aircraft that has as its primary mission the refueling of other aircraft.

(B) The term “total aircraft inventory” means aircraft authorized to a flying unit for operations or training.

SEC.___. EXTENSION OF AUTHORITY TO GRANT COMPETITIVE STATUS TO EMPLOYEES OF INSPECTORS GENERAL FOR OVERSEAS CONTINGENCY OPERATIONS.

Section 8L(d)(5)(B) of the Inspector General Act of 1978 (Public Law 95-452; 5 U.S.C. App. 8L) is amended by striking "2 years" and inserting "5 years".

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

Section-by-Section Analysis

This proposal would amend section 8L(d)(5)(B) of the Inspector General Act of 1978 to extend the authority to grant competitive status to employees hired under section 8L by the Department of Defense, the Department of State, and U.S. Agency for International Development Offices of Inspector General to support the Lead Inspector General (Lead IG) mission.

The current authorization for competitive status applies only to employees hired on or before December 20, 2021, within 2 years from enactment of the FY 2020 NDAA. To sustain this recruitment and retention incentive for all section 8L employees supporting the Lead IG mission, including those hired after December 20, 2021, we believe the authorization should be extended to 5 years in the FY 2023 NDAA.

Budget Implications: This proposal has no impact on the use of resources.

Changes to Existing Law: This proposal would amend section 8L(d)(5)(B) of the Inspector General Act of 1978 (Public Law 95-452; 5 U.S.C. App. 8L) as follows:

SEC. 8L. SPECIAL PROVISIONS CONCERNING OVERSEAS CONTINGENCY OPERATIONS.

(a) ADDITIONAL RESPONSIBILITIES OF CHAIR OF COUNCIL OF INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY.—The Chair of the Council of Inspectors General on Integrity and Efficiency (CIGIE) shall, in consultation with the members of the Council, have the additional responsibilities specified in subsection (b) with respect to the Inspectors General specified in subsection (c) upon the earlier of—

(1) the commencement or designation of a military operation as an overseas contingency operation that exceeds 60 days; or

(2) receipt of a notification under section 113(n) of title 10, United States Code, with respect to an overseas contingency operation.

(b) SPECIFIC RESPONSIBILITIES.—The responsibilities specified in this subsection are the following:

(1) In consultation with the Inspectors General specified in subsection (c), to designate a lead Inspector General in accordance with subsection (d) to discharge the authorities of the lead Inspector General for the overseas contingency operation concerned as set forth in subsection (d).

(2) To resolve conflicts of jurisdiction among the Inspectors General specified in subsection (c) on investigations, inspections, and audits with respect to such contingency operation in accordance with subsection (d)(2)(B).

(3) To assist in identifying for the lead inspector general for such contingency operation, Inspectors General and inspector general office personnel available to assist the lead Inspector General and the other Inspectors General specified in subsection (c) on matters relating to such contingency operation.

(c) INSPECTORS GENERAL.—The Inspectors General specified in this subsection are the Inspectors General as follows:

(1) The Inspector General of the Department of Defense.

(2) The Inspector General of the Department of State.

(3) The Inspector General of the United States Agency for International Development.

(d) LEAD INSPECTOR GENERAL FOR OVERSEAS CONTINGENCY OPERATION.—

(1) A lead Inspector General for an overseas contingency operation shall be designated by the Chair of the Council of Inspectors General on Integrity and Efficiency under subsection (b)(1) not later than 30 days after the earlier of—

(A) the commencement or designation of the military operation concerned as an overseas contingency operation that exceeds 60 days; or

(B) receipt of a notification under section 113(n) of title 10, United States Code, with respect to an overseas contingency operation. The lead Inspector General for a contingency operation shall be designated from among the Inspectors General specified in subsection (c).

(2) The lead Inspector General for an overseas contingency operation shall have the following responsibilities:

(A) To appoint, from among the offices of the other Inspectors General specified in subsection (c), an Inspector General to act as associate Inspector General for the contingency operation who shall act in a coordinating role to assist the lead Inspector General in the discharge of responsibilities under this subsection.

(B) To develop and carry out, in coordination with the offices of the other Inspectors General specified in subsection (c), a joint strategic plan to conduct comprehensive oversight over all aspects of the contingency operation and to ensure through either joint or individual audits, inspections, and investigations, independent and effective oversight of all programs and operations of the Federal Government in support of the contingency operation.

(C) To review and ascertain the accuracy of information provided by Federal agencies relating to obligations and expenditures, costs of programs and projects, accountability of funds, and the award and execution of major contracts, grants, and agreements in support of the contingency operation.

(D)

(i) If none of the Inspectors General specified in subsection (c) has principal jurisdiction over a matter with respect to the contingency operation, to identify and coordinate with the Inspector General who has principal jurisdiction over the matter to ensure effective oversight.

(ii) If more than one of the Inspectors General specified in subsection (c) has jurisdiction over a matter with respect to the contingency operation, to determine principal jurisdiction for discharging oversight responsibilities in accordance with this Act with respect to such matter.

(iii)

(I) Upon written request by the Inspector General with principal jurisdiction over a matter with respect to the contingency operation, and with the approval of the lead Inspector General, an Inspector General specified in subsection (c) may provide investigative support or conduct an independent investigation of an allegation of criminal activity by any United States personnel, contractor, subcontractor, grantee, or vendor in the applicable theater of operations.

(II) In the case of a determination by the lead Inspector General that no Inspector General has principal jurisdiction over a matter with respect to the contingency operation, the lead Inspector General may—

(aa) conduct an independent investigation of an allegation described in subclause (I); or

(bb) request that an Inspector General specified in subsection (c) conduct such investigation.

(E) To employ, or authorize the employment by the other Inspectors General specified in subsection (c), on a temporary basis using the authorities in section 3161 of title 5, United States Code, (without regard to subsection (b)(2) of such section) such auditors, investigators, and other personnel as the lead Inspector General considers appropriate to assist the lead Inspector General and such other Inspectors General on matters relating to the contingency operation.

(F) To submit to Congress on a bi-annual basis, and to make available on an Internet website available to the public, a report on the activities of the lead Inspector General and the other Inspectors General specified in subsection (c) with respect to the contingency operation, including—

(i) the status and results of investigations, inspections, and audits and of referrals to the Department of Justice; and

(ii) overall plans for the review of the contingency operation by inspectors general, including plans for investigations, inspections, and audits.

(G) To submit to Congress on a quarterly basis, and to make available on an Internet website available to the public, a report on the contingency operation.

(H) To carry out such other responsibilities relating to the coordination and efficient and effective discharge by the Inspectors General specified in subsection (c) of duties relating to the contingency operation as the lead Inspector General shall specify.

(I) To enhance cooperation among Inspectors General and encourage comprehensive oversight of the contingency operation, any Inspector General responsible for conducting oversight of any program or operation performed in support of the contingency operation may, to the maximum extent practicable and consistent with the duties, responsibilities, policies, and procedures of such Inspector General—

(i) coordinate such oversight activities with the lead Inspector General; and

(ii) provide information requested by the lead Inspector General relating to the responsibilities of the lead Inspector General described in subparagraphs (B), (C), and (G).

(3)

(A) The lead Inspector General for an overseas contingency operation may employ, or authorize the employment by the other Inspectors General specified in subsection (c) of, annuitants covered by section 9902(g) of title 5, United States Code, for purposes of assisting the lead Inspector General in discharging responsibilities under this subsection with respect to the contingency operation.

(B) The employment of annuitants under this paragraph shall be subject to the provisions of section 9902(g) of title 5, United States Code, as if the lead Inspector General concerned was the Department of Defense.

(C)

(i)An annuitant receiving an annuity under the Foreign Service Retirement and Disability System or the Foreign Service Pension System under chapter 8 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) who is reemployed under this subsection—

(I) shall continue to receive the annuity; and

(II) shall not be considered a participant for purposes of chapter 8 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) or an employee for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code.

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

(4) The lead Inspector General for an overseas contingency operation shall discharge the responsibilities for the contingency operation under this subsection in a manner consistent with the authorities and requirements of this Act generally and the authorities and requirements applicable to the Inspectors General specified in subsection (c) under this Act.

(5)

(A) A person employed by any of the Inspectors General specified in subsection (c) for oversight of an overseas contingency operation under this section shall acquire competitive status for appointment to any position in the competitive

service for which the employee possesses the required qualifications upon the completion of 2 years of continuous service as an employee under this section.

(B) No person who is first employed as described in subparagraph (A) more than ~~2~~ 5 years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020 may acquire competitive status under subparagraph (A).

(e) SUNSET FOR PARTICULAR CONTINGENCY OPERATIONS.—

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

(f) CONSTRUCTION OF AUTHORITY.—

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

SEC. __. EXTENSION AND MODIFICATION OF AUTHORITY TO PROVIDE ASSISTANCE TO COUNTER THE ISLAMIC STATE OF IRAQ AND SYRIA.

(a) EXTENSION.—Subsection (a) of section 1236 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3559), as most recently amended by section 1223 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81), is further amended by striking "December 31, 2022" and inserting "December 31, 2024".

(b) FUNDING.—Subsection (g) of such section 1236 is amended by striking "Overseas Contingency Operations for fiscal year 2022" and inserting "fiscal year 2023".

(c) FOREIGN CONTRIBUTIONS.—Subsection (h) of such section 1236 is amended—

(1) by striking "CONTRIBUTIONS.—The Secretary" and inserting the following: "CONTRIBUTIONS.—

"(1) IN GENERAL.—The Secretary"; and

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

"(2) USE OF CONTRIBUTIONS.—The limitations under subsection (a) and subsection (m) shall not apply with respect to the expenditure of foreign contributions in excess of the limitations described in those subsections.".

(d) WAIVER AUTHORITY.—Subsection (o) of such section 1236 is amended—

(1) in paragraph (1), by striking "limitation in subsection (a)" and inserting "limitations in subsection (a) or subsection (m)"; and

(2) in paragraph (5), by striking "December 31, 2022" and inserting "December 31, 2024".

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

Section-by-Section Analysis

This proposal would extend and modify existing authority under section 1236 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291) to continue providing support to defeat-ISIS partner forces in Iraq and help ensure ISIS cannot resurge.

This authority continues to serve as the principal means for supporting counterterrorism and related operations "by, with, and through" vetted Government of Iraq (GoI) forces, including the Peshmerga, to achieve the enduring defeat of the Islamic State of Iraq and Syria (ISIS) in Iraq. The extension and modification reflects DoD requirements in the current operational environment and the continuing need to enable vetted Iraqi Security Forces (ISF) and Peshmerga forces to ensure the defeat of ISIS and prevent its re-emergence.

The Administration continues to work with the Government of Iraq to enable their ability to securely and humanely hold Iraqi ISIS fighters in detention facilities. More than 2,000 Iraqi ISIS fighters remain in partner-run detention facilities in Syria, which remain vulnerable to ISIS efforts to break out. Continuing and expanding the authority to waive limitations on the cost of construction projects would allow for the expedited implementation of projects to support our Iraqi partners' efforts to expand detention capacity effectively, and facilitate the secure and humane repatriation of Iraqi ISIS detainees currently in Syria. The Administration is seeking additional foreign contributions in support of these efforts.

U.S. support for the ISF defeat-ISIS effort strengthens Iraq's ability to counter ISIS effectively and liberate their nation from the ISIS threat. Continuing this support will enhance the enduring strategic relationship between the United States and Iraq and help build the security relationship into the future. Section 1236 support gave, and gives, credibility to our commitment to Iraq. The training, equipment, and operational support provided through this authority allowed the GoI to consolidate the gains achieved against ISIS and liberate all the territory ISIS once held. Extension of the program will facilitate the security development necessary for stability in Iraq.

Section 1236 is the only authority that provides the flexibility to support the evolving nature of the fight against ISIS in Iraq, ensure the defeat of ISIS, and achieve U.S. objectives in the region.

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

RESOURCE IMPACT ($MILLIONS)									
	FY 2022	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Iraq CTEF	$358					CTEF	04	4GTD0 000	1002200T
Total	$358								

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

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

(a) IN GENERAL.—The Secretary of Defense is authorized, in coordination with the Secretary of State, to provide assistance, including training, equipment, logistics support, supplies, and services, stipends, infrastructure repair and renovation, small-scale construction of temporary facilities necessary to meet urgent operational or force protection requirements with a cost less than $4,000,000, and sustainment, to military and other security forces of or associated with the Government of Iraq, including Kurdish and tribal security forces or other local security forces, with a national security mission, and facilitate Coalition efforts to build capacity in our partner forces to counter and defeat any re-emergence of ISIS, through ~~December 31, 2022~~ December 31, 2024, for the following purposes:

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

(2) Securing the territory of Iraq.

* * * * *

(g) FUNDING.—Of the amounts authorized to be appropriated for the Department of Defense for ~~Overseas Contingency Operations for fiscal year 2022~~ fiscal year 2023, there are authorized to be appropriated $345,000,000 to carry out this section.

(h) AUTHORITY TO ACCEPT CONTRIBUTIONS.—

(1) IN GENERAL.—The Secretary of Defense may accept and retain contributions, including assistance in-kind, from foreign governments, including the Government of Iraq, to provide assistance authorized under subsection (a). Any funds accepted by the Secretary may be credited to the account from which funds are made available for the provision of assistance authorized under subsection (a) and may be used for such purpose until expended.

(2) USE OF CONTRIBUTIONS.—The limitations under subsection (a) and subsection (m) shall not apply with respect to the expenditure of foreign contributions in excess of the limitations described in those subsections.

* * * * *

(m) LIMITATION ON AGGREGATE COST OF CONSTRUCTION, REPAIR, AND RENOVATION PROJECTS.—The aggregate amount of construction, repair, and renovation projects carried out under this section in any fiscal year may not exceed $30,000,000.

* * * * *

(o) WAIVER AUTHORITY.—

(1) IN GENERAL.—The President may waive the dollar amount ~~limitation~~ limitations in subsection (a) or subsection (m) with respect to a construction, repair, or renovation project for the purposes of providing the support described in paragraph (2) if the President—

(A) determines that the waiver is in the national security interest of the United States; and

(B) submits to the appropriate congressional committees a notification of the exercise of the waiver.

(2) SUPPORT DESCRIBED.—The support described in this paragraph is support relating to temporary humane detention of Islamic State of Iraq and Syria foreign terrorist fighters in accordance with all laws and obligations relating to the provision of such support, including, as applicable—

(A) the law of armed conflict;

(B) internationally recognized human rights;

(C) the principle of non-refoulement;

(D) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (done at New York on December 10, 1984); and

(E) the United Nations Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST6223)).

(3) NOTICE AND WAIT.—

(A) IN GENERAL.—A project with respect to which the exercise of a waiver under paragraph (1) applies may only be carried out after the end of a 15-day period beginning at the date on which the appropriate congressional committees receive the notification required by paragraph (1)(B).

(B) MATTERS TO BE INCLUDED.—The notification required by paragraph (1)(B) shall include the following:

(i) A detailed plan and cost estimate for the project.

(ii) A certification by the President that facilities and activities relating to the project comply with the laws and obligations described in paragraph (2).

(iii) An explanation of the national security interest addressed by the project.

(C) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this paragraph, the term "appropriate congressional committees" means—

(i) the congressional defense committees; and

(ii) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(4) UPDATE TO PLAN AND COST ESTIMATE.—Upon obligation of any funds to carry out a project with respect to which the exercise of a waiver under paragraph (1) applies, the Secretary of Defense shall submit to the congressional defense committees an update to the plan and cost estimate for the project as required by paragraph (3)(B)(i).

(5) SUNSET.—The waiver authority under this subsection shall expire on ~~December 31, 2022~~ December 31, 2024.

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

Paragraph (2) of section 1603(a) of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234; 120 Stat. 443), as added by section 1102 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4616) and as most recently amended by section 1114 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81), is further amended by striking "2023" and inserting "2024".

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

Section-by-Section Analysis

This proposal would extend through Fiscal Year (FY) 2024 the discretionary authority of the head of an agency to provide to an individual employed by, or assigned or detailed to, such agency, allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3973; 4081 et seq.), if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

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

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. Only Defense Agencies that anticipate having employees assigned to areas covered by this authority are identified in the budget table below. The costing methodology for this legislative proposal is based on the number of DoD civilian employees currently deployed to Pakistan or a combat zone, times the cost associated with each allowance, benefit, and gratuity under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (i.e., death gratuity equal to EX-II ($199,300 in 2021)); and payment of commercial roundtrip travel for Rest and Recuperation (R&R) breaks (up to three per year for employees deployed for 12 consecutive months and home

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

RESOURCE IMPACT ($MILLIONS)					
Program	**FY 2023**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Army	$27.36	Operation and Maintenance, Army	Multiple	Multiple	
Navy	$18.18	Operation and Maintenance, Navy	Multiple	Multiple	
Air Force	$3.17	Operation and Maintenance, Air Force	Multiple	Multiple	
DLA	$3.15	Defense Working Capital Funds, Defense-Wide	Multiple	Multiple	
DCMA	$1.48	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DISA	$0.53	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DCAA	$0.15	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
OSD	$0.42	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DFAS	$0.13	Defense Working Capital Funds, Defense-Wide	Multiple	Multiple	
WHS	$0.07	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
Joint Staff	$0.07	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
Total	$54.71				

PERSONNEL IMPACT (END STRENGTH)					
Program	**FY 2023**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Army	503	Operation and Maintenance, Army	Multiple	Multiple	
Navy	333	Operation and Maintenance, Navy	Multiple	Multiple	
Air Force	55	Operation and Maintenance, Air Force	Multiple	Multiple	
Defense-Wide Agencies	109	Operation and Maintenance, Defense Working Capital Funds, Defense-Wide	Multiple	Multiple	
Army	503	Operation and Maintenance, Army	Multiple	Multiple	
Navy	333	Operation and Maintenance, Navy	Multiple	Multiple	
Air Force	55	Operation and Maintenance, Air Force	Multiple	Multiple	
DLA	59	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DCMA	28	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DISA	9	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DCAA	2	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
OSD	7	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
DFAS	2	Defense Working Capital Funds, Defense-Wide	Multiple	Multiple	
WHS	1	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
Joint Staff	1	Operation and Maintenance, Defense-Wide	Multiple	Multiple	
Total	1,000				

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

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

(2) During fiscal years 2009 through ~~2023~~ 2024**,** the head of an agency may, in the agency head's discretion, provide to an individual employed by, or assigned or detailed to, such agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980, if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

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

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

SEC. ___. CLARIFICATION OF ADMINISTRATIVE CHAIN OF COMMAND FOR SPECIAL OPERATIONS.

(a) ASSISTANT SECRETARIES OF DEFENSE.—Section 138(b)(2) of title 10, United States Code, is amended—

(1) in subparagraph (A)(i), by striking the semicolon; and

(2) in subparagraph (B)—

(A) in the first sentence, by striking "the Secretary of Defense" and inserting "the Secretary of Defense and, if directed by the Secretary, the Deputy Secretary of Defense"; and

(B) in the second sentence, by inserting "or, if directed by the Secretary, the Deputy Secretary" after "the Secretary".

(b) SECRETARIAT FOR SPECIAL OPERATIONS.—Section 139b(a)(4) of title 10, United States Code, is amended in the second sentence by inserting "the Deputy Secretary of Defense, if directed by the Secretary, or" before "the Assistant Secretary".

(c) UNIFIED COMBATANT COMMAND FOR SPECIAL OPERATIONS FORCES.—Section 167(f)(1)(B) of title 10, United States Code, is amended by striking "the Secretary of Defense" and inserting "the Secretary of Defense, through the Deputy Secretary of Defense if directed by the Secretary,".

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

Section-by-Section Analysis

This proposal would clarify the role of the Deputy Secretary of Defense in the administrative chain of command for special operations matters. The Deputy Secretary often serves in the Secretary's stead. This proposal would ensure that the existing provisions relating to the administrative chain of command for special operations are not read to exclude the Deputy Secretary from appropriately acting pursuant to the Deputy's official duties.

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

Changes to Existing Law: This proposal would amend section 138, 139b, and 167 of title 10, United States Code:

§ 138. Assistant Secretaries of Defense

(a)(1) There are 15 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 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 <u>and, if directed by the Secretary under section 167(f) of this title, the Deputy Secretary of Defense</u>. Unless otherwise directed by the President, no officer below the Secretary <u>or, if directed by the Secretary, the Deputy Secretary</u> may intervene to exercise authority, direction, or control over the Assistant Secretary in the discharge of such responsibilities.

* * * * *

§ 139b. Secretariat for Special Operations; Special Operations Policy and Oversight Council

(a) SECRETARIAT FOR SPECIAL OPERATIONS.—

(1) IN GENERAL.—In order to fulfill the responsibilities of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict specified in section 138(b)(2)(A)(i) of this title, there shall be within the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict an office to be known as the "Secretariat for Special Operations".

(2) PURPOSE.—The purpose of the Secretariat is to assist the Assistant Secretary in exercising authority, direction, and control with respect to the special operations-peculiar administration and support of the special operations command, including the readiness and organization of special operations forces, resources and equipment, and civilian personnel as specified in such section.

(3) DIRECTOR.—The Director of the Secretariat for Special Operations shall be appointed by the Secretary of Defense from among individuals qualified to serve as the Director. An individual serving as Director shall, while so serving, be a member of the Senior Executive Service.

(4) ADMINISTRATIVE CHAIN OF COMMAND.—For purposes of the support of the Secretariat for the Assistant Secretary in the fulfillment of the responsibilities referred to in paragraph (1), the administrative chain of command is as specified in section 167(f) of this title. Unless otherwise directed by the President, no officer below the Secretary of Defense (other than the Deputy Secretary of Defense, if directed by the Secretary, or the Assistant Secretary) may intervene to exercise authority, direction, or control over the Secretariat in its support of the Assistant Secretary in the discharge of such responsibilities.

* * * * *

§ 167. Unified combatant command for special operations forces

(a) ESTABLISHMENT.—With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall establish under section 161 of this title a unified combatant command for special operations forces (hereinafter in this section referred to as the "special operations command"). The principal function of the command is to prepare special operations forces to carry out assigned missions.

* * * * *

(f) ADMINISTRATIVE CHAIN OF COMMAND.—(1) Unless otherwise directed by the President, the administrative chain of command to the special operations command runs—

(A) from the President to the Secretary of Defense;

(B) from the Secretary of Defense, through the Deputy Secretary of Defense if directed by the Secretary, to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict; and

(C) from the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict to the commander of the special operations command.

(2) For purposes of this subsection, administrative chain of command refers to the exercise of authority, direction and control with respect to the special operations-peculiar administration and support of the special operations command, including the readiness and organization of special operations forces, resources and equipment, and civilian personnel. It does not refer to the exercise of authority, direction, and control of operational matters that are subject to the operational chain of command of the commanders of combatant commands or the exercise of authority, direction, and control of personnel, resources, equipment, and other matters that are not special operations-peculiar that are the purview of the armed forces.

* * * * *

SEC. ___. CLARIFICATION OF EXCEPTIONS TO LIMITATIONS ON COST VARIATIONS

Subparagraph (D) of section 2853(c)(1) of title 10, United States Code, is amended to read as follows:

"(D) The Secretary concerned may not use the authority provided by subparagraph (A) to waive the cost limitation applicable to a military construction project with a total authorized cost greater than $500,000,000 or a military family housing project with a total authorized cost greater than $500,000,000, if that waiver would increase the project cost by more than 50 percent of the total authorized cost of the project.".

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

Section-by-Section Analysis

This proposal would amend section 2853 of title 10, United States Code, to clarify that the upper limit on authorized cost increases (50 percent of total authorized cost) only applies to military construction and military family housing projects with a total authorized cost greater than $500 million, as Congress intended.

Specifically, as noted in the Joint Explanatory Statement accompanying the Fiscal Year (FY) 2022 National Defense Authorization Act (NDAA), the "House bill contained a provision (sec. 2804 [sic]) that would amend section 2853 of title 10, United States Code to place limitations on the cost and scope of work variations for which the military departments can use notification procedures. The Senate amendment contained no similar provision. The agreement includes the House provision with an amendment that would clarify that the Secretary concerned cannot waive the cost limitation applicable to a military construction project or a military family housing project with a total authorized cost greater than $500.0 million."

As amended by section 2802 of the FY 2022 NDAA, however, section 2853 of title 10 now provides that all projects (not just those with a total authorized cost greater than $500 million) are limited to an authorized cost increase of no more than 50 percent with congressional notification, and projects with an authorized cost of in excess of $500 million are limited to an authorized cost increase of no more than $12 million.

The Department strongly opposed applying the upper limitation on authorized cost increases to all projects because affected projects would have to wait for a new authorized cost and would not be authorized to obligate funds either to award the project or modify an existing

construction contract that would cause the project to exceed the current authorized cost until the next NDAA.

By the time a cost increase of more than 50 percent or $12 million for projects over $500 million is identified, it would take at least nine months (PB Request (Feb) to NDAA Enactment (~Nov)) to obtain a new authorized cost. During this time, the basis for the cost increase would no longer be valid and a new solicitation or quote from the contractor would be required. For ongoing construction projects, waiting for a new authorization could mean having contractors demobilize its workforce, driving up much more significant project costs. The obligation of the additional funds would be subject to a new authorized cost if approved by Congress and to any requirements to reprogram or enact additional appropriations to cover the increased cost. This would further delay completing needed facilities for DoD's missions.

Resource Implications: If this proposal is not enacted, significant resources may be required due to time delays and increased project costs. These resources are not currently budgeted and would have to be redirected from other requirements, creating unfunded priorities throughout the Department.

Changes to Existing Law: This proposal would amend section 2853 of title 10, United States Code, as amended by section 2802 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81), as follows:

§2853. Authorized cost and scope of work variations

(a) COST VARIATIONS AUTHORIZED; LIMITATIONS.—Except as provided in subsection (c), (d), or (e), the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased or decreased by not more than 25 percent of the total authorized cost of the project or 200 percent of the minor construction project ceiling specified in section 2805(a) of this title, whichever is less, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was authorized by Congress.

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

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

acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

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

(c) EXCEPTIONS TO LIMITATION ON COST VARIATIONS AND SCOPE OF WORK REDUCTIONS.—(1)(A) Except as provided in subparagraph (D), the Secretary concerned may waive the percentage or dollar cost limitation applicable to a military construction project or a military family housing project under subsection (a) and approve an increase in the cost authorized for the project in excess of that limitation if the Secretary concerned notifies the appropriate committees of Congress of the cost increase in the manner provided in this paragraph.

(B) The notification required by subparagraph (A) shall—

(i) identify the amount of the cost increase and the reasons for the increase;

(ii) certify that the cost increase is sufficient to meet the mission requirement identified in the justification data provided to Congress as part of the request for authorization of the project; and

(iii) describe the funds proposed to be used to finance the cost increase.

(C) A waiver and approval by the Secretary concerned under subparagraph (A) shall take effect only after the end of the 14-day period beginning on the date on which the notification required by such subparagraph is received by the appropriate committees of Congress in an electronic medium pursuant to section 480 of this title.

~~(D) The Secretary concerned may not use the authority provided by subparagraph (A)—~~

~~(i) to waive the cost limitation applicable to a military construction project with a total authorized cost greater than $500,000,000 or a military family housing project with a total authorized cost greater than $500,000,000; and~~

~~(ii) to approve an increase in the cost authorized for the project that would increase the project cost by more than 50 percent of the total authorized cost of the project.~~

(D) The Secretary concerned may not use the authority provided by subparagraph (A) to waive the cost limitation applicable to a military construction project with a total authorized cost greater than $500,000,000 or a military family housing project with a total authorized cost greater than $500,000,000, if that waiver would increase the project cost by more than 50 percent of the total authorized cost of the project.

(E) In addition to the notification required by this paragraph, subsection (f) applies whenever a military construction project or military family housing project with a total authorized cost greater than $40,000,000 will have a cost increase of 25 percent or more. Subsection (f) may not be construed to authorize a cost increase in excess of the limitation imposed by subparagraph (D).

(2)(A) The Secretary concerned may waive the percentage or dollar cost limitation applicable to a military construction project or a military family housing project under subsection (a) and approve a decrease in the cost authorized for the project in excess of that limitation if the

Secretary concerned notifies the appropriate committees of Congress of the cost decrease not later than 14 days after the date funds are obligated in connection with the project.

(B) The notification required by subparagraph (A) shall be provided in an electronic medium pursuant to section 480 of this title.

(3)(A) The Secretary concerned may waive the limitation on a reduction in the scope of work applicable to a military construction project or a military family housing project under subsection (b)(1) and approve a scope of work reduction for the project in excess of that limitation if the Secretary concerned notifies the appropriate committees of Congress of the reduction in the manner provided in this paragraph.

(B) The notification required by subparagraph (A) shall—

(i) describe the reduction in the scope of work and the reasons for the decrease; and

(ii) certify that the mission requirement identified in the justification data provided to Congress can still be met with the reduced scope.

(C) A waiver and approval by the Secretary concerned under subparagraph (A) shall take effect only after the end of the 14-day period beginning on the date on which the notification required by such subparagraph is received by the appropriate committees of Congress in an electronic medium pursuant to section 480 of this title.

(d) EXCEPTIONS TO LIMITATION ON SCOPE OF WORK INCREASES.—(1) Except as provided in paragraph (4), the Secretary concerned may waive the limitation on an increase in the scope of work applicable to a military construction project or a military family housing project under subsection (b)(1) and approve an increase in the scope of work for the project in excess of that limitation if the Secretary concerned notifies the appropriate committees of Congress of the reduction in the manner provided in this subsection.

(2) The notification required by paragraph (1) shall describe the increase in the scope of work and the reasons for the increase.

(3) A waiver and approval by the Secretary concerned under paragraph (1) shall take effect only after the end of the 14-day period beginning on the date on which the notification required by such paragraph is received by the appropriate committees of Congress in an electronic medium pursuant to section 480 of this title.

(4) The Secretary concerned may not use the authority provided by paragraph (1) to waive the limitation on an increase in the scope of work applicable to a military construction project or a military family housing project and approve an increase in the scope of work for the project that would increase the scope of work by more than 10 percent of the amount specified for the project in the justification data provided to Congress as part of the request for authorization of the project.

(e) ADDITIONAL COST VARIATION EXCEPTIONS.—The limitation on cost variations in subsection (a) does not apply to the following:

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

(2) The costs associated with the required remediation of an environmental hazard in connection with a military construction project or military family housing project, such as asbestos removal, radon abatement, lead-based paint removal or abatement, or any other legally required environmental hazard remediation, if the required remediation

could not have reasonably been anticipated at the time the project was approved originally by Congress.

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

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

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

(B) A description of any ongoing or completed proceedings or investigation into a government employee, prime contractor, subcontractor, or non-governmental organization that may be responsible for the cost increase, and the status of such proceeding or investigation.

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

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

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

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

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

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

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

(g) RELATION TO OTHER LAW.—Notwithstanding the authority under subsections (a) through (f), the Secretary concerned shall ensure compliance of contracts for military construction projects and for the construction, improvement, and acquisition of military family housing projects with section 1341 of title 31 (commonly referred to as the "Anti-Deficiency Act").

* * * * *

SEC. ___. CONFORMING AMENDMENTS TO CARRY OUT ELIMINATION OF POSITION OF CHIEF MANAGEMENT OFFICER.

(a) REMOVAL OF REFERENCES TO CHIEF MANAGEMENT OFFICER IN PROVISIONS OF LAW RELATING TO PRECEDENCE.—Chapter 4 of title 10, United States Code, is amended—

(1) in section 133a(c)—

(A) in paragraph (1), by striking ", the Deputy Secretary of Defense, and the Chief Management Officer of the Department of Defense" and inserting "and the Deputy Secretary of Defense"; and

(B) in paragraph (2), by striking "the Chief Management Officer,";

(2) in section 133b(c)—

(A) in paragraph (1), by striking "the Chief Management Officer of the Department of Defense,"; and

(B) in paragraph (2), by striking "the Chief Management Officer,";

(3) in section 137a(d), by striking "the Chief Management Officer of the Department of Defense,"; and

(4) in section 138(d), by striking "the Chief Management Officer of the Department of Defense,".

(b) ASSIGNMENT OF PERIODIC REVIEW OF DEFENSE AGENCIES AND DOD FIELD ACTIVITIES TO SECRETARY OF DEFENSE.—Section 192(c) of such title is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking "the Chief Management Officer of the Department of Defense" and inserting "the Secretary of Defense"; and

(B) in subparagraphs (B) and (C), by striking "the Chief Management Officer" and inserting "the Secretary"; and

(2) in paragraph (2), by striking "the Chief Management Officer" each place it appears and inserting "the Secretary".

(c) ASSIGNMENT OF RESPONSIBILITY FOR FINANCIAL IMPROVEMENT AND AUDIT REMEDIATION TO UNDER SECRETARY OF DEFENSE (COMPTROLLER).—Section 240b of such title is amended—

(1) in subsection (a)(1), by striking "The Chief Management Officer of the Department of Defense shall, in consultation with the Under Secretary of Defense (Comptroller)," and inserting "The Under Secretary of Defense (Comptroller) shall, in consultation with the Performance Improvement Officer of the Department of Defense,"; and

(2) in subsection (b)(1)(C)(ii), by striking "the Chief Management Officer" and inserting "the Performance Improvement Officer".

(d) REMOVAL OF CHIEF MANAGEMENT OFFICER AS RECIPIENT OF REPORTS OF AUDITS BY EXTERNAL AUDITORS.—Section 240d(d)(1)(A) of such title is amended by striking "and the Chief Management Officer of the Department of Defense".

(e) CONFORMING AMENDMENTS TO PROVISIONS OF LAW RELATED TO DEFENSE BUSINESS SYSTEMS.—Section 2222 of such title is amended—

(1) in subsection (c)(2), by striking "the Chief Management Officer of the Department of Defense" and inserting "the Under Secretary of Defense (Comptroller)";

(2) in subsection (e)—

(A) in paragraph (1), by striking ", working through the Chief Management Officer of the Department of Defense,"; and

(B) in paragraph (6)—

(i) in subparagraph (A), in the matter preceding clause (i)—

(I) by striking "Chief Management Officer" both places it appears and inserting "Chief Operating Officer"; and

(II) in the second sentence, by striking "In consultation with" and inserting "Working through"; and

(ii) in subparagraph (B), by striking "The Chief Management Officer" and inserting "The Chief Information Officer";

(3) in subsection (f)—

(A) in paragraph (1), by striking "the Chief Management Officer and the Chief Information Officer of the Department of Defense" and inserting "a senior official designated by the Secretary";

(B) in paragraph (2)(B), by adding at the end the following new clauses:

"(iv) The Performance Improvement Officer of the Department of Defense with respect to performance improvement processes.

"(v) The Chief Information Officer of the Department of Defense with respect to information technology processes.

"(vi) Other officials as designated by the Secretary.";

(4) in subsection (g)(2)—

(A) in subparagraph (A), by striking "the Chief Management Officer" and inserting "the Chief Information Officer"; and

(B) in subparagraph (B)(ii), by striking "the Chief Management Officer of the Department of Defense" and inserting "the official assigned responsibility for the overall supervision of that Defense Agency or Department of Defense Field Activity pursuant to section 192 of this title"; and

(5) in subsection (i)(5)(B), by striking "Chief Management Officer" and inserting "Chief Information Officer".

(f) CONFORMING AMENDMENTS TO PROVISIONS OF LAW RELATED TO FREEDOM OF INFORMATION ACT EXEMPTIONS.—Such title is further amended—

(1) in section 130e—

(A) by striking subsection (d);

(B) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively; and

(C) in subsection (d), as so redesignated—

(i) by striking ", or the Secretary's designee,"; and

(ii) by striking ", through the Office of the Director of Administration and Management"; and

(2) in section 2254a—

(A) by striking subsection (c);

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

(C) in subsection (c), as so redesignated—

(i) by striking ", or the Secretary's designee,"; and

(ii) by striking ", through the Office of the Director of Administration and Management".

(g) ASSIGNMENT OF RESPONSIBILITY FOR ANNUAL REVIEW OF AGENCY INFORMATION TECHNOLOGY PORTFOLIO TO THE CHIEF INFORMATION OFFICER.—Section 11319(d)(4) of title 40, United States Code, is amended, in the second sentence, by striking "the Chief Management Officer of the Department of Defense (or any successor to such Officer), in consultation with the Chief Information Officer, the Under Secretary of Defense for Acquisition and Sustainment, and" and inserting "the Chief Information Officer of the Department of Defense, in consultation with the Under Secretary of Defense for Acquisition and Sustainment and".

(h) REMOVAL OF CHIEF MANAGEMENT OFFICER AS REQUIRED COORDINATOR ON DEFENSE RESALE MATTERS.—Section 631(a) of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92; 10 U.S.C. 2481 note) is amended by striking ", in coordination with the Chief Management Officer of the Department of Defense,".

(i) ASSIGNMENT OF AUTHORITY TO DISAPPROVE DARPA PILOT PROGRAMS FOR ENHANCEMENT OF RESEARCH, DEVELOPMENT, TEST, AND EVALUATION CENTERS TO THE UNDER SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING.—Section 233(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 4001 note) is amended by striking "the Chief Management Officer" and inserting "the Under Secretary of Defense for Research and Engineering, or a senior official designated by the Under Secretary,".

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

Section-by-Section Analysis

This proposal would amend provisions of law that reference the Chief Management Officer of the Department of Defense (CMO), or that otherwise require modification to accurately reflect the reorganization of the Office of the Secretary of Defense (OSD) that resulted from the disestablishment of the CMO. The CMO was eliminated by section 901 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year

(FY) 2021 (Public Law 116-283), and the functions previously assigned to the CMO have been assigned to other officials as of September 1, 2021 by the Deputy Secretary of Defense. The proposed changes would either eliminate references to the CMO or update responsibilities to reflect the current assignment of functions and responsibilities to other senior officials, as follows:

(a) *Elimination of references to the CMO in provisions relating to the order of precedence*: Sections 133a, 133b, 137a, and 138 of title 10, United States Code (U.S.C.), contain references to the CMO in provisions relating to the order of precedence in the Department of Defense. This proposal would remove the references to the CMO.

(b) *Assignment of periodic review of the Defense Agencies and DoD Field Activities (DAFA) to the Director of Administration and Management (DA&M)*: Section 192 of title 10, U.S.C., directs the CMO to conduct regular reviews of the efficiency and effectiveness of each DAFA. This proposal would assign these duties to the Secretary of Defense.

(c) *Assignment of responsibility for preparation of the Financial Improvement and Audit Remediation plan to the Under Secretary of Defense (USD) (Comptroller) (USD(C))*: Section 240b of title 10, U.S.C., directs the CMO to develop a Financial Improvement and Audit Remediation Plan, in coordination with the USD(C). This proposal would assign these duties to the USD(C), in coordination with the Performance Improvement Officer of the DoD (PIO).

(d) *Removal of the requirement that independent external auditors provide annual reports to the CMO*: Section 240d of title 10, U.S.C., directs the Inspector General of the DoD to require that independent external auditors conducting audits on the DoD financial statements provide a report on their audits to the CMO each year. This proposal would remove the requirement to provide reports on audits to the CMO.

(e) *Conforming amendments to provisions of law related to Defense Business Systems (DBS)*: Section 2222 of title 10, U.S.C., directs the CMO to: provide supporting guidance on DBS, develop the Defense Business Enterprise Architecture (DBEA), serve as the official with primary decision-making authority with respect to the development of common enterprise data, co-chair the Defense Business Council (DBC) with the Chief Information Officer of the DoD (CIO), serve as the approval official for priority DBS or those DBS that support more than one Military Department or DAFA, and have responsibility for designating priority DBS. This proposal would remove references to the CMO and add responsibilities for DBS activities to the CIO and USD(C). The Deputy Secretary of Defense, in the Deputy's role as the agency Chief Operating Officer, would have primary decision-making authority with respect to the development of common enterprise data. And, the DBC membership would be expanded with a chair selected by the Secretary of Defense.

(f) *Removal of provisions authorizing delegations to the DA&M from provisions of law related to the Freedom of Information Act (FOIA)*: Sections 130e and 2254a of title 10,

U.S.C., document that certain DoD FOIA-related functions may be delegated to the DA&M, who at the time of the enactment of those sections also served as the DoD Chief FOIA Officer. However, the OSD reorganization that resulted from the disestablishment of the CMO included the establishment of a new position of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency (ATSD(PCLT)), who now serves as the DoD Chief FOIA Officer, a senior position required by FOIA itself. As a result, the authority to exempt certain information from release under FOIA should be exercised by the ATSD(PCLT), rather than the DA&M.

(g) *Assignment of annual review of the DoD information technology portfolio to the CIO*: Section 11319 of title 40, U.S.C., directs the CMO to conduct an annual review of the business systems information technology portfolio. This proposal would assign these duties to the CIO.

(h) *Removal of the requirement for the USD for Personnel and Readiness to coordinate with the CMO on defense resale oversight*: Section 631 of the NDAA for FY 2020 directs the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) to maintain oversight of business transformation efforts of the defense commissary system and the exchange stores system in coordination with the CMO. This proposal would remove the requirement to coordinate with the CMO.

(i) *Assignment of the authority to disapprove Defense Advanced Research Projects Agency (DARPA) pilot programs to the USD for Research and Engineering (R&E)*: Section 233 of the NDAA for FY 2017 directs the Secretary of Defense and the Secretaries of the Military Departments to carry out pilot programs to demonstrate methods for the more effective development of technology and management of functions at certain science and technology laboratories, test and evaluation centers, and DARPA. Each pilot proposal submitted shall be implemented unless the senior official concerned disapproves the pilot program. For DARPA pilot programs, the senior official concerned is the CMO. This proposal would assign the authority to disapprove DARPA pilot programs to the USD(R&E).

These proposed changes align the former CMO responsibilities to those senior officials most capable of effectively and efficiently implementing the responsibilities. In most cases, these senior officials were already performing a significant amount of the work required to execute these functions and will be able to seamlessly assume responsibilities.

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

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

TITLE 10, UNITED STATES CODE

§ 130e. Treatment under Freedom of Information Act of certain critical infrastructure security information

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

(1) the information is Department of Defense critical infrastructure security information; and

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

(b) ***

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

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

~~(f)~~ (e) DEFINITION.—In this section, the term "Department of Defense critical infrastructure security information" means sensitive but unclassified information that, if disclosed, would reveal vulnerabilities in Department of Defense critical infrastructure that, if exploited, would likely result in the significant disruption, destruction, or damage of or to Department of Defense operations, property, or facilities, including information regarding the securing and safeguarding of explosives, hazardous chemicals, or pipelines, related to critical infrastructure or protected systems owned or operated by or on behalf of the Department of Defense, including vulnerability assessments prepared by or on behalf of the Department of Defense, explosives safety information (including storage and handling), and other site-specific information on or relating to installation security.

*****

§ 133a. Under Secretary of Defense for Research and Engineering

(a) ***

(c) PRECEDENCE IN DEPARTMENT OF DEFENSE.—

(1) PRECEDENCE IN MATTERS OF RESPONSIBILITY.—With regard to all matters for which the Under Secretary has responsibility by the direction of the Secretary of Defense or by law, the Under Secretary takes precedence in the Department of Defense after the Secretary~~,~~ and the Deputy Secretary of Defense~~, and the Chief Management Officer of the Department of Defense~~.

(2) PRECEDENCE IN OTHER MATTERS.—With regard to all matters other than the matters for which the Under Secretary has responsibility by the direction of the Secretary or by law, the Under Secretary takes precedence in the Department of Defense after the Secretary, the Deputy Secretary, ~~the Chief Management Officer,~~ and the Secretaries of the military departments.

§ 133b. Under Secretary of Defense for Acquisition and Sustainment

(a) ***

(c) PRECEDENCE IN DEPARTMENT OF DEFENSE.—

(1) PRECEDENCE IN MATTERS OF RESPONSIBILITY.—With regard to all matters for which the Under Secretary has responsibility by the direction of the Secretary of Defense

or by law, the Under Secretary takes precedence in the Department of Defense after the Secretary, the Deputy Secretary of Defense, ~~the Chief Management Officer of the Department of Defense,~~ and the Under Secretary of Defense for Research and Engineering.

(2) PRECEDENCE IN OTHER MATTERS.—With regard to all matters other than the matters for which the Under Secretary has responsibility by the direction of the Secretary or by law, the Under Secretary takes precedence in the Department of Defense after the Secretary, the Deputy Secretary, ~~the Chief Management Officer,~~ the Under Secretary of Defense for Research and Engineering, and the Secretaries of the military departments.

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§ 137a. Deputy Under Secretaries of Defense

(a) ***

(d) The Deputy Under Secretaries of Defense 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, and the Under Secretaries of Defense. The Deputy Under Secretaries shall take precedence among themselves in the order prescribed by the Secretary of Defense.

§ 138. Assistant Secretaries of Defense

(a) ***

(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.

*****

§ 192. Defense Agencies and Department of Defense Field Activities: oversight by the Secretary of Defense

(a) ***

(c) PERIODIC REVIEW.—(1)(A) Not later than January 1, 2020, and periodically (but not less frequently than every four years) thereafter, the ~~Chief Management Officer of the Department of Defense~~ Secretary of Defense shall conduct a review of the efficiency and effectiveness of each Defense Agency and Department of Defense Field Activity. Each review shall, to the maximum extent practicable, be conducted in coordination with other ongoing efforts in connection with business enterprise reform.

(B) As part of each review under this paragraph, the ~~Chief Management Officer~~ Secretary shall identify each activity of an Agency or Activity that is substantially similar to, or duplicative of, an activity carried out by another organization or element of the Department of Defense, or is not being performed to an adequate level to meet Department needs.

(C) For purposes of conducting reviews under this paragraph, the ~~Chief Management Officer~~ Secretary shall develop internal guidance that defines requirements for such reviews and provides clear direction for conducting and recording the results of reviews.

(2)(A) Not later than 90 days after the completion of a review under paragraph (1), the ~~Chief Management Officer~~ Secretary shall submit to the congressional defense committees a report that sets forth the results of the review.

(B) The report on a review under this paragraph shall, based on the results of the review, include the following:

(i) A list of each Defense Agency and Department of Defense Field Activity that the ~~Chief Management Officer~~ Secretary has determined—

(I) operates efficiently and effectively; and

(II) does not carry out any function that is substantially similar to, or duplicative of, a function carried out by another organization or element of the Department of Defense.

(ii) With respect to each Agency or Activity not included on the list under clause (i), a plan, aimed at better meeting Department needs, for—

(I) rationalizing the functions within such Agency or Activity; or

(II) transferring some or all of the functions of such Agency or Activity to another organization or element of the Department.

(iii) Recommendations for functions, if any, currently conducted separately by the military departments that should be consolidated into an Agency or Activity.

(3) Paragraph (1) shall apply to the National Security Agency as determined appropriate by the Secretary, in consultation with the Director of National Intelligence. The Secretary shall establish procedures under which information required for review of the National Security Agency shall be obtained.

(d) ***

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§ 240b. Financial Improvement and Audit Remediation Plan

(a) FINANCIAL IMPROVEMENT AND AUDIT REMEDIATION PLAN.—

(1) IN GENERAL.—~~The Chief Management Officer of the Department of Defense shall, in consultation with the Under Secretary of Defense (Comptroller),~~The Under Secretary of Defense (Comptroller) shall, in consultation with the Performance Improvement Officer of the Department of Defense, maintain a plan to be known as the "Financial Improvement and Audit Remediation Plan".

(2) ***

(b) REPORT AND BRIEFING REQUIREMENTS.—

(1) ANNUAL REPORT.—

(A) ***

(B) ELEMENTS.—Each report under subparagraph (A) shall include the following:

(i) ***

(viii) If less than 25 percent of the auditing services under contract, as described in the briefing required under paragraph (2), are being performed by professionals meeting the qualifications described in section

240d(b) of this title, a written certification that the staffing ratio complies with commercial best practices and presents no increased risk of delay in the Department's ability to achieve a clean audit opinion.

(ix) ***

(C) ADDITIONAL REQUIREMENTS.—

(i) UNCLASSIFIED FORM.—A description submitted pursuant to clause (vii) or (ix) of subparagraph (B) or a certification submitted pursuant to clause (viii) of such subparagraph shall be submitted in unclassified form, but may contain a classified annex.

(ii) DELEGATION.—The Secretary may not delegate the submission of a certification pursuant to clause (viii) of subparagraph (B) to any official other than the Deputy Secretary of Defense, the ~~Chief Management Officer~~ Performance Improvement Officer, or the Under Secretary of Defense (Comptroller).

(2) SEMIANNUAL BRIEFINGS.—(A) ***

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§ 240d. Audits: audit of financial statements of Department of Defense components by independent external auditors

(a) ***

(b) SELECTION OF AUDITORS.—The selection of independent external auditors for purposes of subsection (a) shall be based, among other appropriate criteria, on their qualifications, independence, and capacity to conduct audits described in subsection (a) in accordance with applicable generally accepted government auditing standards. The Inspector General shall participate in the selection of the independent external auditors.

(c) ***

(d) REPORTS ON AUDITS.—

(1) IN GENERAL.—The Inspector General shall require the independent external auditors conducting audits under subsection (a) to submit a report on their audits each year to—

(A) the Under Secretary of Defense (Comptroller) as the Chief Financial Officer of the Department of Defense for the purposes of chapter 9 of title 31 ~~and the Chief Management Officer of the Department of Defense~~;

(B) the Controller of the Office of Federal Financial Management in the Office of Management and Budget;

(C) the head of each component audited; and

(D) the appropriate committees of Congress.

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

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

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

(e) ***

*****

§ 2222. Defense business systems: business process reengineering; enterprise architecture; management

(a) ***

(c) ISSUANCE OF GUIDANCE.—

(1) SECRETARY OF DEFENSE GUIDANCE.—The Secretary shall issue guidance to provide for the coordination of, and decision making for, the planning, programming, and control of investments in covered defense business systems.

(2) SUPPORTING GUIDANCE.—The Secretary shall direct the ~~Chief Management Officer of the Department of Defense~~ Under Secretary of Defense (Comptroller), the Under Secretary of Defense for Acquisition and Sustainment, the Chief Information Officer, and the Chief Management Officer of each of the military departments to issue and maintain supporting guidance, as appropriate and within their respective areas of responsibility, for the guidance of the Secretary issued under paragraph (1).

(d) ***

(e) DEFENSE BUSINESS ENTERPRISE ARCHITECTURE.—

(1) BLUEPRINT.—The Secretary~~, working through the Chief Management Officer of the Department of Defense,~~ shall develop and maintain a blueprint to guide the development of integrated business processes within the Department of Defense. Such blueprint shall be known as the "defense business enterprise architecture".

(2) ***

(4) INTEGRATION INTO INFORMATION TECHNOLOGY ARCHITECTURE.—(A) The defense business enterprise architecture shall be integrated into the information technology enterprise architecture required under subparagraph (B).

(B) The Chief Information Officer of the Department of Defense shall develop an information technology enterprise architecture. The architecture shall describe a plan for improving the information technology and computing infrastructure of the Department of Defense, including for each of the major business processes conducted by the Department of Defense.

(5) COMMON ENTERPRISE DATA.—The defense business enterprise shall include enterprise data that may be automatically extracted from the relevant systems to facilitate Department of Defense-wide analysis and management of its business operations.

(6) ROLES AND RESPONSIBILITIES.—

(A) The ~~Chief Management Officer~~ Chief Operating Officer of the Department of Defense shall have primary decision-making authority with respect to the development of common enterprise data. ~~In consultation with~~ Working through the Defense Business Council, the ~~Chief Management Officer~~ Chief Operating Officer shall—

(i) develop an associated data governance process; and

(ii) oversee the preparation, extraction, and provision of data across the defense business enterprise.

(B) The ~~Chief Management Officer~~ Chief Information Officer and the Under Secretary of Defense (Comptroller) shall—

(i) in consultation with the Defense Business Council, document and maintain any common enterprise data for their respective areas of authority;

(ii) participate in any related data governance process;

(iii) extract data from defense business systems as needed to support priority activities and analyses;

(iv) when appropriate, ensure the source data is the same as that used to produce the financial statements subject to annual audit;

(v) in consultation with the Defense Business Council, provide access, except as otherwise provided by law or regulation, to such data to the Office of the Secretary of Defense, the Joint Staff, the military departments, the combatant commands, the Defense Agencies, the Department of Defense Field Activities, and all other offices, agencies, activities, and commands of the Department of Defense; and

(vi) ensure consistency of the common enterprise data maintained by their respective organizations.

(C) The Director of Cost Assessment and Program Evaluation shall have access to data for the purpose of executing missions as designated by the Secretary of Defense.

(D) The Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Secretaries of the military departments, commanders of combatant commands, the heads of the Defense Agencies, the heads of the Department of Defense Field Activities, and the heads of all other offices, agencies, activities, and commands of the Department of Defense shall provide access to the relevant system of such department, combatant command, Defense Agency, Defense Field Activity, or office, agency, activity, and command organization, as applicable, and data extracted from such system, for purposes of automatically populating data sets coded with common enterprise data.

(f) DEFENSE BUSINESS COUNCIL.—

(1) REQUIREMENT FOR COUNCIL.—The Secretary shall establish a Defense Business Council to provide advice to the Secretary on developing the defense business enterprise architecture, reengineering the Department's business processes, developing and deploying defense business systems, and developing requirements for defense business systems. The Council shall be chaired by ~~the Chief Management Officer and the Chief Information Officer of the Department of Defense~~ a senior official designated by the Secretary.

(2) MEMBERSHIP.—The membership of the Council shall include the following:

(A) The Chief Management Officers of the military departments, or their designees.

(B) The following officials of the Department of Defense, or their designees:

(i) The Under Secretary of Defense for Acquisition and Sustainment with respect to acquisition, logistics, and installations management processes.

(ii) The Under Secretary of Defense (Comptroller) with respect to financial management and planning and budgeting processes.

(iii) The Under Secretary of Defense for Personnel and Readiness with respect to human resources management processes.

(iv) The Performance Improvement Officer of the Department of Defense with respect to performance improvement processes.

(v) The Chief Information Officer of the Department of Defense with respect to information technology processes.

(vi) Other officials as designated by the Secretary.

(g) APPROVALS REQUIRED FOR DEVELOPMENT.—

(1) INITIAL APPROVAL REQUIRED.—The Secretary shall ensure that a covered defense business system program cannot proceed into development (or, if no development is required, into production or fielding) unless the appropriate approval official (as specified in paragraph (2)) determines that—

(A) the system has been, or is being, reengineered to be as streamlined and efficient as practicable, and the implementation of the system will maximize the elimination of unique software requirements and unique interfaces;

(B) the system and business system portfolio are or will be in compliance with the defense business enterprise architecture developed pursuant to subsection (e) or will be in compliance as a result of modifications planned;

(C) the system has valid, achievable requirements and a viable plan for implementing those requirements (including, as appropriate, market research, business process reengineering, and prototyping activities);

(D) the system has an acquisition strategy designed to eliminate or reduce the need to tailor commercial off-the-shelf systems to meet unique requirements, incorporate unique requirements, or incorporate unique interfaces to the maximum extent practicable; and

(E) the system is in compliance with the Department's auditability requirements.

(2) APPROPRIATE OFFICIAL.—For purposes of paragraph (1), the appropriate approval official with respect to a covered defense business system is the following:

(A) Except as may be provided in subparagraph (C), in the case of a priority defense business system, the ~~Chief Management Officer~~ Chief Information Officer of the Department of Defense.

(B) Except as may be provided in subparagraph (C), for any defense business system other than a priority defense business system—

(i) in the case of a system of a military department, the Chief Management Officer of that military department; and

(ii) in the case of a system of a Defense Agency or Department of Defense Field Activity, or a system that will support the business process of more than one military department or Defense Agency or Department of Defense Field Activity, the ~~Chief Management Officer of the Department of Defense~~ official assigned responsibility for the overall supervision of that Defense Agency or Department of Defense Field Activity pursuant to section 192 of this title.

(C) In the case of any defense business system, such official other than the applicable official under subparagraph (A) or (B) as the Secretary designates for such purpose.

(3) ANNUAL CERTIFICATION.—For any fiscal year in which funds are expended for development or sustainment pursuant to a covered defense business system program, the appropriate approval official shall review the system and certify, certify with conditions, or decline to certify, as the case may be, that it continues to satisfy the requirements of paragraph (1). If the approval official determines that certification cannot be granted, the approval official shall notify the milestone decision authority for the program and provide a recommendation for corrective action.

(4) OBLIGATION OF FUNDS IN VIOLATION OF REQUIREMENTS.—The obligation of Department of Defense funds for a covered defense business system program that has not been certified in accordance with paragraph (3) is a violation of section 1341(a)(1)(A) of title 31.

(h) RESPONSIBILITY OF MILESTONE DECISION AUTHORITY.—The milestone decision authority for a covered defense business system program shall be responsible for the acquisition of such system and shall ensure that acquisition process approvals are not considered for such system until the relevant certifications and approvals have been made under this section.

(i) DEFINITIONS.—In this section:

(1) ***

(5) PRIORITY DEFENSE BUSINESS SYSTEM.—The term "priority defense business system" means a defense business system that is—

(A) expected to have a total amount of budget authority over the period of the current future—years defense program submitted to Congress under section 221 of this title in excess of $250,000,000; or

(B) designated by the ~~Chief Management Officer~~ Chief Information Officer of the Department of Defense as a priority defense business system, based on specific program analyses of factors including complexity, scope, and technical risk, and after notification to Congress of such designation.

(6) ***

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§ 2254a. Data files of military flight operations quality assurance systems: exemption from disclosure under Freedom of Information Act

(a) AUTHORITY TO EXEMPT CERTAIN DATA FILES FROM DISCLOSURE UNDER FOIA.—(1) The Secretary of Defense may exempt information contained in any data file of the military flight operations quality assurance system of a military department from disclosure undersection 552(b)(3) of title 5, upon a written determination that—

(A) the information is sensitive information concerning military aircraft, units, or aircrew; and

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

(2) In this section, the term “data file” means a file of the military flight operations quality assurance (in this section referred to as “MFOQA”) system that contains information acquired or generated by the MFOQA system, including—

(A) any data base containing raw MFOQA data; and

(B) any analysis or report generated by the MFOQA system or which is derived from MFOQA data.

(3) Information that is exempt under paragraph (1) from disclosure under section 552(b)(3) of title 5 shall be exempt from such disclosure even if such information is contained in a data file that is not exempt in its entirety from such disclosure.

(4) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of the enactment of this section and which specifically cites and repeals or modifies those provisions.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. Such regulations shall ensure consistent application of the authority in subsection (a) across the military departments.

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

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

TITLE 40, UNITED STATES CODE

§ 11319. Resources, planning, and portfolio management

(a) DEFINITIONS.—In this section:

(1) The term "covered agency" means each agency listed in section 901(b)(1) or 901(b)(2) of title 31.

(2) The term "information technology" has the meaning given that term under capital planning guidance issued by the Office of Management and Budget.

(b) ***

(d) INFORMATION TECHNOLOGY PORTFOLIO, PROGRAM, AND RESOURCE REVIEWS.—

(1) PROCESS.—The Director of the Office of Management and Budget, in consultation with the Chief Information Officers of appropriate agencies, shall implement a process to assist covered agencies in reviewing their portfolio of information technology investments—

(A) to identify or develop ways to increase the efficiency and effectiveness of the information technology investments of the covered agency;

(B) to identify or develop opportunities to consolidate the acquisition and management of information technology services, and increase the use of shared-service delivery models;

(C) to identify potential duplication and waste;

(D) to identify potential cost savings;

(E) to develop plans for actions to optimize the information technology portfolio, programs, and resources of the covered agency;

(F) to develop ways to better align the information technology portfolio, programs, and financial resources of the covered agency to any multi-year funding requirements or strategic plans required by law;

(G) to develop a multi-year strategy to identify and reduce duplication and waste within the information technology portfolio of the covered agency, including component-level investments and to identify projected cost savings resulting from such strategy; and

(H) to carry out any other goals that the Director may establish.

(2) METRICS AND PERFORMANCE INDICATORS.—The Director of the Office of Management and Budget, in consultation with the Chief Information Officers of appropriate agencies, shall develop standardized cost savings and cost avoidance metrics and performance indicators for use by agencies for the process implemented under paragraph (1).

(3) ANNUAL REVIEW.—The Chief Information Officer of each covered agency, in conjunction with the Chief Operating Officer or Deputy Secretary (or equivalent) of the covered agency and the Administrator of the Office of Electronic Government, shall conduct an annual review of the information technology portfolio of the covered agency.

(4) APPLICABILITY TO THE DEPARTMENT OF DEFENSE.—In the case of the Department of Defense, processes established pursuant to this subsection shall apply only to the business systems information technology portfolio of the Department of Defense and not to national security systems as defined by section 11103(a) of this title. The annual review required by paragraph (3) shall be carried out by ~~the Chief Management Officer of the Department of Defense (or any successor to such Officer), in consultation with the Chief Information Officer, the Under Secretary of Defense for Acquisition and Sustainment,~~ the Chief Information Officer of the Department of Defense, in consultation with the Under Secretary of Defense for Acquisition and Sustainment and other appropriate Department of Defense officials. The Secretary of Defense may designate an existing investment or management review process to fulfill the requirement for the annual review required by paragraph (3), in consultation with the Administrator of the Office of Electronic Government.

(5) QUARTERLY REPORTS.—

(A) IN GENERAL.—The Administrator of the Office of Electronic Government shall submit a quarterly report on the cost savings and reductions in duplicative information technology investments identified through the review required by paragraph (3) to—

(i) the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate;

(ii) the Committee on Oversight and Government Reform and the Committee on Appropriations of the House of Representatives; and

(iii) upon a request by any committee of Congress, to that committee.

(B) INCLUSION IN OTHER REPORTS.—The reports required under subparagraph (A) may be included as part of another report submitted to the committees of Congress described in clauses (i), (ii), and (iii) of subparagraph (A).

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NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2020

(PUBLIC LAW 116-328)

SEC. 631. [10 U.S.C. 2481 note] DEFENSE RESALE SYSTEM MATTERS.

(a) IN GENERAL.—The Under Secretary of Defense for Personnel and Readiness shall~~, in coordination with the Chief Management Officer of the Department of Defense,~~ maintain oversight of business transformation efforts of the defense commissary system and the exchange stores system in order to ensure the following:

(1) Development of an intercomponent business strategy that maximizes efficiencies and results in a viable defense resale system in the future.

(2) Preservation of patron savings and satisfaction from and in the defense commissary system and exchange stores system.

(3) Sustainment of financial support of the defense commissary and exchange systems for morale, welfare, and recreation (MWR) services of the Armed Forces.

(b) EXECUTIVE RESALE BOARD ADVICE ON OPERATIONS OF SYSTEMS.—The Executive Resale Board of the Department of Defense shall advise the Under Secretary on the implementation of sustainable, complementary operations of the defense commissary system and the exchange stores system.

(c) INFORMATION TECHNOLOGY MODERNIZATION.—The Secretary of Defense shall, acting through the Under Secretary and with advice from the Executive Resale Board, require the Defense Commissary Agency and the Military Exchange Service to do as follows:

(1) Field new technologies and best business practices for information technology for the defense resale system.

(2) Implement cutting-edge marketing opportunities across the defense resale system.

(d) ***

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

SEC. 233. [10 U.S.C. 2358 note; 10 U.S.C. 2358 has been redesignated as 10 U.S.C. 4001] PILOT PROGRAM FOR THE ENHANCEMENT OF THE RESEARCH, DEVELOPMENT, TEST, AND EVALUATION CENTERS OF THE DEPARTMENT OF DEFENSE.

(a) PILOT PROGRAM REQUIRED.—

(1) IN GENERAL.—The Secretary of Defense and the Secretaries of the military departments shall jointly carry out a pilot program to demonstrate methods for the more effective development of technology and management of functions at eligible centers.

(2) ELIGIBLE CENTERS.—For purposes of the pilot program, the eligible centers are—

(A) the science and technology reinvention laboratories, as specified in section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 [Pub. L. 111–84] (10 U.S.C. 2358 note);

(B) the test and evaluation centers which are activities specified as part of the Major Range and Test Facility Base in Department of Defense Directive 3200.11; and

(C) the Defense Advanced Research Projects Agency.

(b) SELECTION.—

(1) IN GENERAL.—The Secretaries described in subsection (a) shall ensure that participation in the pilot program includes—

(A) the Defense Advanced Research Projects Agency; and

(B) in accordance with paragraph (2)—

(i) five additional eligible centers described in subparagraph (A) of subsection (a)(2) from each of the military departments; and

(ii) five additional eligible centers described in subparagraph (B) of such subsection from each of the military departments.

(2) SELECTION PROCEDURES.—(A) The head of an eligible center described in subparagraph (A) or (B) of subsection (a)(2) seeking to participate in the pilot program shall submit to the appropriate reviewer an application therefor at such time, in such manner, and containing such information as the appropriate reviewer shall specify.

(B) Not later than 120 days after the date of such submittal, each appropriate reviewer shall—

(i) evaluate each application received under subparagraph (A); and

(ii) approve or disapprove of the application.

(C) If the head of an eligible center submits an application under subparagraph (A) in accordance with the requirements specified by the appropriate reviewer for purposes of such subparagraph and the appropriate reviewer neither approves nor disapproves such application pursuant to subparagraph (B)(ii) on or before the date that is 120 days after the date of such submittal, such eligible center shall be considered a participant in the pilot program.

(D) For purposes of this paragraph, the appropriate reviewer is—

(i) in the case of an eligible center described in subparagraph (A) of subsection (a)(2), the Laboratory Quality Enhancement Program; and

(ii) in the case of an eligible center described in subparagraph (B) of such subsection, the Director of the Test Resource Management Center.

(c) PARTICIPATION IN PROGRAM.—

(1) IN GENERAL.—Subject to paragraph (2), the head of each eligible center selected under subsection (b)(1) shall submit to the Assistant Secretary concerned a proposal on, and implement, alternative and innovative methods of effective management and operations of eligible centers, rapid project delivery, support, experimentation, prototyping, and partnership with universities and private sector entities to—

(A) generate greater value and efficiencies in research and development activities;

(B) enable more efficient and effective operations of supporting activities, such as—

(i) facility management, construction, and repair;

(ii) business operations;

(iii) personnel management policies and practices; and

(iv) intramural and public outreach; and

(C) enable more rapid deployment of warfighter capabilities.

(2) IMPLEMENTATION.—(A) The head of an eligible center described in subparagraph (A) or (B) of subsection (a)(2) shall implement each method proposed under paragraph (1) unless such method is disapproved in writing by the Assistant Secretary concerned within 60 days of receiving a proposal from an eligible center selected under subsection (b)(1) by such Assistant Secretary.

(B) The Director of the Defense Advanced Research Projects Agency shall implement each method proposed under paragraph (1) unless such method is disapproved in writing by the ~~Chief Management Officer~~ Under Secretary of Defense for Research and Engineering, or a senior official designated by the Under Secretary, within 60 days of receiving a proposal from the Director.

(C) In this paragraph, the term 'Assistant Secretary concerned' means—

(i) the Assistant Secretary of the Air Force for Acquisition [now Assistant Secretary of the Air Force for Acquisition, Technology, and Logistics], with respect to matters concerning the Air Force;

(ii) the Assistant Secretary of the Army for Acquisition, Logistics, and Technology, with respect to matters concerning the Army; and

(iii) the Assistant Secretary of the Navy for Research, Development, and Acquisition, with respect to matters concerning the Navy.

(d) WAIVER AUTHORITY FOR DEMONSTRATION AND IMPLEMENTATION.—Until the termination of the pilot program under subsection (e), the head of an eligible center selected under subsection (b)(1) may waive any regulation, restriction, requirement, guidance, policy, procedure, or departmental instruction that would affect the implementation of a method proposed under subsection (c)(1), unless such implementation would be prohibited by a provision of a Federal statute or common law.

(e) TERMINATION.—The pilot program shall terminate on September 30, 2027.

(f) REPORT.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 [Pub. L. 116–283; approved Jan. 1, 2021], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the status of the pilot program.

(2) CONTENTS.—The report required by paragraph (1) shall include the following:

(A) Identification of the eligible centers participating in the pilot program.

(B) Identification of the eligible centers whose applications to participate in the pilot program were disapproved under subsection (b), including justifications for such disapprovals.

(C) A description of the methods implemented pursuant to subsection (c).

(D) A description of the methods that were proposed pursuant to paragraph (1) of subsection (c) but disapproved under paragraph (2) of such subsection.

(E) An assessment of how methods implemented pursuant to subsection (c) have contributed to the objectives identified in subparagraphs (A), (B), and (C) of paragraph (1) of such subsection.

(F) With respect to any military department not participating in the pilot program, an explanation for such nonparticipation, including identification of—

(i) any issues that may be preventing such participation; and

(ii) any offices or other elements of the Department of Defense that may be responsible for the delay in participation.

SEC. ___. RESTRICTED REPORTING OPTION FOR DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES CHOOSING TO REPORT EXPERIENCING ADULT SEXUAL ASSAULT.

(a) IN GENERAL.—Chapter 81 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1599j. Restricted reports of incidents of adult sexual assault

"(a) RESTRICTED REPORTS.—Notwithstanding any other provision of law, the Secretary of Defense may provide a civilian employee of the Department of Defense an opportunity to submit to an individual described in section (d) a restricted report of an alleged incident of adult sexual assault for the purpose of assisting the employee in obtaining information and access to authorized victim support services provided by the Department.

"(b) RESTRICTIONS ON DISCLOSURES AND INITIATING INVESTIGATIONS.—Unless the Secretary determines that a disclosure is necessary to prevent or mitigate a serious and imminent safety threat to the employee submitting the report or to another person, a restricted report submitted pursuant to subsection (a) shall not—

"(1) be disclosed to the supervisor of the employee or any other management official; or

"(2) cause the initiation of a Federal civil or criminal investigation.

"(c) DUTIES UNDER OTHER LAWS.—The receipt of a restricted report submitted under subsection (a) shall not be construed as imputing actual or constructive knowledge of an alleged incident of sexual assault to the Department of Defense for any purpose.

"(d) INDIVIDUALS AUTHORIZED TO RECEIVE RESTRICTED REPORTS.—An individual described in this subsection is an individual who performs victim advocate duties under a

program for one or more of the following purposes (or any other program designated by the Secretary):

"(1) Sexual assault prevention and response.

"(2) Victim advocacy.

"(3) Equal employment opportunity.

"(4) Workplace violence prevention and response.

"(5) Employee assistance.

"(6) Family advocacy.

"(d) DEFINITIONS.—In this section:

"(1) CIVILIAN EMPLOYEE.—The term 'civilian employee' has the meaning given the term 'employee' in section 2105 of title 5.

"(2) SEXUAL ASSAULT.—The term 'sexual assault' has the meaning given that term in Article 120, Uniform Code of Military Justice (10 U.S.C. 920), and includes penetrative offenses and sexual contact offenses.".

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

"1599j. Restricted reports of incidents of adult sexual assault.".

Section-by-Section Analysis

This legislative proposal provides discretionary authority to provide a restricted reporting option for civilian employees. It does not require that the restricted reporting option be implemented for all civilian employees. The legislation, if enacted, would allow civilian employees of the Department of Defense (DoD) to confidentially disclose a sexual assault to an individual who performs victim advocate duties, without further disclosure to a supervisor or management official. Restricted reports would not initiate an investigation into workplace sexual assault allegations or impute knowledge of the disclosure to DoD management officials for purposes of compliance with statutory employer obligations to detect and address workplace violence, to include title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.).

Currently, unrestricted reporting of sexual assaults with a workplace nexus require notification to law enforcement and the employer. This may represent a barrier for civilian employee sexual assault victims to disclose and report allegations of sexual assault, which may result in the victim not being able to access available services in a timely basis. Recently, the Department of the Army (DA) and the Department of the Air Force (DAF) explored the feasibility and desirability of a restricted reporting option for their Department's civilian employees. Both the Army and the Air Force are interested in continuing to provide restricted reporting. Below is an assessment provided by the DA and the DAF:

Army: The Department of the Army executed a one-year pilot from January 24, 2017 to January 23, 2018 that provided DA civilian employees with sexual harassment/assault prevention and response (SHARP) advocacy services, to include restricted reporting for purposes of obtaining assistance. During the pilot period, 45 DA civilian employees filed reports: 6 restricted (confidential) reports and 39 unrestricted reports, with 1 restricted report converting to unrestricted. Extending the option of restricted reporting through the SHARP program to DA civilian employees has been championed in several forums, to include the Army Family Advocacy Program. The recent General Accountability Office (GAO) report, "Sexual Harassment and Assault Guidance Needed to Ensure Consistent Tracking, Response, and Training for DoD Civilians," Report to Congressional Committees, February 2021, GAO-21-113, also supported this initiative. Empirical research has shown that sexual assault victims who receive advocacy services are more likely to obtain medical care, engage with the criminal justice system, and stay engaged with the criminal justice system than those victims who do not receive advocacy services. This proposal is critical to empowering DA civilian employees to confidentially report sexual assault. A restricted reporting option may also enable more DA civilian employee cases to be entered into the Defense Sexual Assault Incident Database (DSAID), in furtherance of the GAO recommendation to consistently and comprehensively track reports of work-related sexual assaults involving DoD civilian employee victims.

Air Force: Department of the Air Force civilian employee victims of sexual assault within the continental United States have been eligible to file restricted reports since 2015. Between August 2015 and August 2020, DAF civilian employees filed: 55 restricted (confidential) reports and 183 unrestricted reports, with 10 restricted reports converting to unrestricted. DAF has provided restricted reporting to DAF civilian employees without any additional resources required and determined that the expanded reporting options enabled DAF civilian employees to better access available services.

This proposal, if enacted, would remove barriers for a civilian employee victim to make a restricted report of sexual assault, allow such employees to access support services, and minimize litigation risk regarding the Department's obligations to address discrimination and harassment in the workplace.

Budget Implications: 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.

This proposal does not impose a requirement to set up a program to provide sexual assault victims advocacy services, but rather provides the authority to offer an additional

reporting option for those DoD entities that already have an established program or choose to implement such a program. The development of an effective workplace violence prevention and response program for DoD civilian employees, including an infrastructure for such a program, is already required by Department of Defense Instruction (DoDI) 1438.06, "DoD Workplace Violence Prevention and Response Policy," which identifies the Deputy Assistant Secretary of Defense for Civilian Personnel Policy, under the authority, direction, and control of the Assistant Secretary of Defense for Manpower and Reserve Affairs, as the DoD lead for policy development and ensuring implementation of workplace violence prevention and response programs, including education and training, for civilian employees.

The Office of the Under Secretary of Defense (Personnel & Readiness) memorandum dated March 11, 2021, "Requirement to Implement Ability for DoD Civilian Employees Who Have Experienced Sexual Assault to Make Requests for Assistance Through the Federal Workplace Violence Prevention and Response Program," reiterated the requirement that DoD components implement component-specific policy that allows DoD civilian employees who have experienced sexual assault to obtain advocacy, support, and referrals available through workplace violence prevention and response programs.

As there is an existing requirement to assign DoD personnel to the role of providing advocacy, support, and referrals through workplace violence prevention and response programs, this legislative proposal does not necessitate the assignment of additional personnel, nor does it create a new advocacy requirement.

Changes to Existing Law: This proposal adds a new section to chapter 81 of title 10, United States Code, as set forth in the legislative text above**.**

SEC. ___. BLOCK BUY CONTRACTS FOR SHIP-TO-SHORE CONNECTOR PROGRAM.

(a) BLOCK BUY CONTRACT AUTHORITY.—The Secretary of the Navy may enter into one or more block buy contracts, beginning with fiscal year 2023, for the procurement of up to 25 Ship-to-Shore Connector class craft and associated material.

(b) LIABILITY.—Any contract entered into under subsection (a) shall provide that—

(1) any obligation of the United States to make a payment under the contract is subject to the availability of appropriations for that purpose; and

(2) that total liability of the Federal Government for termination of any contract entered into shall be limited to the total amount of funding obligated to the contract at time of termination.

Section-by-Section Analysis

This proposal would permit the Navy to enter into one or more block buy contracts for up to 25 Ship-to-Shore Connector class craft. The initial award would occur in fiscal year (FY) 2023.

The proposal aims to promote industrial base stability, production efficiencies, and cost savings when compared to a base contract plus options via annual procurement cost estimate. This contracting authority would provide the prime contractor and vendors with a reasonable advance assurance of authority to buy up to 25 craft and associated material, while also limiting the Government's liability to the funds obligated to the contract in the event of termination. Providing such assurances to both the prime contractor and vendors will strengthen the industrial base and give confidence to vendors to make long-term investments in both facilities and labor.

Material cost avoidances through a clear demand signal to the industrial base and economic ordering quantities based on cost reductions seen on the Ship to Shore Connector Follow On procurement contract (LCAC 109-123) are expected. Additionally, based on cost reductions seen for Virginia Class Submarine MYP, labor cost avoidance resulting from production efficiencies due to economic ordering quantities and production line stability is also expected. The amount of cost avoidance will be dependent on future budget decisions that provide increased funding and craft quantities. The initial block buy supported by the President's Budget for FY 2023 and the future years defense program for FYs 2023-2027 would be for 10 Ship-to-Shore Connectors.

This proposal ensures that the Government's liability for the procurement is limited to funding that is obligated to the contract at the time of termination.

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

PB23

Funding ($M)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Navy	$190.4	$192.0	$201.5	$204.7	$206.6	Shipbuilding Conversion Navy (SCN)	1	5112	0204228N

Qty	FY23	FY24	FY25	FY26	FY27	Total
	2	2	2	2	2	10

Changes to Existing Law: None.

SEC. ___. DATA REQUIREMENTS FOR COMMERCIAL ITEM PRICING NOT BASED ON ADEQUATE PRICE COMPETITION.

Section 3705[1] of title 10, United States Code is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

"(b) AUTHORITY TO REQUIRE SUBMISSION OF INFORMATION FOR COMMERCIAL PRODUCTS OF A TYPE CUSTOMARILY USED BY GENERAL PUBLIC OR NONGOVERNMENTAL ENTITIES.—

"(1) DATA TO SUPPORT COMMERCIAL PRODUCT DETERMINATION.— For products proposed as commercial as defined in section 103(1) of title 41 and that have not previously been determined commercial in accordance with section 3703(d) of this title, the offeror shall be required to identify the comparable commercial product that is customarily used by the general public or non-governmental entities that serves as the basis for the 'of a type' assertion. The offeror shall submit a comparison of the essential physical characteristics and functionality between the proposed 'of a type′ product and the comparable commercial product in support of the 'of a type' assertion. The offeror shall also provide the National Stock Numbers for both the comparable commercial product used by the general public, if one is assigned, and the product proposed to meet the Government's requirement, if one is assigned.

"(2) DATA TO SUPPORT PRICE REASONABLENESS.— When procurements that include products proposed as commercial as defined in 103(1) of title 41 and are not covered by the exceptions in section 3703(a)(1) of this title, and the contracting officer

[1] This proposal uses citations and text of title 10, United States Code, that will be in effect as of January 1, 2022, pursuant to section 1801(d)(1) of the FY21 NDAA (Public Law 116-283).

determines data available from within the Government and outside sources are insufficient to determine price reasonableness or the contracting officer determines the proposed price is not reasonable, the offeror shall be required to provide data to support price reasonableness for a contract, subcontract, or modification of a contract or subcontract as follows:

"(A) If the offeror sells the commercial product that is customarily used by the general public or non-governmental entities, the offeror shall provide the contracting officer access to all unredacted sales data or purchase order history for the commercial product so the contracting officer can review unredacted sales to the general public or non-governmental entities. If the contracting officer determines the proposed price is not reasonable after evaluating the sales data, the offeror shall be required to provide the contracting officer with cost data, including information on labor cost, material cost, and overhead rates, for the purpose of establishing price reasonableness.

"(B) If the offeror does not sell the commercial product that is customarily used by the general public or non-governmental entities for purposes other than governmental purposes that serves as the basis for its 'of a type' assertion for the proposed product, the offeror shall provide the contracting officer with cost data, including information on labor cost, material cost, and overhead rates, for the purpose of establishing price reasonableness.".

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

Section-by-Section Analysis

This proposal is a top Acquisition and Sustainment efficiency initiative to ensure that the Department has the data necessary to 1) make prompt and efficient commercial product determinations for "of a type" commercial products, as defined in 103(1) of title 41, and 2) establish price reasonableness when these acquisitions are not based on adequate price competition or prices set by law or regulation. Providing the Department with the statutory authority to obtain data to support the commercial product determination and to establish price reasonableness is paramount when the Government may be the only buyer of the commercial "of a type" product and the offeror is a sole source. When the commercial product assertion is based on the "of a type" component of the statutory commercial definition, it is critical for the contracting officer to obtain data from the offeror to understand the similarities in product features and essential physical characteristics between the commercial item and the "of a type" item proposed to meet the Government's requirement so that the determination is accurate and well-supported. This process can be very elongated, and industry has expressed its concern to the Department. Requiring data from the offeror will streamline the commercial determination process, which is especially important as the "of a type" determination requires significant judgement on the part of the contracting officer. Since this determination is binding, determinations made in error or without foundation will have broad repercussions for subsequent contracting officers across the Department. Furthermore, as there is usually no marketplace establishing a reasonable price for the item the Government is buying, in most cases it is necessary to obtain data from the offeror and when they refuse or do not provide meaningful data, it is difficult for the contracting officer to establish price reasonableness. Sole source, "of a type" procurements are the most prevalent circumstance for which excessive pricing practices are reported by oversight agencies and media. Finally, the proposed legislation clearly articulates the obligations of the contracting officer and the offeror to avoid the prolonged exchanges between the parties that result in schedule delays.

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 3705 of title 10, United States Code, as shown below. That section becomes effective as of January 1, 2022, pursuant to title XVIII of the FY 2021 NDAA (Public Law 116–283), which transferred section 2306a(d) of such title and redesignated it as section 3705. (See section 1831(f) of Public Law 116–283.) The citations to the original provisions of title 10 that are in effect before January 1, 2022, are shown in brackets for convenience.

§3705. [2306a(d)] Submission of Other Information

(a) [2306a(d)(1)] AUTHORITY TO REQUIRE SUBMISSION.-When certified cost or pricing data are not required to be submitted under this chapter for a contract, subcontract, or modification of a contract or subcontract, the offeror shall be required to submit to the contracting officer data other than certified cost or pricing data (if requested by the contracting officer), to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in section 3703(a)(1) of this title, the contracting officer shall require that the data submitted include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the

reasonableness of the price for the procurement. If the contracting officer determines that the offeror does not have access to and cannot provide sufficient information on prices for the same or similar items to determine the reasonableness of price, the contracting officer shall require the submission of information on prices for similar levels of work or effort on related products or services, prices for alternative solutions or approaches, and other information that is relevant to the determination of a fair and reasonable price. Contracting officers shall not determine the price of a contract or subcontract to be fair and reasonable based solely on historical prices paid by the Government.

(b) AUTHORITY TO REQUIRE SUBMISSION OF INFORMATION FOR COMMERCIAL PRODUCTS OF A TYPE CUSTOMARILY USED BY GENERAL PUBLIC OR NONGOVERNMENTAL ENTITIES.—

(1) Data to Support Commercial Product Determination.— For products proposed as commercial as defined in section 103(1) of title 41 and that have not previously been determined commercial in accordance with section 3703(d) of this title, the offeror shall be required to identify the comparable commercial product that is customarily used by the general public or non-governmental entities that serves as the basis for the 'of a type' assertion. The offeror shall submit a comparison of the essential physical characteristics and functionality between the proposed 'of a type´ product and the comparable commercial product in support of the 'of a type' assertion. The offeror shall also provide the National Stock Numbers for both the comparable commercial product used by the general public, if one is assigned, and the product proposed to meet the Government's requirement, if one is assigned.

(2) Data to Support Price Reasonableness.— When procurements that include products proposed as commercial as defined in 103(1) of title 41 and are not covered by the exceptions in section 3703(a)(1) of this title, and the contracting officer determines data available from within the Government and outside sources are insufficient to determine price reasonableness or the contracting officer determines the proposed price is not reasonable, the offeror shall be required to provide data to support price reasonableness for a contract, subcontract, or modification of a contract or subcontract as follows:

(A) If the offeror sells the commercial product that is customarily used by the general public or non-governmental entities, the offeror shall provide the contracting officer access to all unredacted sales data or purchase order history for the commercial product so the contracting officer can review unredacted sales to the general public or non-governmental entities. If the contracting officer determines the proposed price is not reasonable after evaluating the sales data, the offeror shall be required to provide the contracting officer with cost data, including information on labor cost, material cost, and overhead rates, for the purpose of establishing price reasonableness.

(B) If the offeror does not sell the commercial product that is customarily used by the general public or non-governmental entities for purposes other than governmental purposes that serves as the basis for its 'of a type' assertion for the proposed product, the offeror shall provide the contracting officer with cost data, including information on labor cost, material cost, and overhead rates, for the purpose of establishing price reasonableness.

(~~b~~c) [2306a(d)(2)] INELIGIBILITY FOR AWARD.-(1) In the event the contracting officer is unable to determine proposed prices are fair and reasonable by any other means, an offeror who fails to make a good faith effort to comply with a reasonable request to submit data in accordance with subsection (a) is ineligible for award unless the head of the contracting activity, or the designee of the head of contracting activity, determines that it is in the best interest of the Government to

make the award to that offeror, based on consideration of pertinent factors, including the following:

(A) The effort to obtain the data.

(B) Availability of other sources of supply of the item or service.

(C) The urgency or criticality of the Government's need for the item or service.

(D) Reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract based on information available to the contracting officer.

(E) Rationale or justification made by the offeror for not providing the requested data.

(F) Risk to the Government if award is not made.

(2)(A) Any new determination made by the head of the contracting activity under paragraph (1) shall be reported to the Principal Director, Defense Pricing and Contracting on a quarterly basis.

(B) The Under Secretary of Defense for Acquisition and Sustainment, or a designee, shall produce an annual report identifying offerors that have denied multiple requests for submission of uncertified cost or pricing data over the preceding three-year period, but nevertheless received an award. The report shall identify products or services offered by such offerors that should undergo should-cost analysis. The Secretary of Defense may include a notation on such offerors in the system used by the Federal Government to monitor or record contractor past performance. The Under Secretary shall assess the extent to which these offerors are sole source providers within the defense industrial base and shall develop strategies to incentivize new entrants into the industrial base to increase the availability of other sources of supply for the product or service.

(~~c~~d) [2306a(d)(3)] LIMITATIONS ON AUTHORITY.-The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under subsection (a):

(1) Reasonable limitations on requests for sales data relating to commercial products or commercial services.

(2) A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial products or commercial services from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

(3) A statement that any information received relating to commercial products or commercial services that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.

SEC. ___. DIVERSITY IN SELECTION BOARD MEMBERSHIP.

(a) COMPOSITION OF ACTIVE DUTY SELECTION BOARDS.—

(1) OFFICERS.—Section 612(b) of title 10, United States Code, is amended—

(A) by striking "(b) No officer " and inserting "(b)(1) Except as provided in paragraph (2), no officer";

(B) by striking "successive" and inserting "consecutive"; and

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

"(2) An officer may be a member of two (but not more than two) consecutive selection boards described in paragraph (1) if the Secretary of the military department concerned determines that the membership of the officer in the second of the two boards is necessary to represent the diverse population of the armed force concerned as required by subsection (a)(1).".

(2) WARRANT OFFICERS.—Section 573(e) of such title is amended—

(A) by striking "(e) No officer" and inserting "(e)(1) Except as provided in paragraph (2), no officer";

(B) in paragraph (1), as so designated, by striking ", if the second board considers" and all that follows before the period at the end; and

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

"(2) An officer may be a member of two (but not more than two) consecutive selection boards under this section if the Secretary concerned determines that the membership of the officer in the second of the two boards is necessary to represent the diverse population of the armed force concerned as required by subsection (b).".

(b) COMPOSITION OF RESERVE COMPONENT SELECTION BOARDS.—Section 14102(d) of such title is amended—

(1) by striking "No officer" and inserting "(1) Except as provided by paragraph (2), no officer";

(2) in paragraph (1), as so designated—

(A) by striking "successive" and inserting "consecutive"; and

(B) by striking "if the second of the two boards" and all that follows before the period at the end; and

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

"(2) An officer may be a member of two (but not more than two) consecutive selection boards under this section if the Secretary of the military department concerned determines that the membership of the officer in the second of the two boards is necessary to represent the diverse population of the armed force concerned as required by subsection (b).".

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

Section-by-Section Analysis

This legislative proposal would amend sections 573, 612, and 14102 of title 10, United States Code, to allow for consecutive board membership when necessary to represent the diverse population of the armed force concerned.

Currently, it is not practicable for the Secretaries concerned to convene selection boards that represent the diverse population of the armed force concerned without permitting some members to serve on two consecutive selection boards.

Budget Implications: This proposal has no budgetary impact.

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

§ 573. Convening of selection boards

(a)(1) Whenever the Secretary concerned determines that the needs of the service so require, he shall convene a selection board to recommend for promotion to the next higher warrant officer grade warrant officers on the warrant officer active-duty list who are in the grade of chief warrant officer, W–2, chief warrant officer, W–3, or chief warrant officer, W–4.

(2) Warrant officers serving on the warrant officer active-duty list in the grade of warrant officer, W–1, shall be promoted to the grade of chief warrant officer, W–2, in accordance with regulations prescribed by the Secretary concerned. Such regulations shall require that an officer have served not less than 18 months on active duty in the grade of warrant officer, W–1, before promotion to the grade of warrant officer, W–2.

(b) A selection board shall consist of five or more officers who are on the active-duty list of the same armed force as the warrant officers under consideration by the board. At least five members of a selection board must be serving in a permanent grade above major or lieutenant commander. The Secretary concerned may appoint warrant officers, senior in grade to those under consideration, as additional members of the selection board. If warrant officers are appointed members of the selection board and if competitive categories have been established by the Secretary under section 574(b) of this title, at least one must be appointed from each warrant officer competitive category under consideration by the board, unless there is an insufficient number of warrant officers in the competitive category concerned who are senior in grade to those under consideration and qualified, as determined by the Secretary concerned, to be appointed as additional members of the board. The members of a selection board shall represent the diverse population of the armed force concerned to the extent practicable.

(c) The Secretary concerned may convene selection boards to recommend regular warrant officers for continuation on active duty under section 580 of this title and for retirement under section 581 of this title.

(d) When reserve warrant officers of one of the armed forces are to be considered by a selection board convened under subsection (a), the membership of the board shall, if practicable, include at least one reserve officer of that armed force, with the exact number of reserve officers to be determined by the Secretary concerned.

(e)(1) Except as provided by paragraph (2), no ~~No~~ officer may serve on two consecutive boards under this section~~, if the second board considers any warrant officer who was considered by the first board~~.

(2) An officer may be a member of two (but not more than two) consecutive selection boards under this section if the Secretary concerned determines that the membership of the officer in the second of the two boards is necessary to represent the diverse population of the armed force concerned as required by subsection (b).

(f) The Secretary concerned shall prescribe all other matters relating to the functions and duties of the boards, including the number of members constituting a quorum, and instructions concerning notice of convening of boards and communications with boards.

§ 612. Composition of selection boards

(a)(1) Members of selection boards shall be appointed by the Secretary of the military department concerned in accordance with this section. A selection board shall consist of five or more officers of the same armed force as the officers under consideration by the board. Each member of a selection board (except as provided in paragraphs (2), (3), and (4)) shall be an officer on the active-duty list. Each member of a selection board must be serving in a grade

higher than the grade of the officers under consideration by the board, except that no member of a board may be serving in a grade below major or lieutenant commander. The members of a selection board shall represent the diverse population of the armed force concerned to the extent practicable.

(2)(A) Except as provided in subparagraph (B), a selection board shall include at least one officer from each competitive category of officers to be considered by the board.

(B) A selection board need not include an officer from a competitive category to be considered by the board when there are no officers of that competitive category on the active-duty list in a grade higher than the grade of the officers to be considered by the board and eligible to serve on the board. However, in such a case the Secretary of the military department concerned, in his discretion, may appoint as a member of the board an officer of that competitive category who is not on the active-duty list from among officers of the same armed force as the officers under consideration by the board who hold a higher grade than the grade of the officers under consideration and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(3) When reserve officers of an armed force are to be considered by a selection board, the membership of the board shall include at least one reserve officer of that armed force on active duty (whether or not on the active-duty list). The actual number of reserve officers shall be determined by the Secretary of the military department concerned, in the Secretary's discretion. Notwithstanding the first sentence of this paragraph, in the case of a board which is considering officers in the grade of colonel or brigadier general or, in the case of officers of the Navy, captain or rear admiral (lower half), no reserve officer need be included if there are no reserve officers of that armed force on active duty in the next higher grade who are eligible to serve on the board.

(4) Except as provided in paragraphs (2) and (3), if qualified officers on the active-duty list are not available in sufficient number to comprise a selection board, the Secretary of the military department concerned shall complete the membership of the board by appointing as members of the board officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(5) A retired general or flag officer who is on active duty for the purpose of serving on a selection board shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(b)(1) Except as provided by paragraph (2), no ~~No~~ officer may be a member of two ~~successive~~consecutive selection boards convened under section 611(a) of this title for the consideration of officers of the same competitive category and grade.

(2) An officer may be a member of two (but not more than two) consecutive selection boards described in paragraph (1) if the Secretary of the military department concerned determines that the membership of the officer in the second of the two boards is necessary to represent the diverse population of the armed force concerned as required by subsection (a)(1).

(c)(1) Each selection board convened under section 611(a) of this title that will consider an officer described in paragraph (2) shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is a joint qualified officer.

(2) Paragraph (1) applies with respect to an officer who—

(A) is serving on, or has served on, the Joint Staff; or

(B) is a joint qualified officer.

(3) The Secretary of Defense may waive the requirement in paragraph (1) in the case of—

(A) any selection board of the Marine Corps; or

(B) any selection board that is considering officers in specialties identified in paragraph (2) or (3) of section 619a(b) of this title.

§ 14102 - Selection boards: appointment and composition

(a) APPOINTMENT.—Members of selection boards convened under section 14101 of this title shall be appointed by the Secretary of the military department concerned in accordance with this section. Promotion boards and special selection boards shall consist of five or more officers. Selection boards convened under section 14101(b) of this title shall consist of three or more officers. All of the officers of any such selection board shall be of the same armed force as the officers under consideration by the board.

(b) COMPOSITION.—At least one-half of the members of such a selection board shall be reserve officers, to include at least one reserve officer from each reserve component from which officers are to be considered by the board. Each member of a selection board must hold a permanent grade higher than the grade of the officers under consideration by the board, and no member of a board may hold a grade below major or lieutenant commander. The members of a selection board shall represent the diverse population of the armed force concerned to the extent practicable.

(c) REPRESENTATION OF COMPETITIVE CATEGORIES.—(1) Except as provided in paragraph (2), a selection board shall include at least one officer from each competitive category of officers to be considered by the board.

(2) A selection board need not include an officer from a competitive category to be considered by the board if there is no officer of that competitive category on the reserve active-status list or the active-duty list in a permanent grade higher than the grade of the officers to be considered by the board and otherwise eligible to serve on the board. However, in such a case, the Secretary of the military department concerned, in his discretion, may appoint as a member of the board a retired officer of that competitive category who is in the same armed force as the officers under consideration by the board who holds a higher grade than the grade of the officers under consideration.

(d) PROHIBITION OF SERVICE ON CONSECUTIVE PROMOTION BOARDS.—(1) Except as provided in paragraph (2), no ~~No~~ officer may be a member of two ~~successive~~consecutive promotion boards convened under section 14101(a) of this title for the consideration of officers of the same competitive category and grade ~~if the second of the two boards is to consider any officer who was considered and not recommended for promotion to the next higher grade by the first of the two boards~~.

(2) An officer may be a member of two (but not more than two) consecutive selection boards described in paragraph (1) if the Secretary of the military department concerned

determines that the membership of the officer in the second of the two boards is necessary to represent the diverse population of the armed force concerned as required by subsection (b).

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

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

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

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

(B) by striking subsection (c).

(2) CONFORMING AMENDMENTS.—

(A) SECTION HEADING.—The heading of such section is amended to read as follows:

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

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

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

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

(c) AIR UNIVERSITY.—Section 9371 of such title is amended by striking subsection (c).

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

Section-by-Section Analysis

This proposal would expand hiring authority under title 10, United States Code, for professors, lecturers, and instructors at military education institutions and programs of the Military Departments. Such authority is currently limited to specifically enumerated military education institutions--the U.S. Army War College, the U.S. Army Command and General Staff College, the Naval War College, the Marine Corps University, and the Air University—so long as the primary course of instruction offered is at least ten months in duration. This proposal would add Army University to the list of specifically enumerated military education institutions and remove the limitation on the use of authority to only courses of instruction that are 10 months or longer.

Congress has previously recognized the requirement to provide excepted service authorities to appropriately staff the faculties of these military education programs. The rationale for expanding this authority to other programs remains the same: the career civil service system erects significant barriers to hiring appropriately credentialed faculty by precluding specification of degree and skill levels required in favor of general-purpose duty descriptions that are broadly applicable. The excepted service hiring authority authorized in these sections of title 10 permit the military education institutions of the Military Departments to determine the levels of experience, expertise, and credentials required to effectively staff their faculty while also providing flexibility to manage that faculty in light of evolving requirements, as opposed to the permanent structure of the career civil service system.

These requirements have grown. To meet congressional intent to increase the rigor of military education over the past decades, the Military Departments have increased the number of institutions and programs that are accredited by an agency or authority recognized by the Secretary of Education or the American Council on Education. Yet the majority of the force development educational programs of the Army, Navy, Marine Corps, and Air Force are denied the ability to field a faculty with a blend of military experts and highly qualified, credentialed civilian academic professionals. Staffing such schools and programs with faculty that are professionally credentialed has been challenging under existing authorities.

This proposal supports the Army Learning Model and Army Concept for Training and Education, the Department of the Navy's Education for Seapower initiative, the Marine Corps' 21st Century Learning initiative, and the Air Force's Human Capital strategy.

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

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

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

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

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

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

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

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

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

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

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

§ 9371. Air University: Civilian Faculty Members

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

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

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

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

~~(2) This section shall not apply with respect to professors, instructors, and~~

~~lecturers employed at a school of the Air University if the duration of the principal course of instruction offered at that school is less than 10 months.~~

SEC.___. EXEMPTION OF GSA AUDITS FROM THE CONTRACT DISPUTES ACT.

(a) IN GENERAL.—Section 3726(b) of title 31, United States Code, is amended—

(1) by striking "(b)" and inserting "(b)(1)"; and

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

"(2) Chapter 71 of title 41 shall not apply to an appeal of a pre- or post-payment audit decision under paragraph (1), or a deduction under subsection (d), with respect to a contract for transportation services awarded pursuant to the Federal Acquisition Regulation. Such an appeal shall be adjudicated under the authority of this section using administrative procedures of the General Services Administration.

"(3) In conducting a pre- or post-payment audit under paragraph (1) with respect to a contract for transportation services awarded pursuant to the Federal Acquisition Regulation and any appeal of such an audit, the Administrator shall consider the contracting officer's opinion and interpretation of contract terms and facts involved.".

(b) CONFORMING AMENDMENT.—Section 7102 of title 41, United States Code, is amended by adding at the end the following new subsection:

"(e) TRANSPORTATION SERVICES CONTRACTS.—This chapter does not apply to an appeal of a pre- or post-payment audit decision or deduction made by the Administrator of General Services under section 3726 of title 31 with respect to a contract for transportation services awarded pursuant to the Federal Acquisition Regulation.".

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

Section-by-Section Analysis

This proposal would amend section 3726 of title 31, United States Code (U.S.C.), and section 7102 of title 41, U.S.C., to deconflict the authority of the General Services

Administration (GSA) from the Contract Disputes Act (CDA) and provide greater clarity on the process by which a contractor may appeal a GSA offset under its audit authority.

The GSA has authority under section 3726 of title 31, U.S.C., which was enacted as part of the Transportation Act of 1940 (the Transportation Act), to conduct pre- and post-payment audits of invoices submitted by transportation service providers (TSPs) for transportation services provided to Federal entities. While the Transportation Act was written when almost all government transportation was obtained under "tenders of service" (as opposed to Federal Acquisition Regulation (FAR)-based contracts), it does not limit GSA audit authority to tenders of service but applies to FAR-based contracts as well. Under this authority, GSA can offset or take monies from TSPs resulting from overcharges identified by GSA in pre- and post-payment audits.

The GSA's authority and implementing regulations provide a dispute process for a TSP to contest the GSA's offsets or monies taken as a result of pre- and post-payment audits. This includes a protest to the GSA Audits Division and a subsequent appeal to the Civilian Board of Contract Appeals. The GSA's Transportation Act authority conflicts with a contracting officer's authority under the CDA to resolve disputes relating to transportation services obtained using contracts awarded through the authority of the FAR. Under the CDA, disputes are resolved in accordance with FAR clause 52.233-1, Disputes. Additionally, the Transportation Act conflicts with FAR requirements for a "demand for payment" and contract "debts" as spelled out in FAR clause 52.212-4. Under FAR-based contracts and the CDA, a TSP can protest any offsets/disputes to the contracting officer and subsequently appeal an unfavorable contracting officer final decision to the Armed Services Board of Contract Appeals (ASBCA).

The current conflicting statutes cause confusion for TSPs as to what process to follow should they disagree with a GSA audit. The conflict further creates unnecessary work for the Government as personnel from GSA and the contracting entity continually work through issues regarding who has final authority and what processes govern. It also creates fiscal law issues when GSA collects funds and the transportation provider protests through the contracting officer or ASBCA since neither the contracting officer or ASBCA can require GSA to reimburse the transportation provider.

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 section 3726 of title 31, U.S.C. and section 7102 of title 41, U.S.C.:

TITLE 31, UNITED STATES CODE

§3726. Payment for transportation

(a)(1) Each agency that receives a bill from a carrier or freight forwarder for transporting an individual or property for the United States Government shall verify its correctness (to include transportation rates, freight classifications, or proper combinations thereof), using prepayment audit, prior to payment in accordance with the requirements of this section and regulations prescribed by the Administrator of General Services.

(2) The Administrator of General Services may exempt bills, a particular mode or modes of transportation, or an agency or subagency from a prepayment audit and verification and in lieu thereof require a postpayment audit, based on cost effectiveness, public interest, or other factors the Administrator considers appropriate.

(3) Expenses for prepayment audits shall be funded by the agency's appropriations used for the transportation services.

(4) The audit authority provided to agencies by this section is subject to oversight by the Administrator.

(b)(1) The Administrator may conduct pre- or post-payment audits of transportation bills of any Federal agency. The number and types of bills audited shall be based on the Administrator's judgment.

(2) Chapter 71 of title 41 shall not apply to an appeal of a pre- or post-payment audit decision under paragraph (1), or a deduction under subsection (d), with respect to a contract for transportation services awarded pursuant to the Federal Acquisition Regulation. Such an appeal shall be adjudicated under the authority of this section using administrative procedures of the General Services Administration.

(3) In conducting a pre- or post-payment audit under paragraph (1) with respect to a contract for transportation services awarded pursuant to the Federal Acquisition Regulation and any appeal of such an audit, the Administrator shall consider the contracting officer’s opinion and interpretation of contract terms and facts involved.

(c)(1) The Administrator shall adjudicate transportation claims which cannot be resolved by the agency procuring the transportation services, or the carrier or freight-forwarder presenting the bill.

(2) A claim under this section shall be allowed only if it is received by the Administrator not later than 3 years (excluding time of war) after the later of the following dates:

(A) The date of accrual of the claim.

(B) The date payment for the transportation is made.

(C) The date a refund for an overpayment for the transportation is made.

(D) The date a deduction under subsection (d) of this section is made.

(d) Not later than 3 years (excluding time of war) after the time a bill is paid, the Government may deduct from an amount subsequently due a carrier or freight forwarder an amount paid on the bill that was greater than the rate allowed under-

(1) a lawful tariff under title 49 or on file with the Secretary of Transportation with respect to foreign air transportation (as defined in section 40102(a) of title 49), the Federal Maritime Commission, or a State transportation authority;

(2) a lawfully quoted rate subject to the jurisdiction of the Surface Transportation Board; or

(3) sections 10721, 13712, and 15504 of title 49 or an equivalent arrangement or an exemption.

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TITLE 41, UNITED STATES CODE

§7102. Applicability of chapter

(a) EXECUTIVE AGENCY CONTRACTS.-Unless otherwise specifically provided in this chapter, this chapter applies to any express or implied contract (including those of the nonappropriated fund activities described in sections 1346 and 1491 of title 28) made by an executive agency for-

(1) the procurement of property, other than real property in being;

(2) the procurement of services;

(3) the procurement of construction, alteration, repair, or maintenance of real property; or

(4) the disposal of personal property.

(b) TENNESSEE VALLEY AUTHORITY CONTRACTS.-

(1) In general.-With respect to contracts of the Tennessee Valley Authority, this chapter applies only to contracts containing a clause that requires contract disputes to be resolved through an agency administrative process.

(2) Exclusion.-Notwithstanding any other provision of this chapter, this chapter does not apply to a contract of the Tennessee Valley Authority for the sale of fertilizer or electric power or related to the conduct or operation of the electric power sys(c) Foreign Government or International Organization Contracts.-If an agency head determines that applying this chapter would not be in the public interest, this chapter does not apply to a contract with a foreign government, an agency of a foreign government, an international organization, or a subsidiary body of an international organization.

(d) MARITIME CONTRACTS.-Appeals under section 7107(a) of this title and actions brought under sections 7104(b) and 7107(b) to (f) of this title, arising out of maritime contracts, are governed by chapter 309 or 311 of title 46, as applicable, to the extent that those chapters are not inconsistent with this chapter.

(e) TRANSPORTATION SERVICES CONTRACTS.—This chapter does not apply to an appeal of a pre- or post-payment audit decision or deduction made by the Administrator of General Services under section 3726 of title 31 with respect to a contract for transportation services awarded pursuant to the Federal Acquisition Regulation.

SEC. ___. EXCLUSION OF ACTIVE DUTY STATUS FOR REQUIRED MEDICAL EVALUATION AND CARE FROM THE FIVE-YEAR SERVICE LIMITATION ESTABLISHED IN THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT.

(a) IN GENERAL.—Section 4312(c)(4)(A) of title 38, United States Code, is amended—

(1) by inserting "12301(h)," after "12301(g),"; and

(2) by striking "331, 332, 359, 360, 367, or 712" and inserting "2127, 2128, 2308, 2309, 2314, or 3713".

(b) APPLICABILITY.—The amendment made by subsection (a)(1) of this section shall apply to a member of a uniformed service who is ordered to or retained on active duty under section 12301(h) of title 10, United States Code, after the date of the enactment of this Act.

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

Section-by-Section Analysis

This proposal would add active duty status for medical care to the list of authorities excluded from the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) five-year service limit. Currently, section 12301(h) of title 10, United States Code (U.S.C.), states that "When authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a reserve component to active duty – to receive authorized medical care; to be medically evaluated for disability or other purposes; or to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member." Currently, section 12301(h) of title 10, U.S.C., is not identified as a statutory exemption under USERRA. The result is that reserve component Service members receiving authorized medical care and evaluation under section 12301(h) of title 10, U.S.C., authority, some of whom are assigned to wounded warrior units for extended periods of time, have this period of service counted against the five-year cumulative absence limitation from their civilian employment as defined in USERRA.

After discussions with representatives from the Department of Labor and the military representatives to the Department of Defense USERRA Working Group, it was determined that adding section 12301(h) of title 10, U.S.C., to the list of statutory exemptions identified in section 4312(c)(4)(A) of title 38, U.S.C., is an appropriate exemption to USERRA's five-year cumulative limit as a readiness issue across all Services. Adding 12301(h) to the list of statutory

exemptions in USERRA will avoid the confusion created for Service members and employers, and the discrepancies between the Services, when periods of service are exempted via individual Service Secretary Policy memorandum.

In addition, this proposal includes a conforming amendment that is required due to the redesignation of sections in title 14, U.S.C., by Public Law 115-282.

Resource Information: This proposal has no resource implications.

Changes to Existing Law: This proposal would amend section 4312 of title 38, United States Code as set forth in the legislative text above.

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§4312. REEMPLOYMENT RIGHTS OF PERSONS WHO SERVE IN THE UNIFORMED SERVICES.

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(a) Subject to subsections (b), (c), and (d) and to section 4304, any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if—

(1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer;

(2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and

(3) except as provided in subsection (f), the person reports to, or submits an application for reemployment to, such employer in accordance with the provisions of subsection (e).

(b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service—

(1) that is required, beyond five years, to complete an initial period of obligated service;

(2) during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

(3) performed as required pursuant to section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is—

(A) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12301(h), 12302, 12304, 12304a, 12304b, or 12305 of title 10 or under section ~~331, 332, 359, 360, 367, or 712~~ 2127, 2128, 2308, 2309, 2314, or 3713 of title 14;

(B) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services;

(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10; or

(F) ordered to full-time National Guard duty (other than for training) under section 502(f)(2)(A) 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, as determined by the Secretary concerned.

* * * * *

SEC. ____. EXPANSION OF GEOGRAPHIC AREA OF SUPPORT FOR NATO SUPPORT ORGANIZATIONS.

Section 2350d(b)(1) of title 10, United States Code, is amended by inserting after "in Europe" the following: ", and in support of training and contingency operations outside of Europe,".

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

Section-by-Section Analysis

This legislative proposal would insert ", and in support of training and contingency operations outside of Europe," in section 2350d(b)(1) of title 10, United States Code, expanding the geographic area of support, which will positively support current and future NATO global operations. This legislative proposal would revise the statutory geographic limitation associated with support or procurement partnership agreements with one or more governments of other NATO member countries participating in the operation of the NATO Support and Procurement Organization (NSPO) and its executive agencies.

The ", and in support of training and contingency operations outside of Europe," amendment removes the geographic limitation negatively impacting support to current and future NATO global operations and aligns with the President's call for greater NATO support to U.S. global operations and the new NATO strategy of global engagement and the shift to counter China. The rationale for the proposed change to 10 U.S.C. 2350d(b)(1) is to enable use of support or procurement partnership agreements to enable effective assistance mechanisms to aid NATO operations globally.

Resource Information: This proposal has no resource implications.

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

TITLE 10, UNITED STATES CODE

§2350d. Cooperative logistic support agreements: NATO countries

(a) General Authority.-

(1) The Secretary of Defense may enter into bilateral or multilateral agreements known as Support or Procurement Partnership Agreements with one or more governments of other member countries of the North Atlantic Treaty Organization (NATO) participating in the operation of the NATO Support and Procurement Organization and its executive

agencies. Any such agreement shall be for the purpose of providing cooperative logistics support for the armed forces of the countries which are parties to the agreement. Any such agreement-

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

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

(2) Such an agreement may provide for-

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

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

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

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

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

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

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

(e) Application of Arms Export Control Act.-Any transfer of defense articles or defense services to a member country of the North Atlantic Treaty Organization or to the NATO Support and Procurement Organization and its executive agencies for the purposes of a Support or

Procurement Partnership Agreement shall be carried out in accordance with this chapter and the Arms Export Control Act (22 U.S.C. 2751 et seq.).

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

* * * * *

SEC. __. EXPANDED AUTHORITY TO USE ONE-STEP TURN-KEY SELECTION PROCEDURES.

(a) REPAIR PROJECTS.—Subsection (a)(2) of section 2862 of title 10, United States Code, is amended by striking "with an approved cost equal to or less than $4,000,000".

(b) SECURITY ASSISTANCE OR SECURITY COOPERATION PROJECTS.—Such section is further amended by inserting "or security cooperation" after "security assistance" in subsection (a)(3) and each place it appears in subsection (b)(2).

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

Section-by-Section Analysis

This proposal would amend section 2862 of title 10, United States Code, to remove the current $4 million ceiling on the authority to use turnkey design-build procedures[1] for repair projects, as defined in section 2811(e) of such title. It also makes an administrative change to the term "authorized security assistance projects" to reduce confusion and better align with current Department of Defense (DoD) nomenclature for the subset of projects listed in section 2862.

Well-maintained and fully operational DoD real property facilities are essential for readiness and the well-being of DoD service members, civilians, and their families. Increasingly, installation sustainment, renovation, and modernization annual budget priorities include a greater number of larger-scale facility repair projects than ever before. The Department recognizes the increasing size and scope of facilities projects due to their greater technological complexity and increased environmental efficiencies. In the last few years, minor construction and unspecified minor military construction project limits have increased to $2 million and $6 million, respectively, and the "conversion" of a facility is now classified as a repair project.[2] These changes have led to the increased size, scale, and importance of repair projects because repairing an existing facility can often be more cost and time efficient than new construction. Maintaining top notch modern, efficient, and sustainable facilities is integral to the readiness and resiliency of today's Armed Forces. Accordingly, the trend of larger-scale and more complex and efficient DoD facilities is expected to remain constant over the long-term, resulting in a need for expanded repair project authority.

[1] Generally speaking, a turnkey project establishes a fixed price, usually based on a written request for proposal (RFP) with no sketches or drawings. Instead, the RFP defines the minimum design requirements and the design build teams submit design concepts along with price proposals.

[2] See the National Defense Authorization Act of 2018, section 2802, P.L. 115-91 and the National Defense Authorization Act of 2017, section 2802 of P.L. 114-328.

If adopted, this proposal would resolve inefficiencies by providing the military departments more flexibility to choose the most appropriate acquisition method for a project, considering the project's individual scope, budget, and schedule. The Department would no longer be forced to fit a repair project into an acquisition method that may not be the best business decision in terms of achieving the highest quality results and the most efficient use of taxpayer funds. Historically, the current $4 million threshold corresponded to the small business sole source set-aside authorities found in part 19 of the Federal Acquisition Regulation; however, projects have increasingly grown in size and complexity and the goals of competition and maximizing qualified small business participation are paramount in current times. Moreover, removing the threshold would also result in parity with the long-standing military construction turnkey design-build authority that is not similarly limited.

This proposal would expand the acquisition delivery methods available to the military departments for installation repair projects. The current two options are: 1) the traditional design-bid-build approach, and 2) the two-phase design-build approach. This proposal would offer a third option, the expanded turnkey design-build approach for all repair projects, regardless of cost. This expanded turnkey design-build acquisition authority would allow for a single phase in the solicitation and award of a contract.

Turnkey selection procedures can be more efficient in terms of project planning and contract acquisition and can achieve higher quality results by providing industry with the responsibility and opportunity to design and build, through a single contract, the world class facilities desired by the Department. It also provides the Department with the ability to better maximize competitive solicitations that may have otherwise been non-competitively awarded due to the timing of the project requirements and funding received by the executing military department. By providing more flexibility in the acquisition tools available to the Department, the executing military department has the freedom to select the method best suited to a specific project's needs and goals. This proposal would achieve higher quality facilities for service members, civilian employees, and military families and would result in better value for the taxpayer.

The Army has additionally created internal policy and protocols, both to assist contracting officers in determining when a particular delivery method is best suited to a construction or repair project, and to address industry concerns and interests. These policies include defining the minimal level of project scope development required for a particular design-build method, ensuring prospective offerors' costs are minimized in proposal preparation, and requiring the District Chief of Construction's approval in determining the level of scope development.[3] In this way, the interests of industry and the Government can be balanced more effectively. It is likely that where many qualified offerors may not previously have had a chance to compete on a project or to offer the military department the latest in innovation, construction techniques, and potentially greater efficiencies during design and construction, this proposed legislation would serve to provide more opportunity for qualified small businesses, and industry as a whole, to compete for these projects under a uniform and balanced framework.

[3] See generally, U.S. Army Corps of Engineers (USACE) Engineer Regulation (ER)1180-1-9, "Design-Build Contracting", (MAR 2012) and the most recent USACE Engineering and Construction Bulletin (ECB) 2019-12, "Limitations on the Use of One-Step Selection Procedures for Design-Build".

Despite the benefits of the enhanced turnkey authority, and the procedures in place to support its effective application, the military departments have been forced to limit their use of this authority to fit within the $4 million repair project threshold over the last ten years, resulting in sub-optimal use of turnkey authority because acquisition strategies are being determined by a project's value alone. A repair project is often scoped simply to stay under the current $4 million threshold in order to not trigger a mandatory two-phase acquisition process or to permit the use non-competitive procedures. The decreased or disjointed scope that results often does not meet the full needs of the military department and the facility's users; and, it also may suppress contractor competition due to the executing military departments not having sufficient time to create a biddable (competitively) scope of work, especially in periods of continuing resolutions.[4] Due to these realities, the forward planning necessary to solicit a competitive repair project may not always include sufficient time to both complete a full design, and also to solicit and award a "build" project, or to successfully solicit two distinct design-build evaluation phases prior to the end of the fiscal year, requiring either limited and insufficient repairs being performed to stay under the $4 million threshold, or the total deferment of critical defense facilities that could have been available to users sooner. In addition, the Government may not always award to the most highly qualified and successfully performing contractor, or reach qualified small businesses wherever possible, when procurements are not appropriately scoped and planned to meet actual user needs. During the contract administration phase of a contract that was not sufficiently scoped or planned, a large amount of high-cost differing site condition changes may materialize, in addition to the impact and delay costs that may be consequently owed to the contractor.

In short, by removing the $4 million project ceiling and thereby enabling the use of turnkey design-build procedures for all repair projects, the proposal would eliminate the above-mentioned shortcomings and provide an additional acquisition method for the use by the Department in its delivery of facilities. Additionally, this change provides consistency with the construction authority, which has no limit. It also positions the Department to be more agile and responsive to the dynamic needs of service members with expanded flexibility in facilities acquisition and delivery.

This proposal also provides an administrative change to align terminology and resolves any unintended ambiguities associated with the term "authorized security assistance activity". The subset of projects listed in the current legislation as "authorized security assistance activity" also includes activities that could be broadly categorized as both security assistance and security cooperation activities. This administrative change would amend the statutory reference to also incorporate security cooperation activities.

Resource Information: This proposal has no impact on the use of resources. There is cost avoidance by eliminating the first step in the two-phase selection process required for military repair projects over $4 million.

Changes to Existing Law: This proposal makes the following changes to section 2862 of title 10, United States Code:

[4] The one-year funds typically appropriated for repair projects may not be made available to installations for these projects until second or third quarter, or sometimes even fourth quarter, of a particular fiscal year.

§ 2862. Turn-key selection procedures

(a) AUTHORITY TO USE FOR CERTAIN PURPOSES.—The Secretary concerned may use one-step turn-key selection procedures for the purpose of entering into a contract for any of the following purposes:

(1) The construction of an authorized military construction project.

(2) A repair project (as defined in section 2811(e) of this title) ~~with an approved cost equal to or less than $4,000,000~~.

(3) The construction of a facility as part of an authorized security assistance or security cooperation activity.

(b) DEFINITIONS.—In this section:

(1) The term "one-step turn-key selection procedures" means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary concerned.

(2) The term "security assistance or security cooperation activity" means—

(A) humanitarian and civic assistance authorized by sections 401 and 2561 of this title;

(B) foreign disaster assistance authorized by section 404 of this title;

(C) foreign military construction sales authorized by section 29 of the Arms Export Control Act (22 U.S.C. 2769);

(D) foreign assistance authorized under sections 607 and 632 of the Foreign Assistance Act of 1961 (22 U.S.C. 2357, 2392); and

(E) other international security assistance or security cooperation specifically authorized by law.

SEC. ___. ONE-YEAR EXTENSION OF CERTAIN EXPIRING BONUS AND SPECIAL PAY AUTHORITIES.

(a) AUTHORITIES RELATING TO RESERVE FORCES.—Section 910(g) of title 37, United States Code, relating to income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service, is amended by striking "December 31, 2022" and inserting "December 31, 2023".

(b) TITLE 10 AUTHORITIES RELATING TO HEALTH CARE PROFESSIONALS.—The following sections of title 10, United States Code, are amended by striking "December 31, 2022" and inserting "December 31, 2023":

(1) Section 2130a(a)(1), relating to nurse officer candidate accession program.

(2) Section 16302(d), relating to repayment of education loans for certain health professionals who serve in the Selected Reserve.

(c) AUTHORITIES RELATING TO NUCLEAR OFFICERS.—Section 333(i) of title 37, United States Code, is amended by striking "December 31, 2022" and inserting "December 31, 2023".

(d) AUTHORITIES RELATING TO TITLE 37 CONSOLIDATED SPECIAL PAY, INCENTIVE PAY, AND BONUS AUTHORITIES.—The following sections of title 37, United States Code, are amended by striking "December 31, 2022" and inserting "December 31, 2023":

(1) Section 331(h), relating to general bonus authority for enlisted members.

(2) Section 332(g), relating to general bonus authority for officers.

(3) Section 334(i), relating to special aviation incentive pay and bonus authorities for officers.

(4) Section 335(k), relating to special bonus and incentive pay authorities for officers in health professions.

(5) Section 336(g), relating to contracting bonus for cadets and midshipmen enrolled in the Senior Reserve Officers' Training Corps.

(6) Section 351(h), relating to hazardous duty pay.

(7) Section 352(g), relating to assignment pay or special duty pay.

(8) Section 353(i), relating to skill incentive pay or proficiency bonus.

(9) Section 355(h), relating to retention incentives for members qualified in critical military skills or assigned to high priority units.

(e) AUTHORITY TO PROVIDE TEMPORARY INCREASE IN RATES OF BASIC ALLOWANCE FOR HOUSING.—Section 403(b) of title 37, United States Code, is amended—

(1) in paragraph (7)(E), by striking "December 31, 2022" and inserting "December 31, 2023"; and

(2) in paragraph (8)(C), by striking "September 30, 2022" and inserting "December 31, 2023".

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

Section-by-Section Analysis

This proposal would extend certain expiring bonus and special pay authorities.

Subsection (a) of this proposal would extend income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service through December 31, 2023. The Department of Defense and Congress recognize the prudence of this incentive, which compensates an involuntarily mobilized Reserve Service member in an amount equal to the monthly income differential between the member's average monthly civilian income and the member's total monthly military compensation.

Subsection (b) of this proposal would extend two critical recruitment and retention incentive programs for Reserve component health care professionals through December 31, 2023. The Reserve components historically have found it challenging to meet the required manning in the health care professions. These incentives, which target nurse and critical health care profession skills, are essential to meet required manning levels. The financial assistance and health professions loan repayment programs have proven to be powerful recruiting tools for

attracting young health professionals trained in specialty areas that are critically short in the Selected Reserve. Extending these authorities is critical to the continued success of recruiting young, skilled health professionals into the Selected Reserve.

Subsection (c) of this proposal would extend accession and retention incentives for nuclear-qualified officers through December 31, 2023. These incentives enable the Navy to attract and retain the qualified personnel required to maintain the operational readiness and unparalleled safety record of the nuclear-powered submarines and aircraft carriers, which comprise over 40% of the Navy's major combatants. Due to extremely high training costs and regulatory requirements for experienced supervisors, these incentives provide the surest and most cost-effective means to maintain the required quantity and quality of these officers.

The nuclear officer bonus and nuclear officer incentive pay (NOIP) program is structured to provide career-long retention of officers in whom the Navy has made a considerable training investment and who have continually demonstrated superior technical and management ability. The scope of the program is limited to the number of officers required to fill critical nuclear supervisory billets, and eligibility is strictly limited to those officers who continue to meet competitive career milestones. The technical, leadership, and management expertise developed in the Naval Nuclear Propulsion Program (NNPP) is highly valued in the civilian workforce, which makes the retention of these officers a continuing challenge.

Subsection (d) of this proposal would extend through December 31, 2023, the consolidated special and incentive pay authorities added to subchapter II of chapter 5 of title 37, United States Code, by the National Defense Authorization Act for FY2008. Experience shows that retention of members in critical skills would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing replacements. The Department of Defense and the Congress have long recognized the cost-effectiveness of financial incentives in supporting effective staffing in such critical military skills, assignments, and high priority units.

Subsection (e) of this proposal would (1) extend through December 31, 2023, the Secretary of Defense authority to prescribe a temporary increase in the rates of basic allowance for housing otherwise prescribed for a military housing area or a portion of a military housing area if the military housing area or portion thereof is located in an area covered by a declaration by the President that a major disaster exists; or contains one or more military installations that are experiencing a sudden increase in the number of members of the armed forces assigned to the installation; and (2) extend through December 31, 2023, the Secretary of Defense authority to prescribe a temporary adjustment in the current rates of basic allowance for housing (BAH rates) for a military housing area or a portion thereof if the Secretary determines that the actual costs of adequate housing for civilians in that military housing area or portion thereof differs from the current BAH rates by more than 20 percent.

EXTENSION AUTHORITIES FOR RESERVE FORCES:

Resource Information: The military departments did not project expenditures for this allowance in their FY 23 President's Budget request because Services do not anticipate usage.

However, extension of authority to provide critical income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service is necessary.

EXTENSION OF TITLE 10 AUTHORITIES RELATING TO HEALTH CARE PROFESSIONALS:

Resource Information: The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2023 President's Budget request. This section will extend critical accession and retention incentive programs, which the military departments fund annually.

NUMBER OF PERSONNEL AFFECTED									
Program	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**	**Appropriation To**	**Budget Activity**	**BLI/SAG**	**Program Element**
Army	0	0	0	0	0	Military Personnel, Army	01	40	
Army Res	954	954	954	954	954	Reserve Personnel, Army	01	120	
Army National Guard	454	454	454	454	454	National Guard Personnel, Army	01	90	
Navy	0	0	0	0	0	Military Personnel, Navy;	01	40	
Navy Res	85	85	85	85	85	Reserve Personnel, Navy	01	120	
Air Force	0	0	0	0	0	Military Personnel, Air Force	01	40	
AF Res	176	176	176	176	176	Reserve Personnel, Air Force	01	120	
Air National Guard	25	25	25	25	25	National Guard Personnel, Air Force	01	90	
Total	1,694	1,694	1,694	1,694	1,694				

RESOURCE REQUIREMENTS ($MILLIONS)									
Program	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**	**Appropriation To**	**Budget Activity**	**BLI/SAG**	**Program Element**
Army	0	0	0	0	0	Military Personnel, Army	01	40	
Army Res	$19.7	$19.7	$19.7	$19.7	$19.7	Reserve Personnel, Army	01	120	
Army National Guard	$18.5	$18.5	$18.5	$18.5	$18.5	National Guard Personnel, Army	01	90	
Navy	0	0	0	0	0	Military Personnel, Navy;	01	40	
Navy Res	$1.2	$1.2	$1.2	$1.2	$1.2	Reserve Personnel, Navy	01	120	

Air Force	0	0	0	0	0	Military Personnel, Air Force	01	40	
AF Res	$4.2	$4.2	$4.2	$4.2	$4.2	Reserve Personnel, Air Force	01	120	
Air National Guard	$.6	$.6	$.6	$.6	$.6	National Guard Personnel, Air Force	01	90	
Total	$44.2	$44.2	$44.2	$44.2	$44.2				

Values reflect FY2023 estimate in the Services FY2023 Budget Estimate.

EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS:

Resource Information: The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2023 President's Budget request. This section will extend the critical accession and retention incentive programs the Navy funds each year. The Army and Air Force are not authorized in the statute to pay these bonuses.

NUMBER OF PERSONNEL AFFECTED									
Program	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**	**Appropriation To**	**Budget Activity**	**BLI/SAG**	**Program Element**
Navy	3,984	3,989	3,994	4,026	4,024	Military Personnel, Navy	01, 03	40 (for 01); 90 (for 02); 110 (for 03)	
Navy Res	200	200	200	200	200	Reserve Personnel, Navy	01	90	
Total	4,184	4,189	4,194	4,226	4,226				

RESOURCE REQUIREMENTS ($MILLIONS)									
Program	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**	**Appropriation To**	**Budget Activity**	**BLI/SAG**	**Program Element**
Navy	$98	$98.2	$98.4	$99.8	$99.9	Military Personnel, Navy	01, 03	40 (for 01); 90 (for 02); 110 (for 03)	
Navy Res	$3	$3	$3	$3	$3	Reserve Personnel, Navy	01	90	
Total	$101	$101.2	$101.4	$102.8	$102.9				

Values reflect FY2023 estimate in the Services FY2023 Budget Estimate.

EXTENSION OF AUTHORITIES RELATING TO CONSOLIDATED SPECIAL PAY, INCENTIVE PAY, AND BONUS AUTHORITIES.

Resource Information: The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2023 President's Budget request. This section will extend the consolidated special and incentive programs the military departments fund each year. These pays consist of enlisted and officer bonuses, aviation bonuses and incentives, non-physician health professions pays, hazardous duty pays, assignment and special duty pays, skill incentive pays, and critical skill retention bonuses. This section does not include the nuclear officer pays, which are located above.

NUMBER OF PERSONNEL AFFECTED									
Program	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**	**Appropriation To**	**Budget Activity**	**BLI/SAG**	**Program Element**
Army	267,519	267,519	267,519	267,519	267,519	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)	
ARNG	87,328	87,328	87,328	87,328	87,328	National Guard Personnel, Army	01	90	
USAR	58,441	58,441	58,441	58,441	58,441	Reserve Personnel, Army	01	90	
Navy	306,920	306,920	306,920	306,920	306,920	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
USNR	7,854	7,854	7,854	7,854	7,854	Reserve Personnel, Navy	01	90	
Marine Corps	50,869	50,869	50,869	50,869	50,869	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
USMCR	1,005	1,005	1,005	1,005	1,005	Reserve Personnel, Marine Corps	01	90	
Air Force	158,731	158,731	158,731	158,731	158,731	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
Air National Guard	9,816	9,816	9,816	9,816	9,816	National Guard Personnel, Air Force	01	120	
AF Res	17,438	17,438	17,438	17,438	17,438	Reserve Personnel, Air Force	01	90	
Space Force	849	849	849	849	849	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
Total	965,921	965,921	965,921	965,921	965,921				

RESOURCE REQUIREMENTS ($ MILLIONS)									
Program	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**	**Appropriation To**	**Budget Activity**	**BLI/SAG**	**Program Element**
Army	$1,259.2	$1,259.2	$1,259.2	$1,259.2	$1,259.2	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)	
ARNG	$298.7	$298.7	$298.7	$298.7	$298.7	National Guard Personnel, Army	01	90	
USAR	$228.3	$228.3	$228.3	$228.3	$228.3	Reserve Personnel, Army	01	90	
Navy	$1,721.8	$1,721.8	$1,721.8	$1,721.8	$1,721.8	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
USNR	$77.6	$77.6	$77.6	$77.6	$77.6	Reserve Personnel, Navy	01	90	
Marine Corps	$273.2	$273.2	$273.2	$273.2	$273.2	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
USMCR	$12.5	$12.5	$12.5	$12.5	$12.5	Reserve Personnel, Marine Corps	01	90	
Air Force	$1,139.6	$1,139.6	$1,139.6	$1,139.6	$1,139.6	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
Air National Guard	$124.6	$124.6	$124.6	$124.6	$124.6	National Guard Personnel, Air Force	01	90	
AF Res	$97,265	$97,265	$97,265	$97,265	$97,265	Reserve Personnel, Air Force	01	120	
Space Force	$4,140	$4,140	$4,140	$4,140	$4,140	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
Total	$5,233	$5,233	$5,233	$5,233	$5,233				

Values reflect FY2023 estimate in the Services FY2023 Budget Estimate.

EXTENSION OF AUTHORITY TO PROVIDE TEMPORARY INCREASE IN RATES OF BASIC ALLOWANCE FOR HOUSING:

Resource information: Expenditures as a result of this authority are not projected in the FY23 President's Budget as the Department, however the authority is required in case of a disaster. This section will extend the Secretary of Defense authority to temporarily increase basic

allowance for housing rates for areas hit by a major disaster or experiencing a sudden increase in the number of members of the armed forces assigned to an installation.

Changes to Existing Laws: This proposal would amend 10 USC and 37 USC as follows:

TITLE 10, UNITED STATES CODE

*****

§ 2130a. Financial assistance: nurse officer candidates

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2022~~ December 31, 2023, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than $20,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed $10,000.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend in an amount not to exceed the stipend rate in effect under section 2121(d) of this title for each month the individual is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution by the Secretary selecting the person. The continuation bonus may be paid for not more than 24 months.

*****

§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages

*****

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before ~~December 31, 2022~~ December 31, 2023.

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TITLE 37, UNITED STATES CODE

*****

§ 331. General bonus authority for enlisted members

*****

(h) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2022~~ December 31, 2023.

*****

§ 332. General bonus authority for officers

*****

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2022~~ December 31, 2023.

*****

§ 333. Special bonus and incentive pay authorities for nuclear officers

*****

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2022~~ December 31, 2023.

*****

§ 334. Special aviation incentive pay and bonus authorities for officers

*****

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2022~~ December 31, 2023.

*****

§ 335. Special bonus and incentive pay authorities for officers in health professions

*****

(k) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2022~~ December 31, 2023.

*****

§ 336. Contracting bonus for cadets and midshipmen enrolled in the Senior Reserve Officers' Training Corps

*****

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2022~~ December 31, 2023.

*****

§ 351. Hazardous duty pay

*****

(h) TERMINATION OF AUTHORITY.—No hazardous duty pay under this section may be paid after ~~December 31, 2022~~ December 31, 2023.

*****

§ 352. Assignment pay or special duty pay

*****

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2022~~ December 31, 2023.

*****

§ 353. Skill incentive pay or proficiency bonus

*****

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2022~~ December 31, 2023.

*****

§ 355. Special pay: retention incentives for members qualified in critical military skills or assigned to high priority units

*****

(h) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any reenlistment, or voluntary extension of an enlistment, in the armed forces entered into after ~~December 31, 2022~~ December 31, 2023, and no agreement under this section may be entered into after that date.

*****

§ 403. Basic allowance for housing

*****

(b) BASIC ALLOWANCE FOR HOUSING INSIDE THE UNITED STATES.—*****

*****

(7)(A) *****

*****

(E) An increase in the rates of basic allowance for housing for an area may not be prescribed under this paragraph or continue after ~~December 31, 2022~~ December 31, 2023.

(8)(A) *****

*****

(C) This paragraph shall cease to be effective on ~~September 30, 2022~~ December 31, 2023.

*****

§ 910. Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service

*****

(g) TERMINATION.—No payment shall be made to a member under this section for months beginning after ~~December 31, 2022~~ December 31, 2023, unless the entitlement of the member to payments under this section is commenced on or before that date.

*****

SEC. ___. IMPROVEMENTS TO USE OF CYBER AND INFORMATION TECHNOLOGY WORKFORCE FOR ENTERPRISE INFORMATION TECHNOLOGY.

(a) IN GENERAL.—Notwithstanding section 2461 of title 10, United States Code, section 325 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2253), sections 741 or 8042 of the Consolidated Appropriations Act, 2020 (Public Law 116-93) or successor provisions, or any other provision of law, the Secretary concerned may transform the cyber and information technology workforce of the military department concerned through reallocation of existing billets and personnel for the transition by that military department to enterprise information technology as a service.

(b) AUTHORITY.—The Secretary concerned may—

(1) use the appropriate cyber and information technology workforce mix of military, civilian, and contract personnel for enterprise information technology as a service that—

(A) leverages both civilian workforce and commercial sector capabilities and sources; and

(B) ensures the civilian workforce is aligned to focus on inherently governmental functions, functions closely associated with inherently governmental functions, or critical mission tasks that require action and decision by Government employees, including focus on cyber defense missions in accordance with the national defense strategy; and

(2) move, transfer, and realign civilian functions and personnel to leverage innovative commercial information technology practices, services, and technologies.

(c) ANNUAL REPORT.—Not later than 30 days after the end of each fiscal year, beginning with fiscal year 2023 and ending with fiscal year 2033, the Secretary concerned shall provide to the congressional defense committees an annual report on use of the authority provided under this section to improve use of the cyber and information technology workforce for enterprise information technology.

(d) DEFINITIONS.—In this section:

(1) The term "Secretary concerned" means—

(A) the Secretary of the Army, with respect to the Department of the Army; and

(B) the Secretary of the Air Force, with respect to the Department of the Air Force.

(2) The term "enterprise information technology as a service" means an initiative to leverage industry best practices to provide core information technology services at the installation level, across the enterprise, and provide applications, services, and data hosting in the commercial Cloud. The term includes networks, phones, email, cloud hosting services, end user hardware support, and help desk.

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

Section-by-Section Analysis

Enterprise information technology as a service represents a significant shift in how the Department of the Air Force (DAF) and the Department of the Army currently acquire, deliver, and consume IT services, as well as a large cultural shift and workforce transformation effort. It is a transition to an 'as-a service' model, which will allow these departments to buy capabilities, rather than invest in infrastructure that must be routinely replaced. Instead of owning the routers, boxes, and switches, and running the network with Government personnel, the effort is exploring methods to buy the network "as-a-service" and pay on a cost-per-user basis.

The restrictions of section 2461 of title 10, United States Code, specify that no function performed by DoD civilian employees may be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition. When coupled with section 325 of the FY10 NDAA and annual appropriations Act provisions that prohibit Government agencies from converting civilian functions to contract performance without conducting public-private competitions, the result limits the DAF and the Army from being able to take advantage of opportunities to improve Information Technology (IT) capabilities to optimize lethality and readiness while maximizing fiscal efficiency and organizational agility.

Consequently, this proposal seeks relief from section 2461 of title 10, United States Code, section 325 of the FY10 NDAA, and associated annual appropriations Act provisions to enable the Department of the Army and Department of the Air Force to directly move, transfer, and realign civilian functions in order to leverage advanced commercial ingenuity, innovation, and best practices in cyber and information technology.

Our world is entering a new age of technological discovery and advancement. Big data analytics and the Internet of Things are transforming societies and economies, and expanding the power of information and knowledge, fueling a revolution in how we fight and evolving the character of war. Victory in combat will depend less on individual capabilities, and more on the integrated strengths of a connected network of weapons, sensors, and analytic tools now that information technology underpins virtually every critical DoD mission or business system. To compete, deter, and win over our great power adversaries, the DAF and the Army are forging more digital organizations that embrace the potential of this data-driven revolution and prepares us for future conflict environments steeped in shared information and powered by rapid decision-making, and synergize interconnected and mutually supporting reform efforts: IT architecture, data management, and business operations reform.

Years of limited funding and legacy acquisition approaches have left the DAF and Army with an outdated portfolio of enterprise IT services. This has had significant impacts to mission effectiveness in the form of network outages, system degradation, and process inefficiencies. The virtual attack surface for our adversaries is greatly increased and puts our national security at risk. Sustaining this infrastructure has placed outsized demands on a military and civilian cyber workforce that have succeed despite the circumstances. This workforce has not been organized, trained, or equipped to face the modern cyber adversary and defend our critical mission and business capabilities.

Rapid IT evolution drives not only opportunity, but also risk. Our adversaries leverage technology advancements to present ever-evolving attack vectors against our capabilities, oftentimes exploiting our inability to keep pace. This is not singularly a technical challenge. Our industrial age talent management processes put our cyber defenders and capability developers at a marked disadvantage. Acquisition processes and legal barriers to public-private partnerships and collaboration prevent many leap-ahead capabilities from taking hold in the DAF and Army. Together, these shortfalls leave the Services with a strategic gap between the IT processes and capabilities in place to protect and defend weapons systems.

The DAF and Army are conducting technical feasibility assessments of alternative delivery models, leveraging successes with cloud initiatives such as Cloud Hosted Enterprise Services and the Cloud One to explore alternative delivery models for enterprise IT services at the installation level (also known within the DAF as the "Risk Reduction Effort"). All civilian employees will continue to perform the functions identified in their present position descriptions during the current technical feasibility assessment/Risk Reduction Effort. The technical feasibility assessment is currently ongoing and is expected to conclude on or around fiscal year 2022.

IT workforce conversions will be required to fully leverage existing commercial solutions, which may implicate section 2461of title 10. The ongoing technical feasibility assessments will determine the optimal level of conversion and total workforce mix necessary to implement the commercial solutions. Current law prohibits the conversion of civilian positions and restricts the DAF's and the Army's ability to implement optimum commercial IT service solutions. There can be no serious question that IT workforce conversions will be required to fully leverage existing commercial solutions. The ongoing technical feasibility assessments will determine the optimal level of conversion necessary, not whether conversion will take place. We have no shortage of recent examples to show negative operational impacts from our current in-house approach to global Enterprise IT service delivery. The Department of the Air Force and the Department of the Army are at turning points with our legacy IT infrastructures. Aged and unreliable, our current digital undercarriage can no longer support the cutting-edge operational capabilities our Nation requires. The COVID-19 pandemic has underscored the critical need for the Departments to deliver an effective, innovative, and secure IT environment through modernizing outdated infrastructure with proven commercial solutions.

Additionally, numerous cyber-workforce related investments have been deferred or partially funded due to the manpower-intensive infrastructure we have fielded. The current cyber and information technology workforce is not positioned to effect this transformation. Difficult and consequential choices must be made in the upcoming strategic planning cycles as to which future investment strategies best enable establishing the underlying infrastructure our digital transformation strategy demands. Making these choices without the policy headroom necessary to consider all human capital options will significantly constrain the DAF's and the Army's flexibility to achieve optimal operational outcomes. Further, this relief will give the Services greater opportunity to achieve the DOD's Information Technology Modernization goals. The DAF has partnered with the Army and this legislative relief will be leveraged by multiple Services. If Congress does not grant the requested relief before the end of the technical feasibility assessment, which ends in FY22, the DAF and the Army will be restricted to executing partial solutions that will drive additional costs to integrate with legacy services while delaying the availability of the modern infrastructure that Joint All Domain Command and Control demands. The remainder of the technical feasibility assessments are focused on how the commercial delivery model will be integrated into the DAF and Army network. If we are forced to wait until the solutions have presented themselves before we begin analyzing the accompanying workforce changes, our technical and human capital debts will continue to grow. Failure to enact this legislative proposal during the FY23 legislative cycle will substantially limit our ability to aggressively implement the service delivery approaches proven during the technical feasibility assessment. These delays will drive additional costs, limit our ability to robustly implement

cyber defense and mission assurance for our critical systems, and delay the modern infrastructure necessary to achieve Joint All Domain Command and Control.

The DAF and the Army plans to repurpose all affected civilians into cyber defense and mission assurance roles. As a result, the Departments do not intend to decrease civilian FTEs or increase spending on retirement benefits as a result of this proposal. While we recognize the value of the restrictions set forth in section 2461, this proposal would authorize the services to improve use of the cyber and information technology workforce by reducing barriers that inhibit the development of the most effective total force in meeting critical mission requirements. It also allows DoD to determine if the IT service provider positions and personnel fit coherently into the enterprise-wide architecture and processes. It allows the services to prioritize the workforce to shift from IT service delivery and information assurance to mission assurance, cyberspace defense, artificial intelligence and security. Nonetheless, due to the DAF's and Army's recognition of the merit of section 2461, this proposal ensures that appropriate oversight and additional safeguards are in place for the transformation of the civilian workforce by requiring the DAF and Army to produce an annual report to Congress that identifies civilian workforce impacts resulting from the workforce transformation.

Resource Information: This proposal is expected to achieve significant cost savings in the long term. If this proposal is not implemented, civilian personnel cannot be transferred from basic IT tasks to cybersecurity/mission defense tasks, and the DAF will need to increase its manpower to fulfill the requirements for cyber defense and mission assurance roles. Since the estimated cost of manpower supporting the cyber/mission assurance mission (line six of table 1) is significantly higher than the cost of manpower performing basic IT functions (line two of table 1), and the other associated costs (lines three through five of table 1) are minimal, authorizing these personnel transfers would lead to significant savings (line one of table 1). The Department of the Army does not intend to use this authority in Fiscal Year 2023.

Table 1: Net change to DAF costs due to EITaaS related transfers:

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)**
Cost of as-a-service based IT capabilities to enable civilian personnel transfers	15.552	15.614	15.925	16.245	16.569	Operation and Maintenance, Air Force		011Z	
Cost of updating Position Descriptions	0.017	0.017	0.017	0.017	0.0	Operation and Maintenance, Air Force		011Z/ 012D	
Training cost of transferring civilian personnel to cyber roles	1.327	1.332	1.360	1.381	0.0	Operation and Maintenance, Air Force		012D	
Cost of writing annual report	0.013	0.013	0.013	0.014	0.014	Operation and Maintenance, Air Force		011Z	
Savings from not needing to augment force with contractor cyber defense personnel	-44.292	-44.466	-45.354	-46.261	-47.186	Operation and Maintenance, Air Force		012D	
Total	-27.382	-27.491	-28.041	-28.606	-30.603	Operation and Maintenance, Air Force		011Z	

Table 2: Anticipated number of DAF Civilian FTEs to be transferred from basic IT tasks (e.g., system patching, troubleshooting) to cyber defense and mission assurance roles:

	FY23	**FY24**	**FY25**	**FY26**	**FY27**
Anticipated number of Civilian FTEs to be transferred from basic IT tasks to cyber defense and mission assurance roles	127	125	125	125	0

Changes to Existing Law: N/A

SEC. ___. INFORMATION REQUIRED TO COMPLY WITH POLICY ON RESPONSE TO JUVENILE-ON-JUVENILE PROBLEMATIC SEXUAL BEHAVIOR COMMITTED ON MILITARY INSTALLATIONS.

Section 1089 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 132 Stat. 1996; 10 U.S.C. 1781 note) is amended—

(1) in subsection (b)(1)—

(A) by striking "law enforcement organization" and inserting "law enforcement official"; and

(B) by striking "child development center" and inserting "child development or advocacy center"; and

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

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

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

Section-by-Section Analysis

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

The current statute requires DoD to establish and maintain a centralized database on incidents of PSB-CY reported to the Family Advocacy Program. The statute specifies categories of information that must be captured on such incidents, including data on investigations. However, per Department of Justice opinion, the privacy provisions of the Federal Juvenile

Delinquency Act (JDA) (18 U.S.C. 5038) prohibit law enforcement from contributing such data. The JDA privacy provisions are intended to protect the identity of juveniles involved in the justice process and, as such, are in effect upon the start of any investigative activity involving an alleged juvenile offense. The JDA provides that information on investigations may be disclosed only to those entities defined by exception in the statute. The requirement to include investigative information on incidents of PSB-CY in the centralized database is, therefore, in direct conflict with the privacy protections applied to juvenile record information in the JDA.

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

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

Changes to Existing Law: This proposal would amend section 1089 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 132 Stat. 1996) as follows:

SEC. 1089. [10 U.S.C. 1781 note] POLICY ON RESPONSE TO JUVENILE-ON-JUVENILE PROBLEMATIC SEXUAL BEHAVIOR COMMITTED ON MILITARY INSTALLATIONS.

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

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

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

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

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

(4) Each review shall be conducted—

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

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

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

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

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

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

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

(A) a description of the allegation;

(B) whether or not the review is completed;

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

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

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

SEC. ___. LIMITATION ON EVICTIONS AND DISTRESS OF SERVICEMEMBERS AND THEIR DEPENDENTS.

(a) COURT-ORDERED EVICTION.—Section 301(a)(1)(A)(ii) of the Servicemembers Civil Relief Act (50 U.S.C. 3951(a)(1)(A)(ii)) is amended—

(1) by striking "exceed $2,400" and inserting "exceed $5,000"; and

(2) by striking "2003" and inserting "2022".

(b) HOUSING PRICE INFLATION ADJUSTMENT.—Section 301(a)(2) of the Servicemembers Civil Relief Act (50 U.S.C. 3951(a)(2)) is amended—

(1) in subparagraph (A), by striking "For calendars years beginning with 2004, the" and inserting "The"; and

(2) in subparagraph (B)(i)(II), by striking "November of 1984" and inserting "November of 2022".

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

Section-by-Section Analysis

This proposal would update section 301 of the Servicemembers Civil Relief Act (SCRA)(50 U.S.C. § 3951), relating to evictions and distress. This section of the SCRA prohibits landlords from evicting Servicemembers or their dependents from a residence during a period of military service, except by court order.

The law, as originally passed by Congress, applied to dwellings with monthly rents of $2,400 or less. The statute requires the Department of Defense (DoD) to adjust this amount annually to reflect inflation and to publish the new dollar amount in the Federal Register. After applying the inflation adjustment for 2019, the maximum monthly rent amount for section 301(a)(1)(A)(ii) as of January 1, 2020, was $3,991.90. In order to update this section, the phrase "exceed $2,400" is changed to "exceed $5,000", which makes this section of the SCRA current as of fiscal year 2023. Housing price inflation adjustments will continue to occur annually with a new base year of 2022. These modifications to the SCRA clarify the current threshold limits for the applicability of this provision and eliminate any confusion regarding the appropriate annual housing price inflation adjustment.

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

Changes to Existing Law: This proposal would make the following changes to section 301 of the Servicemembers Civil Relief Act (50 U.S.C. § 3951):

SEC. 301. EVICTIONS AND DISTRESS.

(a) COURT-ORDERED EVICTION.

(1) IN GENERAL.—Except by court order, a landlord (or another person with paramount title) may not—

(A) evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises—

(i) that are occupied or intended to be occupied primarily as a residence; and

(ii) for which the monthly rent does not ~~exceed $2,400~~ exceed $5,000, as adjusted under paragraph (2) for years after ~~2003~~ 2022; or

(B) subject such premises to a distress during the period of military service.

(2) HOUSING PRICE INFLATION ADJUSTMENT.—(A) ~~For calendar years beginning with 2004, the~~ The amount in effect under paragraph (1)(A)(ii) shall be increased by the housing price inflation adjustment for the calendar year involved.

(B) For purposes of this paragraph—

(i) The housing price inflation adjustment for any calendar year is the percentage change (if any) by which—

(I) the CPI housing component for November of the preceding calendar year, exceeds

(II) the CPI housing component for ~~November of 1984~~ November of 2022.

(ii) The term ''CPI housing component'' means the index published by the Bureau of Labor Statistics of the Department of Labor known as the Consumer Price Index, All Urban Consumers, Rent of Primary Residence, U.S. City Average.

(3) PUBLICATION OF HOUSING PRICE INFLATION ADJUSTMENT.—The Secretary of Defense shall cause to be published in the Federal Register each year the amount in effect under paragraph (1)(A)(ii) for that year following the housing price inflation adjustment for that year pursuant to paragraph (2). Such publication shall be made for a year not later than 60 days after such adjustment is made for that year.

(b) STAY OF EXECUTION.

(1) COURT AUTHORITY.—Upon an application for eviction or distress with respect to premises covered by this section, the court may on its own motion and shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service—

(A) stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or

(B) adjust the obligation under the lease to preserve the interests of all parties.

(2) RELIEF TO LANDLORD.—If a stay is granted under paragraph (1), the court may grant to the landlord (or other person with paramount title) such relief as equity may require.

(c) MISDEMEANOR.—Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(d) RENT ALLOTMENT FROM PAY OF SERVICEMEMBER.—To the extent required by a court order related to property which is the subject of a court action under this section, the Secretary concerned shall make an allotment from the pay of a servicemember to satisfy the terms of such order, except that any such allotment shall be subject to regulations prescribed by the Secretary concerned establishing the maximum amount of pay of servicemembers that may be allotted under this subsection.

(e) LIMITATION OF APPLICABILITY.—Section 3932 is not applicable to this section.

SEC. __. EXTENSION AND EXPANSION OF MEDICAL COUNTERMEASURE PRIORITY REVIEW VOUCHER PROGRAM.

(a) DEFINITION OF MEDICAL COUNTERMEASURE APPLICATION.—Subsection (a)(4) of section 565A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–4a) is amended—

(1) in the paragraph heading, by striking "MATERIAL THREAT MEDICAL" and inserting "MEDICAL";

(2) in the matter preceding subparagraph (A), by striking "material threat"; and

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

"(A) is a human drug application for a drug that is—

"(i) labeled for an indication to prevent or treat a disease or condition specifically caused by a chemical, biological, radiological, or nuclear agent; and

"(ii) part of a class or category of drug on the list described in subsection (b) at the time of approval of the application.".

(b) LIST OF MEDICAL COUNTERMEASURES FOR NATIONAL SECURITY THREATS.—Such section is further amended—

(1) by redesignating subsections (b), (c), (d), (e), (f), and (g) as subsections (c), (d), (e), (f), (g), and (i), respectively; and

(2) by inserting after subsection (a), the following new subsection:

"(b) LIST OF MEDICAL COUNTERMEASURES FOR NATIONAL SECURITY THREATS.—

"(1) The Secretary of Health and Human Services, acting through the Assistant Secretary of Preparedness and Response, in consultation with the Public Health

Emergency Medical Enterprise established under section 2801 of the Public Health Service Act, including the Secretary of Defense, shall establish and maintain a list of potentially eligible classes and/or categories of drugs that are identified as necessary to prevent or treat the diseases and conditions specifically caused by a chemical, biological, radiological, or nuclear agent that—

"(A) has the potential to create a public health emergency with significant potential to affect national security; or

"(B) may present a specific threat to the Armed Forces.

"(2) The following factors, among others, may be considered during the process identified under paragraph (1) in establishing and revising such list—

"(A) whether the eligible classes and/or categories of drugs are identified as necessary to protect the public health under section 319F–2(c)(2)(B)(ii) of the Public Health Service Act and determined to be a priority (consistent with sections 302(2) and 304(a) of the Homeland Security Act of 2002);

"(B) for any class and/or category of drugs under consideration to address specific threats to the Armed Forces, information provided by the Secretary of Defense to help evaluate whether a priority review voucher is necessary and beneficial to incentivize product development for Department of Defense use and fielding;

"(C) whether the class and/or category of drug requires incentivization in the form a priority review voucher based upon economic factors, such as whether there is sufficient market to support the development of the potential

medical countermeasures and the maturity of the medical countermeasure pipeline; and

"(D) the potential effect of an addition of a class or category of drug on the potential sale value of priority review vouchers.

"(3) The Assistant Secretary of Preparedness and Response shall—

"(A) publish on the website of the Office of the Assistant Secretary for Preparedness and Response the list, including the date of publication of the list, developed under paragraph (1) not later than [__] after the date of the enactment of such publication requirement under this subparagraph;

"(B) publish on the website of the Office of the Assistant Secretary for Preparedness and Response each update to the list, including the date of the publication of the list, developed under paragraph (1);

"(C) periodically review the list developed under paragraph (1) for continued necessity and appropriateness, and add, amend, or remove any classes or categories of drugs if no longer necessary or appropriate; and

"(D) maintain a publicly available archive of the list over time.

"(4) Before the date of the initial publication of the list developed under paragraph (1), the prior list developed under this section shall remain in effect.".

(c) GAO REPORT.—Such section is further amended by inserting after subsection (g), as redesignated by subsection (b)(1) of this section, the following new subsection:

"(h) GAO REPORT.—

"(1) IN GENERAL.—Not later than September 30, 2027, the Comptroller General of the United States shall transmit to Congress a report on the effectiveness of this

section in encouraging the development of the medical countermeasures needed to protect and prepare for emerging threats to public health and national security.

"(2) CONTENTS.—The report shall include—

"(A) input from the and the Secretary of Defense and the Secretary of Health and Human Services; and

"(B) recommendations of the Comptroller General, if any, on necessary modifications to this section.".

(d) SUNSET.—Subsection (i) of such section, as redesignated by subsection (b)(1) of this section, is amended—

(1) by striking "subsection (b)" and inserting "subsection (c)"; and

(2) by striking "October 1, 2023" and inserting "October 1, 2029".

(e) CONFORMING AMENDMENTS TO REMOVE REFERENCES TO MATERIAL THREATS.—Such section is further amended by striking "material threat" each place it appears in the following:

(1) Paragraph (3) of subsection (a).

(2) Paragraphs (1) and (2) of subsection (c), as redesignated by subsection (b)(1) of this section.

(3) Subsection (f), as so redesignated.

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

Section-by-Section Analysis

This legislative proposal accomplishes two key objectives. First, this proposal extends the sunset provision in section 565A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb-4a) (authority is currently set to expire on October 1, 2023), which is critical for Department of Defense (DoD) medical counter measure (MCM) development given that between 10 and 15 years is the typical time it takes to develop a drug or biologic. Second, this

proposal ensures that, in addition to the threats currently covered by the statute, the MCM priority review voucher (PRV) program will also potentially apply to drugs that are developed to treat and prevent diseases or other conditions caused by chemical, biological, radiological, or nuclear (CBRN) threats that are specific to military forces,

Public Law 114-255 included section 3086, "Encouraging Treatments for Agents that Present a National Security Threat," which added section 565A to the Federal Food, Drug, and Cosmetic Act. Section 565A created a PRV program designed to incentivize MCM product development against agents that are considered material threats under section 319F–2 of the Public Health Service Act (PHSA) (42 U.S.C. 274d–6b).

Since the PRV's inception, a number of companies have cited it as a significant incentive. One such company, Gilead Sciences, indicated that the existence of a PRV was the determining factor in its ability to submit a proposal for development of a filovirus countermeasure, Remdesivir (approved by the Food and Drug Administration (FDA) in October 2020 as the first treatment of COVID-19); without the PRV, Gilead simply could not make a compelling financial argument to its shareholders. By extending the authority for this incentive to encompass threats specific to DoD, this proposal would result in increased private sector investment and collaboration into the Federal MCM product development enterprise, speeding the approval of needed FDA-approved MCMs against the most dangerous threats to our national security and addressing the unique needs of the warfighter.

It is important to note that the validated CBRN list and the material threat list under section 319 of the PHSA (which forms the basis for PRV eligibility in the current statute) are not coextensive. While there is approximately a 30 percent overlap, the DoD validated CBRN list includes additional threats for which incentives are needed to spur MCM development. Accordingly, it is critical that the PRV be expanded to maintain a viable incentive to invest in DoD MCM development for the unique needs of the warfighter given the low return-on-investment expected from successful development. This proposal will make modifications to ensure that the MCM PRV program is available to meet the needs of the Armed Forces, including a requirement to establish a list of classes and categories of drugs, in consultation with the Department of Defense, that have been identified as potentially eligible for a medical countermeasure priority review voucher.

By addressing the sunset provision and ensuring the MCM PRV is potentially available to address other diseases and conditions caused by CBRN agents that present a threat to our military, this proposal restores and enhances a powerful market incentive for companies to invest in DoD MCM research and development projects.

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

Changes to Existing Law: This proposal makes the following amendments to section 565A (21 U.S.C. 360bbb-4a) of the Federal Food, Drug, and Cosmetic Act:

SEC. 565A. [21 U.S.C. 360bbb–4a] PRIORITY REVIEW TO ENCOURAGE TREATMENTS FOR AGENTS THAT PRESENT NATIONAL SECURITY THREATS.

(a) DEFINITIONS.—In this section:

(1) HUMAN DRUG APPLICATION.—The term "human drug application" has the meaning given such term in section 735(1).

(2) PRIORITY REVIEW.—The term "priority review", with respect to a human drug application, means review and action by the Secretary on such application not later than 6 months after receipt by the Secretary of such application, as described in the Manual of Policies and Procedures in the Food and Drug Administration and goals identified in the letters described in section 101(b) of the Food and Drug Administration Safety and Innovation Act.

(3) PRIORITY REVIEW VOUCHER.—The term "priority review voucher" means a voucher issued by the Secretary to the sponsor of a ~~material threat~~ medical countermeasure application that entitles the holder of such voucher to priority review of a single human drug application submitted under section 505(b)(1) or 351(a) of the Public Health Service Act after the date of approval of the ~~material threat~~ medical countermeasure application.

(4) ~~MATERIAL THREAT M~~ MEDICAL COUNTERMEASURE APPLICATION.—The term "~~material threat~~ medical countermeasure application" means an application that-

(A) is a human drug application for a drug ~~intended for use~~ that is—

(i) labeled for an indication to prevent~~,~~ or treat ~~harm from~~ a disease or condition specifically caused by a ~~biological,~~ chemical, biological, radiological, or nuclear agent ~~identified as a material threat under section 319F–2(c)(2)(A)(ii) of the Public Health Service Act; or~~ ; and

(ii) ~~to mitigate, prevent, or treat harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, or biological product against such~~ part of a class or category of drug on the list described in subsection (b) at the time of approval of the application;

(B) the Secretary determines eligible for priority review;

(C) is approved after the date of enactment of the 21st Century Cures Act; and

(D) is for—

(i) a human drug, no active moiety (as defined by the Secretary in section 314.3 of title 21, Code of Federal Regulations (or any successor regulations)) of which has been approved in any other application under section 505(b)(1); or

(ii) a biological product, no active ingredient of which has been approved in any other application under section 351 of the Public Health Service Act.

(b) LIST OF MEDICAL COUNTERMEASURES FOR NATIONAL SECURITY THREATS.—

(1) The Secretary of Health and Human Services, acting through the Assistant Secretary of Preparedness and Response, in consultation with the Public Health

Emergency Medical Enterprise established under section 2801 of the Public Health Service Act, including the Secretary of Defense, shall establish and maintain a list of potentially eligible classes and/or categories of drugs that are identified as necessary to prevent or treat the diseases and conditions specifically caused by a chemical, biological, radiological, or nuclear agent that—

(A) has the potential to create a public health emergency with significant potential to affect national security; or

(B) may present a specific threat to the Armed Forces.

(2) The following factors, among others, may be considered during the process identified under paragraph (1) in establishing and revising such list—

(A) whether the eligible classes and/or categories of drugs are identified as necessary to protect the public health under section 319F–2(c)(2)(B)(ii) of the Public Health Service Act and determined to be a priority (consistent with sections 302(2) and 304(a) of the Homeland Security Act of 2002);

(B) for any class and/or category of drugs under consideration to address specific threats to the Armed Forces, information provided by the Secretary of Defense to help evaluate whether a priority review voucher is necessary and beneficial to incentivize product development for Department of Defense use and fielding;

(C) whether the class and/or category of drug requires incentivization in the form a priority review voucher based upon economic factors, such as whether there is sufficient market to support the development of the potential medical countermeasures and the maturity of the medical countermeasure pipeline; and

(D) the potential effect of an addition of a class or category of drug on the potential sale value of priority review vouchers.

(3) The Assistant Secretary of Preparedness and Response shall—

(A) publish on the website of the Office of the Assistant Secretary for Preparedness and Response the list, including the date of publication of the list, developed under paragraph (1) not later than [__] year after the date of the enactment of such publication requirement under this subparagraph;

(B) publish on the website of the Office of the Assistant Secretary for Preparedness and Response each update to the list, including the date of the publication of the list, developed under paragraph (1);

(C) periodically review the list developed under paragraph (1) for continued necessity and appropriateness, and add, amend, or remove any classes or categories of drugs if no longer necessary or appropriate; and

(D) maintain a publicly available archive of the list over time.

(4) Before the date of the initial publication of the list developed under paragraph (1), the prior list developed under this section shall remain in effect.

(~~b~~c) PRIORITY REVIEW VOUCHER.—

(1) IN GENERAL.—The Secretary shall award a priority review voucher to the sponsor of a ~~material threat~~ medical countermeasure application upon approval by the Secretary of such ~~material threat~~ medical countermeasure application.

(2) TRANSFERABILITY.—The sponsor of a ~~material threat~~ medical countermeasure application that receives a priority review voucher under this section may transfer

(including by sale) the entitlement to such voucher to a sponsor of a human drug for which an application under section 505(b)(1) or section 351(a) of the Public Health Service Act will be submitted after the date of the approval of the ~~material threat~~ medical countermeasure application. There is no limit on the number of times a priority review voucher may be transferred before such voucher is used.

(3) NOTIFICATION.—

(A) IN GENERAL.—The sponsor of a human drug application shall notify the Secretary not later than 90 calendar days prior to submission of the human drug application that is the subject of a priority review voucher of an intent to submit the human drug application, including the date on which the sponsor intends to submit the application. Such notification shall be a legally binding commitment to pay for the user fee to be assessed in accordance with this section.

(B) TRANSFER AFTER NOTICE.—The sponsor of a human drug application that provides notification of the intent of such sponsor to use the voucher for the human drug application under subparagraph (A) may transfer the voucher after such notification is provided, if such sponsor has not yet submitted the human drug application described in the notification.

(~~e~~d) PRIORITY REVIEW USER FEE.—

(1) IN GENERAL.—The Secretary shall establish a user fee program under which a sponsor of a human drug application that is the subject of a priority review voucher shall pay to the Secretary a fee determined under paragraph (2). Such fee shall be in addition to any fee required to be submitted by the sponsor under chapter VII.

(2) FEE AMOUNT.—The amount of the priority review user fee shall be determined each fiscal year by the Secretary and based on the average cost incurred by the agency in the review of a human drug application subject to priority review in the previous fiscal year.

(3) ANNUAL FEE SETTING.—The Secretary shall establish, before the beginning of each fiscal year beginning after September 30, 2016, for that fiscal year, the amount of the priority review user fee.

(4) PAYMENT.—

(A) IN GENERAL.—The priority review user fee required by this subsection shall be due upon the submission of a human drug application under section 505(b)(1) or section 351(a) of the Public Health Service Act for which the priority review voucher is used.

(B) COMPLETE APPLICATION.—An application described under subparagraph (A) for which the sponsor requests the use of a priority review voucher shall be considered incomplete if the fee required by this subsection and all other applicable user fees are not paid in accordance with the Secretary's procedures for paying such fees.

(C) NO WAIVERS, EXEMPTIONS, REDUCTIONS, OR REFUNDS.—The Secretary may not grant a waiver, exemption, reduction, or refund of any fees due and payable under this section.

(5) OFFSETTING COLLECTIONS.—Fees collected pursuant to this subsection for any fiscal year—

(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Food and Drug Administration; and

(6) shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

(~~d~~e) NOTICE OF ISSUANCE OF VOUCHER AND APPROVAL OF PRODUCTS UNDER VOUCHER.—The Secretary shall publish a notice in the Federal Register and on the Internet website of the Food and Drug Administration not later than 30 calendar days after the occurrence of each of the following:

(1) The Secretary issues a priority review voucher under this section.

(2) The Secretary approves a drug pursuant to an application submitted under section 505(b) of this Act or section 351(a) of the Public Health Service for which the sponsor of the application used a priority review voucher issued under this section.

(~~e~~f) ELIGIBILITY FOR OTHER PROGRAMS.—Nothing in this section precludes a sponsor who seeks a priority review voucher under this section from participating in any other incentive program, including under this Act, except that no sponsor of a ~~material threat~~ medical countermeasure application may receive more than one priority review voucher issued under any section of this chapter with respect to such drug.

(~~f~~g) RELATION TO OTHER PROVISIONS.—The provisions of this section shall supplement, not supplant, any other provisions of this Act or the Public Health Service Act that encourage the development of medical countermeasures.

(h) GAO REPORT.—

(1) IN GENERAL.—Not later than September 30, 2027, the Comptroller General of the United States shall transmit to Congress a report on the effectiveness of this section in encouraging the development of the medical countermeasures needed to protect and prepare for emerging threats to public health and national security.

(2) CONTENTS.—The report shall include—

(A) input from the Secretary of Defense and the Secretary of Health and Human Services; and

(B) recommendations of the Comptroller General, if any, on necessary modifications to this section.

(~~g~~i) SUNSET.—The Secretary may not award any priority review vouchers under ~~subsection (b)~~ subsection (c) after October 1, ~~2023~~ 2029.

SEC. ___. MODIFICATION AND EXTENSION OF PILOT PROGRAM ON DYNAMIC SHAPING OF THE WORKFORCE TO IMPROVE THE TECHNICAL SKILLS AND EXPERTISE AT CERTAIN DEPARTMENT OF DEFENSE LABORATORIES.

(a) REPEAL OF OBSOLETE PROVISION.—Section 1109(b) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C 2358 note) is amended by striking paragraph (1)(D).

(b) EXTENSION OF AUTHORITY.— Section 1109(d)(1) of such Act is amended by striking "December 31, 2023" and inserting "December 31, 2027".

Section-by-Section Analysis

This proposal extends authorities related to the pilot program authorized under section 1109 of the National Defense Authorization Act for Fiscal Year 2009 (Public Law 114–92; 129 Stat.1028; 10 U.S.C. 2358 note), amended by section 1112 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat 1636). Extension of these authorities would afford the directors of the Science and Technology Reinvention Laboratories (STRLs) the authority to continue to utilize the flexible length and renewable term technical appointments, appoint reemployed annuitants, and offer early retirement and separation incentives beyond December 31, 2023. Modification of the authority would remove a provision that has been made obsolete by the repeal of section 955 of the FY2013 NDAA (Public Law 112–239; 126 Stat. 1896; 10 U.S.C. 129a note) by section 915 of the FY2017 NDAA (Public Law 114–328; 130 Stat. 2350).

Extending the expiration date of the pilot program will allow the STRL directors to continue to reemploy annuitants and to reduce their pay in an amount up to the amount of the annuity, and to offer early retirement and separation incentives to restructure and reshape the laboratory workforce, correct skills imbalances, and to delayer the organization.

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 1109 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C 2358 note) as follows:

SEC. 1109. PILOT PROGRAM ON DYNAMIC SHAPING OF THE WORKFORCE TO IMPROVE THE TECHNICAL SKILLS AND EXPERTISE AT CERTAIN DEPARTMENT OF DEFENSE LABORATORIES.

(a) PILOT PROGRAM REQUIRED.—The Secretary of Defense shall establish a pilot program to utilize the authorities specified in subsection (b) at the Department of Defense laboratories specified in subsection (c) to provide the directors of such laboratories the authority to dynamically shape the mix of technical skills and expertise in the workforces of such laboratories in order to achieve one or more of the following:

(1) To meet organizational and Department-designated missions in the most cost-effective and efficient manner.

(2) To upgrade and enhance the scientific quality of the workforces of such laboratories.

(3) To shape such workforces to better respond to such missions.

(4) To reduce the average unit cost of such workforces.

(b) WORKFORCE SHAPING AUTHORITIES.—The authorities that shall be available for use by the director of a Department of Defense laboratory under the pilot program are the following:

(1) FLEXIBLE LENGTH AND RENEWABLE TERM TECHNICAL APPOINTMENTS.—

(A) IN GENERAL.—Subject to the provisions of this paragraph, authority otherwise available to the director by law (and within the available budgetary resources of the laboratory) to make appointments as follows:

(i) Appointment of qualified scientific and technical personnel who are not current Department of Defense civilian employees into any scientific or technical position in the laboratory for a period of more than one year but not more than six years.

(ii) Appointment of qualified scientific and technical personnel who are Department civilian employees in term appointments into any scientific or technical position in the laboratory for a period of more than one year but not more than six years.

(B) BENEFITS.—Personnel appointed under this paragraph shall be provided with benefits comparable to those provided to similar employees at the laboratory concerned, including professional development opportunities, eligibility for all laboratory awards programs, and designation as "status applicants" for the purposes of eligibility for positions in the Federal service.

(C) EXTENSION OF APPOINTMENTS.—The appointment of any individual under this paragraph may be extended without limit in up to six year increments at any time during any term of service under such conditions as the director concerned shall establish for purposes of this paragraph.

~~(D) CONSTRUCTION WITH CERTAIN LIMITATION.—For purposes of determining the workforce size of a laboratory in connection with compliance with section 955 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1896; 10 U.S.C. 129a note), any individual serving in an appointment under this paragraph shall be treated as a fractional employee of the laboratory, which fraction is—~~

~~(i) the current term of appointment of the individual under this paragraph; divided by~~

~~(ii) the average length of tenure of a career employee at the laboratory, as calculated at the end of the last fiscal year ending before the date of the most recent appointment or extension of the individual under this paragraph.~~

(2) REEMPLOYMENT OF ANNUITANTS.—Authorities to authorize the director of any science and technology reinvention laboratory (in this section referred to as ''STRL'') to reemploy annuitants in accordance with section 9902(g) of title 5, United States Code, except that as a condition for reemployment the director may authorize the deduction from the pay of any annuitant so reemployed of an amount up to the amount of the annuity otherwise payable to such annuitant allocable to the period of actual employment of such annuitant, which amount shall be determined in a manner specified by the director for purposes of this paragraph to ensure the most cost effective execution of designated missions by the laboratory while retaining critical technical skills.

(3) EARLY RETIREMENT INCENTIVES.—Authorities to authorize the director of any STRL to authorize voluntary early retirement of employees in accordance with section 8336 of title 5, United States Code, without regard to section 8336(d)(2)(D) or 3522 of such title, and with employees so separated voluntarily from service.

(4) SEPARATION INCENTIVE PAY.—Authorities to authorize the director of any STRL to pay voluntary separation pay to employees in accordance with section 8414(b)(1)(B) of title 5, United States Code, without regard to clause (iv) or (v) of such section or section 3522 of such title, and with—

(A) employees so separated voluntarily from service under regulations prescribed by the Secretary of Defense for purposes of the pilot program; and

(B) payments to employees so separated authorized under section 3523 of such title without regard to—

(i) the plan otherwise required by section 3522 of such title; and

(ii) paragraph (1) or (3) of section 3523(b) of such title.

(c) LABORATORIES.—The Department of Defense laboratories specified in this subsection are the laboratories designated under section 4121(b) of title 10, United States Code.

(d) EXPIRATION.—

(1) IN GENERAL.—The authority in this section shall expire on ~~December 31, 2023~~ December 31, 2027.

(2) CONTINUATION OF AUTHORITIES EXERCISED BEFORE TERMINATION.—The expiration in paragraph (1) shall not be construed to effect the continuation after the date specified in paragraph (1) of any term of employment or other benefit authorized under this section before that date in accordance with the terms of such authorization.

SEC. __. MODIFICATION TO INFORMATION TECHNOLOGY PERSONNEL EXCHANGE PROGRAM.

Section 1110(d) of the National Defense Authorization Act for Fiscal Year 2010 (5 U.S.C. 3702 note; Public Law 111-84) is amended by striking "September 30, 2022" and inserting "December 31, 2026".

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

Section-by-Section Analysis

This proposal would extend the authority of the Secretary of Defense to arrange for the temporary assignment of an employee to a private sector organization, or from a private sector organization to a Department of Defense (DoD) organization authorized under section 1110 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 5 U.S.C. 3702 note).

Extension of this authority would afford DoD organizations to continue collaboration with private sector organizations to share best practices, gain a better understanding of cross-sector cyber/information technology operations and challenges, and partner to address these challenges. The Cyber Information Technology Exchange Program (CITEP) provides the authority for the temporary detail of DoD and private sector employees who work in the cyber operations or information technology fields and is an opportunity for the exchange of knowledge, experience, and skills between the DoD and private sectors.

Since the inception of the program, the following companies have participated in hosting DoD participants: Amazon, Microsoft, VMware, M&T Bank, Salesforce, Virtustream, CISCO, and Perspecta. Most private sector companies and/or their DoD participant request an extension to the six-month standard detail to continue to take advantage of CITEP and improve upon their skillsets.

From Fiscal Year 2017 to Fiscal Year 2021, 33 DoD personnel have participated in CITEP. DoD participants utilize this opportunity for industry collaboration and to gain perspective on emerging cyber and information technology concepts, strategies, industry best practices, et cetera. CITEP participants are then encouraged to return to their commands and reinvigorate their corresponding workforces and/or professional communities with newfound curiosity, skillsets, and modernization tactics that will benefit and lead to progress for the Department of Defense.

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 1110 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 5 U.S.C. 3702 note) as follows:

SEC. 1110. PILOT PROGRAM FOR THE TEMPORARY ASSIGNMENT OF CYBER AND INFORMATION TECHNOLOGY PERSONNEL TO PRIVATE SECTOR ORGANIZATIONS.

(a) ASSIGNMENT AUTHORITY.—The Secretary of Defense may, with the agreement of the private sector organization concerned, arrange for the temporary assignment of an employee to such private sector organization, or from such private sector organization to a Department of Defense organization under this section. An employee shall be eligible for such an assignment only if—

(1) the employee—

(A) works in the field of cyber operations or information technology management;

(B) is considered by the Secretary of Defense to be an exceptional employee;

(C) is expected to assume increased cyber operations or information technology management responsibilities in the future; and

(D) is compensated at not less than the GS–11 level (or the equivalent); and

(2) the proposed assignment meets applicable requirements of section 209(b) of the E-Government Act of 2002 (44 U.S.C. 3501 note).

* * * * *

(d) DURATION.—An assignment under this section shall be for a period of not less than 3 months and not more than 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year; however, no assignment under this section may commence after ~~September 30, 2022~~ December 31, 2026.

SEC. ___. ORDERING AUTHORITY FOR DESIGN AND CONSTRUCTION OF DEPARTMENT OF DEFENSE FACILITIES.

(a) IN GENERAL.—Subchapter I of chapter 169 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2817. Ordering authority

"(a) IN GENERAL.—The head of a department or organization within the Department of Defense may place an order with any other such department or organization for the design and construction of Department of Defense facilities, including facility maintenance and repair projects and minor construction projects, on a reimbursable basis.

"(b) OBLIGATIONS.—An order placed using the authority provided in subsection (a) is deemed to be an obligation in the same manner that a similar order or contract placed with a private contractor is an obligation.

"(c) CONTINGENCY EXPENSES.—An order placed under subsection (a) may include a reasonable amount for contingency expenses.

"(d) AVAILABILITY OF APPROPRIATIONS.—Appropriations remain available to pay an obligation to a department or organization under this section in the same manner and to the same extent as appropriations remain available to pay an obligation to a private contractor.".

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

"2817. Ordering authority.".

Section-by-Section Analysis

This proposal would align contingency funding processes for facilities sustainment, restoration, and modernization (FSRM) projects and minor military construction projects funded with operation and maintenance (O&M) appropriations with those of other construction programs across the Department of Defense (DoD) by providing a new authority for DoD

organizations to utilize when performing design and construction services for O&M funded FSRM and minor military construction projects on a reimbursable basis.

Currently, DoD organizations primarily rely upon the Economy Act (31 U.S.C. 1535) when performing O&M funded design and construction services for one another on a reimbursable basis. Although servicing activities typically include expected contingency costs in the original estimated cost for such Economy Act orders, contingencies for which such funds may be used typically do not arise during the one-year period of availability of the O&M funding provided and the Economy Act deobligation requirement requires the ordering activity to deobligate, and the servicing activity to return, any such funds not obligated by the servicing activity prior to fund expiration. Thus, when a contingency arises on an O&M funded project, the servicing agency often does not have funding immediately available.

This problem is particularly acute for O&M funded FSRM and minor military construction projects, which, by their nature, often involve contingency expenses that arise after funding for a project has expired. For example, contaminates such as asbestos and lead are often unknown until demolition work commences on a project, which often does not occur until the O&M funding obligated under an order has otherwise expired.

This proposal would bring contingency funding practices for O&M funded FSRM and minor construction projects in line with other non-O&M funded DoD construction programs for which the standard practice for decades has been for the DoD organization executing the work to hold a reasonable amount of contingency funds until project completion. The proposal would accomplish this by providing DoD organizations with a new authority, distinct from the Economy Act, that permits the obligation of a reasonable amount of contingency funds at the time a reimbursable order is executed, which consequently would permit the servicing activity to hold such funds until the project is completed, the reimbursable order is otherwise fulfilled, or the funds cancel.

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 title 10, United States Code, as shown in full in the legislative text above.

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

Subsection (a) of section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615), as most recently amended by section 1112 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81), is further amended by striking "through 2022" and inserting "through 2023".

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

Section-by-Section Analysis

This proposal has been a recurring provision for the last several years and is an extension for one additional year of the authority under section 1101 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009, as amended by subsequent NDAAs, most recently section 1112 of the FY 2022 NDAA. The provision is currently in effect through calendar year 2022. The authority under that section is similar to that previously provided in the NDAAs since FY 2006.

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

Under the law generally applicable to premium pay for Federal civilian employees (section 5547 of title 5, United States Code (U.S.C.)), premium pay may be paid to an employee only to the extent that the payment does not cause the aggregate of basic pay and premium pay for any pay period to exceed the greater of the maximum rate of basic pay payable for General Schedule-15 (GS-15), as adjusted for locality, or the rate payable for Level V of the Executive Schedule. Extending the authority under section 1101(a) of the FY 2009 NDAA would allow a Federal agency head, during calendar year 2023, to waive the limitations in section 5547 and pay premium pay to a Federal civilian employee performing work in an overseas location, as described above, to the extent that the payment does not cause the aggregate of basic pay and premium pay to exceed the annual rate of salary payable to the Vice President under section 104 of title 3, U.S.C., in a calendar year.

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. The Department of Defense estimates this proposal would cost approximately $2.653 million for FY 2023. This proposal would be funded from the Component and Defense Agency operation and maintenance fund accounts. The limitation relief is for those people who are deployed in support of Overseas Contingency Operations. The funding is requested in the military departments' Operation and Maintenance budgets by cost breakdown structure category. The number of personnel affected in FY 2022 is estimated to be approximately 2,630. The number of affected personnel Defense-wide in FY 2023 is estimated to be the same. Only Defense Agencies anticipating employees assigned to areas covered by this authority are identified in the budget table below.

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	$1.958					Operation and Maintenance, Army	Multiple	Multiple	
Navy	$0.158					Operation and Maintenance, Navy	Multiple	Multiple	
USMC	$0.079					Operation and Maintenance, USMC	Multiple	Multiple	
Air Force	$0.186					Operation and Maintenance, Air Force	Multiple	Multiple	
DLA	$0.143					Defense Working Capital Funds, Defense-wide	Multiple	Multiple	
DCMA	$0.067					Operation and Maintenance, Defense-wide	Multiple	Multiple	
DISA	$0.024					Operation and Maintenance, Defense-wide	Multiple	Multiple	
DCAA	$0.007					Operation and Maintenance, Defense-wide	Multiple	Multiple	
OSD	$0.019					Operation and Maintenance, Defense-wide	Multiple	Multiple	
DFAS	$0.006					Defense Working Capital Funds, Defense-wide	Multiple	Multiple	
WHS	$0.003					Operation and Maintenance, Defense-wide	Multiple	Multiple	

Joint Staff	$0.003					Operation and Maintenance, Defense-wide	Multiple	Multiple	
Total	$2.653								

Cost Methodology: The cost of this proposal will ultimately be determined by the number of employees affected, the basic pay of each employee (which varies by grade, step, and location), and the number of hours of overtime worked by each employee. Based on available payroll data for eligible employees in 2018, the additional cost for overtime in excess of the annual premium pay limitation was approximately $2.65 million. The actual numbers of employees, their salaries, and the length of time additional overtime might be required are based on mission needs in FY 2023, but the above scenario illustrates the potential impact, and is a reasonable estimate given the relatively stable rate of assignment of employees over the last several years.

PERSONNEL IMPACT (END STRENGTH)									
Program	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**	**Appropriation**	**Budget Activity**	**BLI/SAG**	**Program Element (for all RDT&E programs)**
Army	1,947					Operation and Maintenance, Army	Multiple	Multiple	
Navy	158					Operation and Maintenance, Navy	Multiple	Multiple	
USMC	77					Operation and Maintenance, USMC OCO	Multiple	Multiple	
Air Force	184					Operation and Maintenance, Air Force	Multiple	Multiple	
DLA	142					Defense Working Capital Funds, Defense-wide	Multiple	Multiple	
DCMA	66					Operation and Maintenance, Defense-wide	Multiple	Multiple	
DISA	23					Operation and Maintenance, Defense-wide	Multiple	Multiple	
DCAA	6					Operation and Maintenance, Defense-wide	Multiple	Multiple	
OSD	18					Operation and Maintenance, Defense-wide	Multiple	Multiple	

DFAS	5					Defense Working Capital Funds, Defense-wide	Multiple	Multiple	
WHS	2					Operation and Maintenance, Defense-wide	Multiple	Multiple	
Joint Staff	2					Operation and Maintenance, Defense-wide	Multiple	Multiple	
Total	2,630								

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

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

(a) WAIVER AUTHORITY.—During calendar years 2009 ~~through 2022~~ through 2023, and notwithstanding section 5547 of title 5, United States Code, the head of an Executive agency may waive the premium pay limitations established in that section up to the annual rate of salary payable to the Vice President under section 104 of title 3, United States Code, for an employee who performs work while in an overseas location that is in the area of responsibility of the Commander of the United States Central Command, or an overseas location that was formerly in the area of responsibility of the Commander of the United States Central Command but has been moved to the area of responsibility of the Commander of the United States Africa Command, in direct support of, or directly related to—

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

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

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

(c) ADDITIONAL PAY NOT CONSIDERED BASIC PAY.—To the extent that a waiver under subsection (a) results in payment of additional premium pay of a type that is normally creditable as basic pay for retirement or any other purpose, such additional pay shall not be considered to be basic pay for any purpose, nor shall it be used in computing a lump-sum payment for accumulated and accrued annual leave under section 5551 of title 5, United States Code.

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

SEC. ___. POSTURING THE DEFENSE PRODUCTION ACT TO RESPOND TO INCREASING REQUIREMENTS

(a) PRESIDENTIAL ACTIONS.— Section 303(a) of the Defense Production Act of 1950 (50 U.S.C. 4533(a)) is amended—

(1) in paragraph (5), in the matter preceding subparagraph (A), by striking "on a nondelegable basis,";

(2) in paragraph (6), by striking subparagraph (C); and

(3) in paragraph (7)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by inserting "(A)" before "The requirements of paragraphs (1) through (6) may be waived"; and

(C) by adding at the end the following new subparagraph (B):

"(B) The requirements for paragraph (6) may be waived for funds reprogrammed into the Defense Production Act Fund in accordance with section 1301 of title 31 or through the Program, Planning, Budget, and Execution process from other programs, services, or agencies.".

(b) REPEAL OF FUND BALANCE LIMITATION.— Section 304 of such Act (50 U.S.C. 4534) is amended by striking subsection (e).

(c) AMENDMENT TO DEFINITION OF DOMESTIC SOURCE.— Section 702(7)(A) of such Act (50 U.S.C. 4552(7)(A)) is amended by striking "United States or Canada" and inserting "United States, the United Kingdom of Great Britain and Northern Ireland, Australia, or Canada".

(d) AUTHORIZATION OF APPROPRIATIONS—Section 711 of such Act (50 U.S.C. 4561) is amended by striking "is authorized to be appropriated $133,000,000 for fiscal year 2015 and each fiscal year thereafter" and inserting "are hereby authorized to be appropriated such sums as may be necessary and appropriate".

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

Section-by-Section Analysis

The Defense Production Act of 1950 (DPA) provides the President with the authority to create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense. In an effort to broaden the impact of the DPA, parts of the U.S. Code must be updated to reflect the current national security priorities and advance an agile program. By removing key barriers to the execution of DPA authorities, the industrial base will be better positioned to provide the DoD with critical technology, resulting in increased industrial base readiness and lethality. In addressing the statutory hurdles that limit the DPA, the program will be able to achieve its full potential and create a greater impact.

Section 303(a)(5) [50 U.S.C. 4533(a)(5)] The Presidential Determination (PD) designates an industrial base shortfall as a requiring mitigation pursuant to the DPA. In 2014, language was inserted into this section making the PD "nondelegable." This change added additional layers of coordination and other signatures to the project approval process. For almost two decades before the language was changed, PDs were signed by the Under Secretary of Defense for Acquisition, Technology, and Logistics. By making the PDs nondelegable, the process and the time to get new projects approved lengthened significantly. Today's process requires not only a signature from the Under Secretary of Defense for Acquisition and Sustainment, but the signature of either the Secretary of Defense or the Deputy Secretary of Defense, before the package gets sent to the Executive Office of the President, where it is reviewed and coordinated again and presented to the President for a final signature. By removing the term "nondelegable" and allowing the Secretary of Defense, Deputy Secretary of Defense, or Under Secretary for Acquisition and Sustainment to sign the DPA Title III PDs, the project execution timelines will decrease and Presidential priorities can be carried out by the Secretary of Defense through the delegation of DPA Title III authorities.

Section 303(a)(6)(C) [50 U.S.C. 4533(a)(6)(C)] This limitation prevents the DPA Title III program from using funds set aside to bridge critical shortfalls until Congress reauthorizes the funds for the specific remedy. This section is unnecessarily limiting, especially since section 4533(a)(6)(B) already requires Congressional notification and a 30-day review period before addressing industrial resource shortfalls that exceed $50,000,000. This provision renders large infrastructure projects ideally addressed by DPA Title III nearly impossible to execute in a timely manner (i.e. steel, aluminum, or microelectronics projects). By removing this section, and ensuring that the limitation is removed for any shortfalls to which it previously applied, the DPA

Title III program would be able to more rapidly address the shortfalls that the President determines are essential to the national defense. This idea was adopted within the recently released Report of the Defense Critical Supply Chain Task Force, and removal of the spending limitation was included as one of its recommendations for improving the DPA.

Section 303(a)(7) [50 U.S.C. §4533(a)(7)] The proposed changes would eliminate redundancies in notification requirements and improve efficiencies for the expedient execution of funds. Current law requires a PD for the utilization of section 4533 authorities, as well as Congressional notification and authorization for aggregate actions to exceed $50,000,000. Funds transferred into the DPA Fund in accordance with 31 U.S.C. 1301 or through the Program, Planning, Budget, and Execution Process already require Congressional approval. Mandating additional Congressional oversight for efforts already approved is duplicative and time consuming. The requirement for double approval of the utilization of funds acts as a hindrance to the expedient execution of capital intensive mitigation strategies toward urgent industrial base shortfalls.

Section 304(e) [50 U.S.C. 4534(e)] Removing this limitation ensures that the DPA Title III Program will not be penalized for increased appropriations. As the DPA authorities are increasingly leveraged to respond to the needs of other agencies as well as the most critical national defense requirements, the balance of the DPA Fund is anticipated to rise accordingly. While the DPA Title III Program always pursues the most expedient path to effort execution, some acquisition or mitigation strategies cannot be completed in the span of a year. As such, the law should be amended to allow for an increased balance so that funds that are appropriated or transferred into the DPA Fund are not returned to the Treasury and are allowed to be utilized for their intended purposes over a period of time.

Section 702(7)(A) [50 U.S.C. 4552(7)(A)] The DPA currently defines the Defense Industrial Base as "domestic sources which are providing, or which would be reasonably expected to provide, materials or services to meet national defense requirements during peacetime, national emergency, or war." (50 U.S.C. 4552(6)). The DPA further defines a domestic source as:

> [A] business concern… that performs in the United States or Canada substantially all of the research and development, engineering, manufacturing, and production activities required of such business concern under a contract with the United States relating to a critical component or a critical technology item. (50 U.S.C. 4552(7))

This definition unnecessarily constrains DPA authorities and limits their abilities to ensure a robust industrial base. Adopting a definition that includes the nation's closest allies will aid the DPA Title III Program in its mission to ensure the timely availability of essential industrial resources to support national defense and homeland security requirements. The DPA Title III Program will be able to engage with companies in the third and fourth tiers of supply chains and exercise larger control over supply chains as a whole.

This change in legislation will bring the DPA in closer alignment with the National Technology and Industrial Base (NTIB). Section 881 of the 2017 National Defense Authorization Act (Public Law 114–328) expanded the definition of the NTIB from the United States and Canada to the United States, the United Kingdom of Great Britain and Northern Ireland, and Australia. The

reason behind this expansion was to allow the U.S. Government to leverage the resources of its closest allies to enrich U.S. manufacturing and industrial base capabilities and increase the nation's advantage in an environment of great competition. This same reasoning applies to the proposed change to the DPA.

Section 711 [50 U.S.C. 4561] This statute originally stated, "There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this Act by the President and such agencies as he may designate or create." In 2014, this was changed to say, "There is authorized to be appropriated $133,000,000 for fiscal year 2015 and each fiscal year thereafter for the carrying out of the provisions and purposes of this Act by the President and such agencies as he may designate or create." This new limitation caps the funding available to DPA Title III, severely limiting the ability of the program to rapidly respond to changing industrial base priorities. By reverting the statute to its original language, the program will regain its budgetary flexibility and be better positioned to make strategic long-term investments as well as being equipped to stimulate the defense industrial base during times of war or national emergency. The importance of reverting the statutory language to its prior form was recognized within the Report of the Defense Critical Supply Chain Task Force and adopted as a recommendation for the amending the DPA.

Resource Information: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2023 President's Budget request. This proposal has budgetary impact because these statutory changes will impact the ability of the DPA Title III program to rapidly execute the below appropriations.

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**	**Appropriation**	**Budget Activity**	**BLI/ SAG**	**Program Element (for all RDT&E programs)**
Defense Production Act	659.906	562.049	437.414	261.762	266.717	Defense Production Act Purchases	01	Title III	0902199D8Z
Total	659.906	562.049	437.414	261.762	266.717				

Changes to Existing Law: This proposal would amend sections 303, 304, 702, and 711 of the Defense Production Act (50 U.S.C. 4533, 4534, 4552, and 4561) as follows:

SEC. 303 (50 U.S.C. 4533). Other presidential action authorized

(a) IN GENERAL

(1) In general

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

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

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

(C) for the development of production capabilities; and

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

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

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

(2) Treatment of certain agricultural commodities

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

(3) Terms of sales

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

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

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

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

(ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation, as provided in section 407 of the Agricultural Act of 1949 (7 U.S.C. 1427).

(4) Delivery dates

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

(5) Presidential determinations

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

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

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

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

(6) Notification to Congress of shortfall

(A) In general

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

(B) Aggregate amounts

If the taking of any action under this subsection to correct a domestic industrial base shortfall would cause the aggregate outstanding amount of all such actions for such shortfall to exceed $50,000,000, the action or actions may be taken only after the 30-day period following the date on which the Committee on Banking, Housing, and Urban

Affairs of the Senate and the Committee on Financial Services of the House of Representatives have been notified in writing of the proposed action.

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

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

(7) Waivers authorized

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

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

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

(B) The requirement of paragraph (6) may be waived for funds reprogrammed into the Defense Production Act Fund in accordance with section 1301 of title 31 or through the Program, Planning, Budget, and Execution process from other programs, services, or agencies.

(b) EXEMPTION FOR CERTAIN LIMITATIONS

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

(c) PRESIDENTIAL FINDINGS

(1) In general

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

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

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

(2) Subsidy payments authorized

Upon a finding under paragraph (1), the President may make provision for subsidy payments on any such domestically produced material, other than an agricultural commodity, in such amounts and in such manner (including purchases of such material and its resale at a loss), and on such terms and conditions, as the President determines to be necessary to ensure that

supplies from such high cost sources are continued, or that maximum production or supply in such area at stable prices of such materials is maintained, as the case may be.

(d) INCIDENTAL AUTHORITY

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

(e) INSTALLATION OF EQUIPMENT IN INDUSTRIAL FACILITIES

(1) Installation authorized

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

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

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

(C) to provide for the modification or expansion of privately owned facilities, including the modification or improvement of production processes, when taking actions under section 301, 302, [4531, 4532] or this section; and

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

(2) Indemnification

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

(A) to waive any claim against the United States under section 107 or 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607 and 9613); and

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

(f) EXCESS METALS, MINERALS, AND MATERIALS

(1) In general

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

(2) Transfers at no charge

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

(g) SUBSTITUTES

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

* * * * *

SEC. 304 (50 U.S.C. 4534). Defense Production Act Fund

(a) **ESTABLISHMENT OF THE FUND**

There is established in the Treasury of the United States a separate fund to be known as the "Defense Production Act Fund" (in this section referred to as the "Fund").

(b) MONEYS IN THE FUND

There shall be credited to the Fund—

(1) all moneys appropriated for the Fund, as authorized by section 711 [4561]; and

(2) all moneys received by the Fund on transactions entered into pursuant to section 303 [4533].

(c) USE OF FUND

The Fund shall be available to carry out the provision and purposes of this title, subject to the limitations set forth in this Act and in appropriations Acts.

(d) DURATION OF FUND

Moneys in the Fund shall remain available until expended.

~~**(e) FUND BALANCE**~~

~~The Fund balance at the close of each fiscal year shall not exceed $750,000,000, excluding any moneys appropriated to the Fund during that fiscal year or obligated funds. If, at the close of any fiscal year, the Fund balance exceeds $750,000,000, the amount in excess of $750,000,000 shall be paid into the general fund of the Treasury.~~

(f) FUND MANAGER

The President shall designate a Fund manager. The duties of the Fund manager shall include—

(1) determining the liability of the Fund in accordance with subsection (g);

(2) ensuring the visibility and accountability of transactions engaged in through the Fund; and

(3) reporting to the Congress each year regarding activities of the Fund during the previous fiscal year.

(g) LIABILITIES AGAINST FUND

When any agreement entered into pursuant to this title after December 31, 1991, imposes any contingent liability upon the United States, such liability shall be considered an obligation against the Fund.

* * * * *

SEC. 702 (50 U.S.C. 4552). Definitions

For the purposes of this Act, the following definitions shall apply:

(1) **CRITICAL COMPONENT**

The term "critical component" includes such components, subsystems, systems, and related special tooling and test equipment essential to production, repair, maintenance, or operation of weapon systems or other items of equipment identified by the President as being essential to the execution of the national security strategy of the United States. Components identified as critical by a National Security Assessment conducted pursuant to section 113(i) of title 10 or by a Presidential determination as a result of a petition filed under section 232 of the Trade Expansion Act of 1962 [19 U.S.C. 1862] shall be designated as critical components for purposes of this Act, unless the President determines that the designation is unwarranted.

(2) CRITICAL INFRASTRUCTURE

The term "critical infrastructure" means any systems and assets, whether physical or cyber-based so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

(3) CRITICAL TECHNOLOGY

The term "critical technology" includes any technology designated by the President to be essential to the national defense.

(4) CRITICAL TECHNOLOGY ITEM

The term "critical technology item" means materials directly employing, derived from, or utilizing a critical technology.

(5) DEFENSE CONTRACTOR

The term "defense contractor" means any person who enters into a contract with the United States—

(A) to furnish materials, industrial resources, or a critical technology for the national defense; or

(B) to perform services for the national defense.

(6) DOMESTIC INDUSTRIAL BASE

The term "domestic industrial base" means domestic sources which are providing, or which would be reasonably expected to provide, materials or services to meet national defense requirements during peacetime, national emergency, or war.

(7) DOMESTIC SOURCE

The term "domestic source" means a business concern—

(A) that performs in the ~~United States or Canada~~ United States, the United Kingdom of Great Britain and Northern Ireland, Australia, or Canada ~~s~~substantially all of the research and development, engineering, manufacturing, and production activities required of such business concern under a contract with the United States relating to a critical component or a critical technology item; and

(B) that procures from business concerns described in subparagraph (A) substantially all of any components and assemblies required under a contract with the United States relating to a critical component or critical technology item.

(8) FACILITIES

The term "facilities" includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches, or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

(9) FOREIGN SOURCE

The term "foreign source" means a business entity other than a "domestic source."

(10) GUARANTEEING AGENCY

The term "guaranteeing agency" means a department or agency of the United States engaged in procurement for the national defense.

(11) HOMELAND SECURITY

The term "homeland security" includes efforts—

(A) to prevent terrorist attacks within the United States;

(B) to reduce the vulnerability of the United States to terrorism;

(C) to minimize damage from a terrorist attack in the United States; and

(D) to recover from a terrorist attack in the United States.

(12) INDUSTRIAL RESOURCES

The term “industrial resources” means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) needed to establish or maintain an efficient and modern national defense industrial base.

(13) MATERIALS

The term “materials” includes—

(A) any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

(B) any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

(14) NATIONAL DEFENSE

The term “national defense” means programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conduct pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act and critical infrastructure protection and restoration.

(15) PERSON

The term “person” includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.

(16) SERVICES

The term “services” include any effort that is needed for or incidental to—

(A) the development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item;

(B) the construction of facilities;

(C) the movement of individuals and property by all modes of civil transportation; or

(D) other national defense programs and activities.

(17) SMALL BUSINESS CONCERN

The term “small business concern” means a business concern that meets the requirements of section 3(a) of the Small Business Act [15 U.S.C. 632(a)] and the regulations promulgated pursuant to that section, and includes such business concerns owned and controlled by socially and economically disadvantaged individuals or by women.

* * * * *

SEC. 711 (50 U.S.C. 4561). Authorization of appropriations; availability of funds

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

* * * * *

SEC. ___. PREFERENCE FOR PERFORMANCE-BASED CONTRACT PAYMENTS.

Section 3208[1] of title 10, United States Code, is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively.

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

Section-by-Section Analysis

This proposal would ensure that the Department is able to appropriately provide contract financing in the form of performance-based payments while protecting the taxpayers' and warfighters' interests. The fundamental purpose of all contract financing, including performance-based payments, is to assist the contractor in paying costs incurred during the performance of the contract. As such, in accordance with the Federal Acquisition Regulation (FAR) requirements, financing is to be provided only to the extent actually needed for prompt and efficient performance. In order to comply with the 10 U.S.C. 3802(a) [formerly 2307(b)(1)] preference for performance-based payments, the Department advocates flexibility in negotiating performance-based payment arrangements. A performance-based payment arrangement can only be utilized when all elements of the performance-based payment schedule have been agreed upon. Because a performance-based payment schedule is based on forecasted financing needs, the practicality of using performance-based payments consistent with FAR requirements is affected by the ability to agree on a forecasted expenditure profile. In the absence of such flexibility, the use of performance-based payments will be significantly reduced, which would be a less than desirable outcome based on the stated preference for their use.

Unless the Department contractually agrees that it is in the public interest to provide advance payments, which in accordance with 10 U.S.C. 3803 [formerly 2307(d)] requires the contractor to give adequate security, a contractor should not be reimbursed more than its actual costs incurred at any point in time prior to delivery. This would result in negative levels of contractor investment in the contract and provide a disincentive for contractors to complete work on the contract and deliver goods and services in a timely manner. The deletion of subsection 3802(b) [formerly 2307(b)(2)] in its entirety will provide greater flexibility to contracting officers reaching agreement on performance-based payment schedules in those instances when a high degree of confidence in the forecasted expenditure profile is not present.

[1] This proposal uses citations and text of title 10, United States Code, that will be in effect as of January 1, 2022, pursuant to section 1801(d)(1) of the FY21 NDAA (Public Law 116-283). Previous to January 1, 2022, this proposal would have amended section 2307(b) of title 10.

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 3802 [former 2307(b),(c)] of title 10, United States Code, as follows:

§3802. Payment

(a) PREFERENCE FOR PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under section 3801 of this title shall be made using performance-based payments on any of the following bases:

(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(2) Accomplishment of events defined in the program management plan.

(3) Other quantifiable measures of results.

~~(b) BASIS FOR PERFORMANCE-BASED PAYMENTS.—Performance-based payments shall not be conditioned upon costs incurred in contract performance but on the achievement of performance outcomes listed in subsection (a).~~

(~~c~~b) CONTRACTOR ACCOUNTING SYSTEMS.—

(1) In order to receive performance-based payments, a contractor's accounting system shall be in compliance with Generally Accepted Accounting Principles, and there shall be no requirement for a contractor to develop Government-unique accounting systems or practices as a prerequisite for agreeing to receive performance-based payments.

(2) Nothing in this chapter shall be construed to grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

(~~d~~c) PAYMENT AMOUNT.—Payments made under section 3801 of this title may not exceed the unpaid contract price.

(~~e~~d) ELIGIBILITY OF NONTRADITIONAL DEFENSE CONTRACTORS.—The Secretary of Defense shall ensure that nontraditional defense contractors and other private sector companies are eligible for performance-based payments, consistent with best commercial practices.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1834(a), (c), Jan. 1, 2021, 134 Stat. 4234 , 4235.)

SEC. ___. UPDATING AUTHORITY TO AUTHORIZE PROMOTION TRANSFERS BETWEEN COMPONENTS OF THE SAME SERVICE.

(a) WARRANT OFFICERS TRANSFERRED BETWEEN COMPONENTS WITHIN SAME SERVICE.—Section 578 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(g) Notwithstanding subsection (d), and subject to regulations prescribed by the Secretary of Defense, in the case of a warrant officer who (1) is selected for promotion by a selection board convened under this chapter, and (2) prior to the placement of the officer's name on the applicable promotion list, is approved for transfer to a new component within the same military service, the Secretary concerned may place the officer's name on a corresponding promotion list of the new component. A warrant officer's promotion under this subsection shall be made pursuant to section 12242 of this title.".

(b) OFFICERS TRANSFERRED TO RESERVE ACTIVE-STATUS LIST.—

(1) IN GENERAL.—Section 624 of such title is amended by adding at the end the following new subsections:

"(e) Notwithstanding subsection (a)(2), in the case of an officer who (1) is selected for promotion by a selection board convened under this chapter, and (2) prior to the placement of the officer's name on the applicable promotion list, is approved for transfer to the reserve active-status list, the Secretary concerned may place the officer's name on an appropriate promotion list on the reserve active-status list. An officer's promotion under this subsection shall be made pursuant to section 14308 of this title.

"(f) Notwithstanding subsection (a)(3), in the case of an officer who (1) is placed on an all-fully-qualified-officers list, and (2) is subsequently approved for transfer to the reserve

active-status list, the Secretary concerned may place the officer's name on an appropriate all-fully-qualified-officers list on the reserve active status list. An officer's promotion under this subsection shall be made pursuant to section 14308 of this title.".

(2) DATE OF RANK.—Section 14308(c) of such title is amended—

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by inserting after paragraph (2) the following new paragraph:

"(3) The Secretary concerned may adjust the date of rank of an officer whose name is placed on a reserve active-status promotion list pursuant to subsection (e) or (f) of section 624 of this title.".

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

Section-by-Section Analysis

This proposal would provide increased flexibility to allow the Secretary concerned, in lieu of promoting on the established sequence or approval date, to transfer the promotion selection of a regular officer or warrant officer to the Reserve Component.

Under current authority, section 14317 of title 10, United States Code, as implemented by Department of Defense Instruction 1300.04, allows the Secretary concerned to transfer a promotable officer between components within the same military service and integrate the officer into the corresponding promotion list based upon the officer's date of rank in his or her current grade. The Secretary concerned has the same authority for warrant officers.

However, when a promotable officer/warrant officer's effective promotion date occurs shortly before transfer, the Secretary concerned has no authority to defer and transfer a promotion to the new component, which can contribute to financial burdens, lost employment opportunities, and quality of life issues for the family.

Annually, approximately 100 promotable commissioned/warrant officers, primarily in the grades of CW2, CW3, 1LT, and CPT, conducting an inter-component transfer are adversely impacted when the effective date of their promotion, by promotion list sequence, occurs within approximately 30-45 days of their separation date from their current component. Generally, the impacts are as follows:

- Regular Army officers who are promoted after they have received their separation order, but prior to their separation date, must be retained beyond their approved

separation date until a new appointment scroll for the higher grade is approved. If the officer had an approved start date for a civilian job, the extension on active duty may result in a delayed start date, or a lost employment opportunity. Additionally, the officer/warrant officer may have already shipped household goods and the family may have relocated to the new job location, all of which may cause unforeseen financial burdens and family separation.

- If a Regular Army officer is released from active duty (REFRAD) with an effective date of promotion occurring while the officer is on transition leave, the officer may report to the Reserve unit without a proper, approved Reserve appointment in the higher grade. In such cases the accession is considered erroneous as the appointment is in violation of statutory requirements. When identified, the Army must submit a ratification scroll; however, that process can take 3-6 months. The erroneous accession then puts the officer at risk of incurring debt and losing service time and promotion opportunities for the time served between REFRAD and the approved Reserve appointment.

- If an officer is separating from the Regular Army and transferring to the Reserve, but the new appointment at the higher grade is not yet approved by the approved separation date, the officer may be required to incur a break in service in order to continue with separation on the approved separation date, resulting in numerous adverse effects. The most significant impacts of a break in service in this scenario include the officer's promotion timeline being delayed, and the officer and his or her family temporarily lose educational, health, and/or dental benefits, all of which result in increased financial burdens.

If adopted, this proposal would eliminate delays in separation from active duty and other unintended consequences when an officer's promotion effective date occurs shortly prior to his or her approved separation date. It would also eliminate the requirement for the Secretary concerned to process another appointment scroll to the Secretary of Defense for the officer's promotion to the next higher grade. The Secretary concerned would retain the authority to defer the promotion in the current component and transfer it to the new component in accordance with existing promotion requirements.

Pursuant to sections 14308 and 741(for officers) or 12242 and 742 (for warrant officers) of title 10, the officer's or warrant officer's date of rank and effective date will be adjusted to align with the date of the original promotion sequence number, thereby, having no adverse impact to the officer's time in grade or pay and allowances.

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.

PERSONNEL					
Program	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**

Army	100	100	100	100	100
Navy					
Air Force					
Total	100	100	100	100	100

Changes to Existing Law: This proposal would make the following changes to sections 578, 624, and 14308 of title 10, United States Code:

§578. Promotions: how made; effective date

(a) When the report of a selection board convened under this chapter is approved by the Secretary concerned, the Secretary shall place the names of the warrant officers approved for promotion on a single promotion list for each grade (or grade and competitive category), in the order of the seniority of such officers on the warrant officer active-duty list.

(b) Promotions of warrant officers on the warrant officer promotion list shall be made when, in accordance with regulations issued by the Secretary concerned, additional warrant officers in that grade (or grade and competitive category), are needed.

(c) A regular warrant officer who is promoted is appointed in the regular grade to which promoted, and a reserve warrant officer who is promoted is appointed in the reserve grade to which promoted. The date of appointment in that grade and date of rank shall be prescribed by the Secretary concerned. A warrant officer is entitled to the pay and allowances for the grade to which appointed from the date specified in the appointment order.

(d) Promotions shall be made in the order in which the names of warrant officers appear on the promotion list and after warrant officers previously selected for promotion in the applicable grade (or grade and competitive category) have been promoted.

(e) A warrant officer who is appointed to a higher grade under this section is considered to have accepted such appointment on the date on which the appointment is made unless the officer expressly declines the appointment.

(f) A warrant officer who has served continuously as an officer since subscribing 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 this section.

(g) Notwithstanding subsection (d), and subject to regulations prescribed by the Secretary of Defense, in the case of a warrant officer who (1) is selected for promotion by a selection board convened under this chapter, and (2) prior to the placement of the officer's name on the applicable promotion list, is approved for transfer to a new component within the same military service, the Secretary concerned may place the officer's name on a corresponding promotion list of the new component. A warrant officer's promotion under this subsection shall be made pursuant to section 12242 of this title.".

* * * * *

§624. Promotions: how made

(a)(1) When the report of a selection board convened under section 611(a) of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers approved for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of the seniority of such officers on the active-duty list or based on particular merit, as determined by the promotion board. A promotion list is considered to be established under this section as of the date of the approval of the report of the selection board under the preceding sentence.

(2) Except as provided in subsection (d), officers on a promotion list for a competitive category shall be promoted to the next higher grade when additional officers in that grade and competitive category are needed. Promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted. Officers to be promoted to the grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary concerned.

(3)(A) Except as provided in subsection (d), officers on the active-duty list in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who are on an approved all-fully-qualified-officers list shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary concerned.

(B) An all-fully-qualified-officers list shall be considered to be approved for purposes of subparagraph (A) when the list is approved by the President. When so approved, such a list shall be treated in the same manner as a promotion list under this chapter.

(C) The Secretary of a military department may make a recommendation for approval of an all-fully-qualified-officers list only when the Secretary determines that all officers on the list are needed in the next higher grade to accomplish mission objectives.

(D) For purposes of this paragraph, an all-fully-qualified-officers list is a list of all officers on the active-duty list in a grade who the Secretary of the military department concerned determines—

(i) are fully qualified for promotion to the next higher grade; and

(ii) would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 611(a) of this title upon the convening of such a board.

(E) If the Secretary of the military department concerned determines that one or more officers or former officers were not placed on an all-fully-qualified-list under this paragraph because of administrative error, the Secretary may prepare a supplemental all-fully-qualified-officers list containing the names of any such officers for approval in accordance with this paragraph.

(b)(1) A regular officer who is promoted under this section is appointed in the regular grade to which promoted and a reserve officer who is promoted under this section is appointed in the reserve grade to which promoted.

(2) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d) of this title.

(c) Appointments under this section shall be made by the President, by and with the advice and consent of the Senate, except that appointments under this section in the grade of first lieutenant or captain, in the case of officers of the Army, Air Force, or Marine Corps, or lieutenant (junior grade) or lieutenant, in the case of officers of the Navy, shall be made by the President alone.

(d)(1) Under regulations prescribed by the Secretary of Defense, the appointment of an officer under this section may be delayed if—

(A) sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and such charges have not been disposed of;

(B) an investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer;

(C) a board of officers has been convened under chapter 60 of this title to review the record of the officer;

(D) a criminal proceeding in a Federal or State court is pending against the officer; or

(E) substantiated adverse information about the officer that is material to the decision to appoint the officer is under review by the Secretary of Defense or the Secretary concerned.

If no disciplinary action is taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not ordered removed from active duty by the Secretary concerned under chapter 60 of this title, if the officer is acquitted of the charges brought against him, or if, after a review of substantiated adverse information about the officer regarding the requirement for exemplary conduct set forth in section 7233, 8167, or 9233 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion, as the case may be, then unless action to delay an appointment has also been taken under paragraph (2) the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(2) Under regulations prescribed by the Secretary of Defense, the appointment of an officer under this section may also be delayed in any case in which there is cause to believe that the officer has not met the requirement for exemplary conduct set forth in section 7233, 8167, or 9233 of this title, as applicable, or is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he was selected for promotion. If it is later determined by a civilian official of the Department of Defense (not below the level of Secretary of a military department) that the officer is qualified for promotion to such grade and, after a review of adverse information regarding the requirement for exemplary conduct set forth in section 7233, 8167, or 9233 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion to such grade, the officer shall be retained on the promotion

list (including an approved all-fully-qualified-officers list, if applicable) and shall, upon such promotion, have the same date of rank, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(3) The appointment of an officer may not be delayed under this subsection unless the officer has been given written notice of the grounds for the delay, unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable. An officer whose promotion has been delayed under this subsection shall be afforded an opportunity to make a written statement to the Secretary concerned in response to the action taken. Any such statement shall be given careful consideration by the Secretary.

(4) An appointment of an officer may not be delayed under this subsection for more than six months after the date on which the officer would otherwise have been appointed unless the Secretary concerned specifies a further period of delay. An officer's appointment may not be delayed more than 90 days after final action has been taken in any criminal case against such officer in a Federal or State court, more than 90 days after final action has been taken in any court-martial case against such officer, or more than 18 months after the date on which such officer would otherwise have been appointed, whichever is later.

(e) Notwithstanding subsection (a)(2), in the case of an officer who (1) is selected for promotion by a selection board convened under this chapter, and (2) prior to the placement of the officer's name on the applicable promotion list, is approved for transfer to the reserve active-status list, the Secretary concerned may place the officer's name on an appropriate promotion list on the reserve active-status list. An officer's promotion under this subsection shall be made pursuant to section 14308 of this title.

(f) Notwithstanding subsection (a)(3), in the case of an officer who (1) is placed on an all-fully-qualified-officers list, and (2) is subsequently approved for transfer to the reserve active-status list, the Secretary concerned may place the officer's name on an appropriate all-fully-qualified-officers list on the reserve active status list. An officer's promotion under this subsection shall be made pursuant to section 14308 of this title.

* * * * *

§14308. Promotions: how made

(a) PROMOTION LIST.—When the report of a selection board convened under section 14101(a) or 14502 of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers selected for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of seniority of those officers on the reserve active-status list or based on particular merit, as determined by the promotion board. A promotion list is considered to be

established under this section as of the date of the approval of the report of the selection board under the preceding sentence.

(b) PROMOTION; HOW MADE; ORDER.—(1) Officers on a promotion list for a competitive category shall be promoted in the manner specified in section 12203 of this title.

(2) Officers on a promotion list for a competitive category shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary of the military department concerned. Except as provided in section 14311, 14312, or 14502(e) of this title or in subsection (d) or (e), promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted.

(3) Officers to be promoted to the grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary of the military department concerned.

(4)(A) Officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who are on an approved all-fully-qualified-officers list shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary concerned. Such promotions shall be in the manner specified in section 12203 of this title.

(B) An all-fully-qualified-officers list shall be considered to be approved for purposes of subparagraph (A) when the list is approved by the President. When so approved, such a list shall be treated in the same manner as a promotion list under this chapter and chapter 1403 of this title.

(C) The Secretary of a military department may make a recommendation to the President for approval of an all-fully-qualified-officers list only when the Secretary determines that all officers on the list are needed in the next higher grade to accomplish mission objectives.

(D) For purposes of this paragraph, an all-fully-qualified-officers list is a list of all officers on the reserve active-status list in a grade who the Secretary of the military department concerned determines—

(i) are fully qualified for promotion to the next higher grade; and

(ii) would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 14101(a) of this title upon the convening of such a board.

(E) If the Secretary of the military department concerned determines that one or more officers or former officers were not placed on an all-fully-qualified-list under this paragraph because of administrative error, the Secretary may prepare a supplemental all-fully-qualified-officers list containing the names of any such officers for approval in accordance with this paragraph.

(c) DATE OF RANK.—(1) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d)(2) of this title.

(2) The date of rank of an officer appointed to a higher grade under this section may be adjusted in the same manner as an adjustment may be made under section 741(d)(4) of this title in the date of rank of an officer appointed to a higher grade under section 624(a) of this title. In any use of the authority under the preceding sentence, subparagraph (C)(ii) of such section shall be applied by substituting “reserve active-status list” for “active-duty list”.

(3) The Secretary concerned may adjust the date of rank of an officer whose name is placed on a reserve active-status promotion list pursuant to subsection (e) or (f) of section 624 of this title.

(~~4~~3) Except as provided in paragraph (2) or as otherwise specifically authorized by law, a reserve officer is not entitled to additional pay or allowances if the effective date of the officer's promotion is adjusted to reflect a date earlier than the actual date of the officer's promotion.

(d) OFFICERS WITH RUNNING MATES.—An officer to whom a running mate system applies under section 14306 of this title and who is selected for promotion is eligible for promotion to the grade for which selected when the officer who is that officer's running mate becomes eligible for promotion under chapter 36 of this title. The effective date of the promotion of that officer shall be the same as that of the officer's running mate in the grade to which the running mate is promoted.

(e) ARMY RESERVE AND AIR FORCE RESERVE PROMOTIONS TO FILL VACANCIES.—Subject to this section and to section 14311(e) of this title, and under regulations prescribed by the Secretary of the military department concerned—

(1) an officer in the Army Reserve or the Air Force Reserve who is on a promotion list as a result of selection for promotion by a mandatory promotion board convened under section 14101(a) of this title or a board convened under section 14502 or chapter 36 of this title may be promoted at any time to fill a vacancy in a position to which the officer is assigned; and

(2) an officer in a grade below colonel in the Army Reserve or the Air Force Reserve who is on a promotion list as a result of selection for promotion by a vacancy promotion board convened under section 14101(a) of this title may be promoted at any time to fill the vacancy for which the officer was selected.

(f) EFFECTIVE DATE OF PROMOTION AFTER FEDERAL RECOGNITION.—(1) The effective date of a promotion of a reserve commissioned officer of the Army or the Air Force who is extended Federal recognition in the next higher grade in the Army National Guard or the Air National Guard under section 307 or 310 of title 32 shall be the date on which such Federal recognition in that grade is so extended.

(2) If the Secretary concerned determines that there was an undue delay in extending Federal recognition in the next higher grade in the Army National Guard or the Air National Guard to a reserve commissioned officer of the Army or the Air Force, and the delay was not attributable to the action (or inaction) of such officer, the effective date of the promotion concerned under paragraph (1) may be adjusted to a date determined by the Secretary concerned, but not earlier than the effective date of the State promotion.

(g) ARMY AND AIR FORCE GENERAL OFFICER PROMOTIONS.—A reserve officer of the Army or the Air Force who is on a promotion list for promotion to the grade of brigadier general or major general as a result of selection by a vacancy promotion board may be promoted to that grade only to fill a vacancy in the Army Reserve or the Air Force Reserve, as the case may be, in that grade.

SEC. ___. PROTECTION OF OVERSEAS FACILITIES AND ASSETS FROM UNMANNED AIRCRAFT.

(a) IN GENERAL.—Chapter 3 of title 10, United States Code, is amended by adding at the end the following new section:

"**§ 130j. Clarification of the applicability of laws with respect to certain activities outside the United States related to unmanned aircraft**

"Sections 32, 1030, and 1367 of title 18 and section 46502 of title 49 shall not be construed to apply to activities of the Department of Defense or the Coast Guard that are conducted outside the United States and are related to the mitigation of threats from unmanned aircraft systems or unmanned aircraft.".

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

"130j. Clarification of the applicability of laws with respect to certain activities outside of the United States related to unmanned aircraft.".

Section-by-Section Analysis

This proposal would ensure that Federal statutes do not restrict the Department of Defense or the Coast Guard in protecting facilities and assets from unmanned aircraft outside the United States. Currently, Federal criminal statutes restrict the Department's ability to counter unmanned aircraft outside the United States, including when such aircraft are conducting "mere surveillance" of military operations. "Mere surveillance" of military operations can jeopardize operational security and be predictive of a threat to military personnel and operations at a future time. Federal criminal statutes previously identified as potentially restricting counter-unmanned-aircraft operations are 18 U.S.C. § 1367 (interference with the operation of a satellite), 49 U.S.C. § 46502 (aircraft piracy), 18 U.S.C. §§ 2510-2522 (Wiretap Act), 18 U.S.C. §§ 3121-3127 (Pen/Trap Statute), 18 U.S.C. § 1030 (Computer Fraud and Abuse Act), and 18 U.S.C. § 32 (Aircraft Sabotage Act).

A related statute, 10 U.S.C. § 130i, allows the Department of Defense to protect certain facilities and assets inside the United States from unmanned-aircraft threats, as defined by the Secretary of Defense, in consultation with the Secretary of Transportation. Section 130i provides that 49 U.S.C. § 46502 and any provision of title 18, U.S.C., do not

apply to activities undertaken by the Department of Defense in accordance with section 130i. Section 130i, however, does not apply outside of the United States.

The Computer Fraud and Abuse Act and the Aircraft Sabotage Act have been held to have extraterritorial application. *See United States v. Ivanov*, 175 F. Supp. 2d 367, 374-75 (D. Conn. 2001) (noting that the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 has extraterritorial application); *United States v. Hamidullin*, 114 F. Supp. 3d 365, 384 ("The text of the applicable federal statutes makes it clear that Congress intended [the Aircraft Sabotage Act, 18 U.S.C. § 32(a),] to apply extraterritorially.") (*quoting United States v. Yousef*, 327 F.3d 56, 86 (2d Cir. 2003)). The analysis that applies to the aircraft sabotage statute also applies to the aircraft piracy statute. *Cf. Yousef*, 327 F.3d 56 at 86-87. Although there has been no holding related to the extraterritoriality of 18 U.S.C. § 1367, the ambit of the offense – interference with the authorized operation of a communications or weather satellite or obstruction or hindering any satellite transmission – indicates that it has extraterritorial application. These statutes are cited in the proposal because of their extraterritorial effect.

The Wiretap Act has been held not to apply to interception of communications outside the United States. *See Stowe v. DeVoy*, 588 F.2d 336, 341 (2d Cir. 1978), *cert. denied*, 442 U.S. 931 (1979) (citing *United States v. Toscanino*, 500 F. 2d 267, 279 (2d Cir. 1974)). Additionally, the Pen/Trap Statute appears not to have extraterritorial application because there is no clear indication that Congress intended 18. U.S.C. §§ 3121-3127 to have extraterritorial application. *See Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010) ("When a statute gives no clear indication of extraterritorial application, it has none."). Moreover, there is the contrary indication in 18 U.S.C. § 3123, which provides for orders authorizing the installation and use of a pen register or trap and trace device "anywhere within the United States." 18 U.S.C. § 3123(a)(1). Accordingly, these provisions of law are not listed in the proposal.

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

Changes to Existing Law: This proposal adds a new section to chapter 3 of title 10, United States Code, the full text of which is shown in the legislative language above.

SEC. ___. REVISION OF AUTHORITY FOR PROCEDURES TO ALLOW RAPID ACQUISITION AND DEPLOYMENT OF CAPABILITIES NEEDED UNDER SPECIFIED HIGH-PRIORITY CIRCUMSTANCES.

(a) REVISION AND CODIFICATION OF RAPID ACQUISITION AUTHORITY.—Chapter 253[1] of Part V of title 10, United States Code, is amended to read as follows:

"**CHAPTER 253—RAPID ACQUISITION PROCEDURES**

"Sec.
"3601. Procedures for urgent acquisition and deployment of capability needed in response to urgent operational needs or vital national security interest.

"§ 3601. Procedures for urgent acquisition and deployment of capability needed in response to urgent operational needs or vital national security interest

"(a) PROCEDURES.—

"(1) IN GENERAL.—The Secretary of Defense shall prescribe procedures for the urgent acquisition and deployment of capability needed in response to urgent operational needs. The capabilities for which such procedures may be used in response to an urgent operational need are those—

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

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

"(ii) do not require substantial development effort;

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

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

[1] This proposal uses citations and text of title 10, United States Code, that will be in effect as of January 1, 2022, pursuant to section 1801(d)(1) of the FY21 NDAA (Public Law 116-283). Previous to such date, this proposal would have added a new section 2317 to the end of chapter 137 of title 10.

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

"(2) DEFINITION.—In this section, the term 'section 804 rapid acquisition pathway' means the rapid fielding acquisition pathway or the rapid prototyping acquisition pathway authorized under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92)[2].

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

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

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

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

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

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

[2] Previous to January 1, 2022, the full citation for this provision of law included "10 U.S.C. 2302 note". Section 2302 of title 10 is repealed as of January 1, 2022.

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

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

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

"(4) Specific procedures in accordance with the guidance developed under section 804(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92)[3].

"(c) RESPONSE TO COMBAT EMERGENCIES AND CERTAIN URGENT OPERATIONAL NEEDS.—

"(1) DETERMINATION OF NEED FOR URGENT ACQUISITION AND DEPLOYMENT.—

"(A) In the case of any capability that, as determined in writing by the Secretary of Defense, is urgently needed to eliminate a documented deficiency that has resulted in combat casualties, or is likely to result in combat casualties, the Secretary may use the procedures developed under this section in order to accomplish the urgent acquisition and deployment of the needed capability.

"(B) In the case of any capability that, as determined in writing by the Secretary of Defense, is urgently needed to eliminate a documented deficiency that impacts an ongoing or anticipated contingency operation and that, if left unfulfilled, could potentially result in loss of life or critical mission failure, the

[3] Previous to January 1, 2022, the full citation for this provision of law included "10 U.S.C. 2302 note". Section 2302 of title 10 is repealed as of January 1, 2022.

Secretary may use the procedures developed under this section in order to accomplish the urgent acquisition and deployment of the needed capability.

"(C)(i) In the case of any cyber capability that, as determined in writing by the Secretary of Defense, is urgently needed to eliminate a deficiency that as the result of a cyber attack has resulted in critical mission failure, the loss of life, property destruction, or economic effects, or if left unfilled is likely to result in critical mission failure, the loss of life, property destruction, or economic effects, the Secretary may use the procedures developed under this section in order to accomplish the urgent acquisition and deployment of the needed offensive or defensive cyber capability.

"(ii) In this subparagraph, the term 'cyber attack' means a deliberate action to alter, disrupt, deceive, degrade, or destroy computer systems or networks or the information or programs resident in or transiting these systems or networks.

"(2) DESIGNATION OF SENIOR OFFICIAL RESPONSIBLE.—

"(A)(i) Except as provided under clause (ii), whenever the Secretary makes a determination under subparagraph (A), (B), or (C) of paragraph (1) that a capability is urgently needed to eliminate a deficiency described in that subparagraph, the Secretary shall designate a senior official of the Department of Defense to ensure that the needed capability is acquired and deployed as quickly as possible, with a goal of awarding a contract for the acquisition of the capability within 15 days.

"(ii) Clause (i) does not apply to an acquisition initiated in the case of a determination by the Secretary that funds are necessary to immediately initiate a

project under a section 804 rapid acquisition pathway if the designated official for acquisitions using such pathway is a service acquisition executive.

"(B) Upon designation of a senior official under subparagraph (A) with respect to a needed capability, the Secretary shall authorize that official to waive any provision of law or regulation described in subsection (d) that such official determines in writing would unnecessarily impede the urgent acquisition and deployment of the needed capability. In a case in which the needed capability cannot be acquired without an extensive delay, the senior official shall require that an interim solution be implemented and deployed using the procedures developed under this section to minimize adverse consequences resulting from the urgent need.

"(3) USE OF FUNDS.—

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

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

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

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

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

"(iv) in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under a section 804 rapid acquisition pathway, in an amount aggregating not more than $50,000,000 during any fiscal year.

"(C) For each fiscal year, the limits set forth in clauses (i) and (ii) of subparagraph (B) do not apply to the exercise of authority under such clauses provided that the total amount of capabilities acquired as provided under such subparagraph does not exceed $650,000,000 during such fiscal year.

"(4) Notification to congressional defense committees.—

"(A) In the case of a determination by the Secretary under paragraph (1)(A) and (1)(C), the Secretary shall notify the congressional defense committees of the determination within 15 days after the date of the determination.

"(B) In the case of a determination by the Secretary under paragraph (1)(B), the Secretary shall notify the congressional defense committees of the

determination at least 10 days before the date on which the determination is effective.

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

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

"(i) Identification of the capability to be acquired.

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

"(iii) The source of funds for the acquisition.

"(E) A notice under this paragraph shall fulfill any requirement to provide notification to Congress for a program (referred to as a 'new start program') that has not previously been specifically authorized by law or for which funds have not previously been appropriated.

"(F) A notice under this paragraph shall be provided in consultation with the Director of the Office of Management and Budget.

"(5) LIMITATION ON OFFICERS WITH AUTHORITY.—The authority to make a determination under subparagraph (A), (B), or (C) of paragraph (1) and under paragraph (3)(A) that funds are necessary to immediately initiate a project under a section 804 rapid acquisition pathway, to designate a senior official responsible under paragraph (3), and to provide notification to the congressional defense committees under paragraph (4) may be exercised only by the Secretary or Deputy Secretary of Defense.

"(d) AUTHORITY TO WAIVE CERTAIN LAWS AND REGULATIONS.—

"(1) AUTHORITY.—The Secretary or Deputy Secretary of Defense, for a capability required to address the needs described in subsection (c)(1) or, upon a determination described in subsection (c)(1), and the senior official designated in accordance with subsection (c)(2), with respect to that designation, is authorized to waive any provision of law or regulation addressing—

"(A) the establishment of a requirement or specification for the capability to be acquired;

"(B) the research, development, test, and evaluation of the capability to be acquired;

"(C) the production, fielding, and sustainment of the capability to be acquired; or

"(D) the solicitation, selection of sources, and award of the contracts for procurement of the capability to be acquired.

"(2) LIMITATIONS.—Nothing in this subsection authorizes the waiver of—

"(A) the requirements of this section;

"(B) any provision of law imposing civil or criminal penalties; or

"(C) any provision of law governing the proper expenditure of appropriated funds.

"(e) OPERATIONAL ASSESSMENTS.—

"(1) The process prescribed under subsection (b)(2)(A) for demonstrating performance and evaluating the current operational performance of a capability proposed pursuant to subsection (b)(1)(B) shall include the following:

"(A) An operational assessment in accordance with procedures prescribed by the Director of Operational Test and Evaluation.

"(B) A requirement to provide information about any deficiency of the capability in meeting the original requirements for the capability (as stated in a statement of the urgent operational need or similar document) to the deployment decision-making authority.

"(2) The process may not include a requirement for any deficiency of capability identified in the operational assessment to be the determining factor in deciding whether to deploy the capability.

"(3) If a capability is deployed under the procedures prescribed pursuant to this section, or under any other authority, before operational test and evaluation of the capability is completed, the Director of Operational Test and Evaluation shall have access to operational records and data relevant to such capability in accordance with section 139(e)(3) of this title for the purpose of completing operational test and evaluation of the capability. Such access shall be provided in a time and manner determined by the Secretary of Defense consistent with requirements of operational security and other relevant operational requirements.".

(b) CLERICAL AMENDMENT.— The table of chapters at the beginning of subtitle A, and at the beginning of part V of subtitle A, of title 10, United States Code, are each amended by striking the item relating to chapter 253 and inserting the following:

"253. Rapid Acquisition Procedures .....3601".

(c) CONFORMING REPEALS.—The following provisions of law are repealed:

(1) Section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383)[4].

(2) Section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314)[5].

Section-by-Section Analysis

This proposal would consolidate and harmonize sections of legislation related to rapid acquisition and urgent operational needs, specifically:

1. Section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2302 note[6]) is repealed. The required review process is incorporated into "Urgent Capability Acquisition," DoD Instruction 5000.81, December 31, 2019. The repeal of such section 804 and incorporation of selected items from section 806(c) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 in the proposed changes resolves inconsistencies between multiple laws associated with urgent acquisition in support of urgent operational needs.

2. Section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2302 note) is codified in title 10, United States Code, and as codified is revised as follows:

Revision to subsection (a): Changes first sentence to reflect a continuing Secretary responsibility to prescribe procedures rather than the one time requirement from December 2002. Introduces the phrase "urgent acquisition" to distinguish acquisition in response to urgent needs from acquisition associated with "section 804 rapid acquisition pathway." "Urgent acquisition" is used where appropriate in the remaining subsections.

Proposed subsection (a)(1)(A): Aligns the requirements for capabilities subject to the procedures for urgent acquisition and deployment in response to an urgent operational need that were required by section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4256; 10 U.S.C. 2302 note) and were subsequently incorporated into DoD Instruction 5000.81 "Urgent Capability Acquisition" December 31, 2019.

Proposed subsection (a)(2) allows for the use, throughout the proposal, of the shorter phrase, "section 804 rapid acquisition pathway," in lieu of the full cite: "for capabilities that are developed or procured under the rapid fielding or rapid prototyping acquisition pathways under

[4] Previous to January 1, 2022, the full citation for this provision of law included "10 U.S.C. 2302 note". Section 2302 of title 10 is repealed as of January 1, 2022.
[5] See footnote 4.
[6] See footnote 4. All references to "10 U.S.C. 2302 note" are included in the section-by-section analysis for convenience.

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

Proposed subsections (b) through (e), except subsection (c)(3): Except as noted in the paragraph below, regarding subsection (c)(3) "USE OF FUNDS:", the term "Supplies and associated services" is replaced throughout with "capability." This provides consistency with the terminology used by the Chairman, Joint Chiefs of Staff in the Joint Staff Instructions and processes for the validation of capability gaps associated with urgent operational needs. It is also consistent with the terminology adopted by the Department of Defense in DoD Directive 5000.71, "Rapid Fulfillment of Combatant Commander Urgent Operational Needs," August 24, 2012, and "Urgent Capability Acquisition," DoD Instruction 5000.81, December 31, 20. Subsection (b)(2)(A) is modified by replacing the word "capability" with "performance" for purposes of clarity.

Proposed subsection (b)(3): Adds a process that makes subsection (c)(5) "Time for transitioning to Normal Acquisition System," unnecessary and subsection (c)(5) is therefore proposed to be deleted. Proposed subsection (b)(3) requires a process to evaluate and determine the disposition of a capability, including termination (demilitarization or disposal), sustainment for current contingency operation, or transition to program of record. This process is established in "Urgent Capability Acquisition," DoD Instruction 5000.81, December 31, 2019. The process in DoD Instruction 5000.81 establishes a more suitable and flexible process for determining the ultimate disposition of capability fielded in response to an urgent operational need. The process describes specific responsibility and accountability for accomplishing the disposition analyses and decision which, the Department believes, is more comprehensive and effective than what is currently required by subsection (c)(5).

Proposed subsection (b)(4) renumbered (old subsection (b)(3)).

Proposed subsection (c)(1)(C): Modified to delete the phrase, "without delegation." Deleting this phrase conforms (c)(1)(C) with the subparagraphs (A) and (B) above it, and also makes the subparagraph consistent with subsection (c)(5) that allows that the authority to make a determination under subparagraph (A), (B), (C) of paragraph (1) may be exercised only by the Secretary or Deputy Secretary of Defense.

Subsection (c)(2)(B): Clarifies that the Secretary's authorization to designated official is with regard to a needed capability.

Subsection (c)(3) "USE OF FUNDS:" The term "supplies and associated support services," is deleted as it can be misinterpreted to unnecessarily restrict the Secretary to using only those funds appropriated for "supplies and associated support services," rather than allowing the Secretary to, more appropriately, use <u>any</u> funds available to the Department of Defense. Clarifies that the use of funds is for the documented or identified deficiency or compelling national security interest.

Subsection (c)(3)(B): Provides an exception for new subsection (c)(3)(C). Clarifies the authority provided by the section.

Subsection (c)(3)(B)(iv): revises the funding authority from $200,000,000 to $50,000,000, making permanent the $50M limit previously established for fiscal year 2020 by section 8078, Public Law 116-93, December 20, 2019, and again for fiscal year 2021 by section 8078, Public Law 116-260, January 3, 2020.

Subsection (c)(3)(C): Provides permanent authority to increase the limitations established in subsection (c)(3)(B)(i) and (ii). This flexibility in authority will enable the Department to quickly address more of its most urgent operational needs without exceeding the $650,000,000 ceiling set by Congress.

Subsection (c)(3)(C): revises the total funding authority from $800,000,000 to $650,000,000, pursuant to section 8078, Public Law 116-93, December 20, 2019 and again for fiscal year 2021 by section 8078, Public Law 116-260, January 3, 2020.

Subsection (c)(4)(A): Amended to also add subsection (c)(1)(C). This corrects an administrative oversight in the FY16 NDAA that omitted notification of the Congressional Defense Committees when the cyber attack provision of (c)(1)(C) is used.

Subsection (c)(4)(C): Added to require notification to the Defense Committees within 10 days after the date of the use of such funds.

New subparagraph (E) of subsection (c)(4): This subparagraph is amended to clarify and better conform to legislative language regarding "new starts."

Subsection (c)(5): Subsection deleted - replaced by subsection (b)(3), as discussed previously, above, under the explanation for subsection (b)(3).

Subsection (c)(5) (old subsection (c)(5)): "LIMITATION ON OFFICERS WITH AUTHORITY …" amended to incorporate a section 804 rapid acquisition pathway provision and to enable both the Secretary and the Deputy Secretary of Defense, only, to exercise the listed authorities.

Subsection (d)(1)(C): Adds new subparagraph (C) and re-letters subparagraph (D). New subparagraph (C) adds authority for waivers associated with the production, fielding, and sustainment of the capability. This aligns the waiver authority to that for the "Rapid Acquisition and Deployment Procedures for United States Special Operations Command" [section 851, Public Law 113-291, December 19, 2014] and "Secretary of Defense Waiver of Acquisition Laws to Acquire Vital National Security Capabilities" [section 806, Public Law 114-92, November 25, 2015].

Subsection (e): Replaces the term "Testing Requirement" with "Operational Assessment" to better convey that the evaluation of a proposed solution for an urgent operational need may simply be a report on its capabilities and limitations. This allows the warfighter to determine if the proposed solution will adequately address the urgent need in a timely manner. "Testing

Requirement" if wrongly interpreted can lead to a formal and time consuming process that results in a more sophisticated solution that arrives too late to be useful to the warfighter.

Subsection (f): The "Limitation" established in (previous) subsection (f) is recommended for deletion. The majority of urgent need solutions have not been associated with major systems. The current language in subsection (f) is therefore inappropriate in the majority of instances. The quantities procured in fulfillment of urgent needs are limited to those required by the urgent operational need submitted by the warfighter. Urgent need solutions are not procured to equip general forces unless they are later transitioned to the normal acquisition system.

Subsection (g): The definition of associated support services is deleted. The term is no longer needed with the use of the term "capability" throughout the revised subsection (c).

The final subsection in section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 regarding the Secretary of Defense certification is deleted. The required certification was made by the Secretary of Defense in the notification letters to the Defense Committees on August 21, 2013.

Resource Information: This proposal has no impact on use of resources as it addresses authorities associated with fulfilling the urgent needs of the warfighter and authority to use any existing funds available to the Department in support of such urgent needs. The resources impacted to implement these changes with regard to guidance, directives, and training are incidental in nature and amounts and are included within the Fiscal Year (FY) 2023 President's Budget request.

Changes to Existing Law: This proposal would repeal section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2302 note):

~~**SEC. 804. REVIEW OF ACQUISITION PROCESS FOR RAPID FIELDING OF CAPABILITIES IN RESPONSE TO URGENT OPERATIONAL NEEDS**~~

~~(a) Review of Rapid Acquisition Process Required.~~

~~(b) Discriminating Urgent Operational Needs From Traditional Requirements.~~

~~(1) Expedited review process.—Not later than 270 days after the date of the enactment of this Act, the Secretary shall develop and implement an expedited review process to determine whether capabilities proposed as urgent operational needs are appropriate for fielding through the process for the rapid fielding of capabilities or should be fielded through the traditional acquisition process.~~

~~(2) Elements.—The review process developed and implemented pursuant to paragraph (1) shall—~~

~~(A) apply to the rapid fielding of capabilities in response to joint urgent operational need statements and to other urgent operational needs statements generated by the military departments and the combatant commands;~~

~~(B) identify officials responsible for making determinations described in paragraph (1);~~

~~(C) establish appropriate time periods for making such determinations;~~

~~(D) set forth standards and criteria for making such determinations based on considerations of urgency, risk, and life-cycle management;~~

~~(E) establish appropriate thresholds for the applicability of the review process, or of elements of the review process; and~~
~~(F) authorize appropriate officials to make exceptions from standards and criteria established under subparagraph (D) in exceptional circumstances.~~
~~(3) Covered capabilities. The review process developed and implemented pursuant to paragraph (1) shall provide that, subject to such exceptions as the Secretary considers appropriate for purposes of this section, the acquisition process for rapid fielding of capabilities in response to urgent operational needs is appropriate only for capabilities that-~~
~~(A) can be fielded within a period of two to 24 months;~~
~~(B) do not require substantial development effort;~~
~~(C) are based on technologies that are proven and available; and~~
~~(D) can appropriately be acquired under fixed price contracts.~~
~~(4) Inclusion in report. The Secretary shall include a description of the expedited review process implemented pursuant to paragraph (1) in the report required by subsection (a).~~

2. This proposal would revise section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2302 note) and codify it as section 3601 of title 10, United States Code, as set forth above. The revisions to the text of such section 806 are as follows:

(a) ~~REQUIREMENT TO ESTABLISH~~ PROCEDURES.~~-Not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002], the~~
(1) IN GENERAL. - The Secretary of Defense shall prescribe procedures for the ~~rapid~~ urgent acquisition and deployment of capability ~~supplies and associated support services that are~~ needed in response to urgent operational needs. The capabilities for which such procedures for urgent acquisition and deployment may be used in response to urgent operational needs are those

~~(1)(A) currently under development by the Department of Defense or available from the commercial sector; or~~
~~(B) require only minor modifications to supplies described in subparagraph (A);~~
~~(C) developed or procured under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note); and~~
~~(2) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations.~~
(A) that, subject to such exceptions as the Secretary considers appropriate for purposes of this section, -
(i) can be fielded within a period of two to 24 months;
(ii) do not require substantial development effort;
(iii) are based on technologies that are proven and available; and
(iv) can appropriately be acquired under fixed price contracts.
or
(B) that can be developed or procured under a section 804 rapid acquisition pathway

(2) DEFINITION. – In this section, the term 'section 804 rapid acquisition pathway' means the rapid fielding acquisition pathway or the rapid prototyping acquisition pathway authorized

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

(b) ~~ISSUES~~ MATTERS TO BE ~~ADDRESSED~~ INCLUDED.-The procedures prescribed under subsection (a) shall include the following:

(1) A process for streamlined communications between the Chairman of the Joint Chiefs of Staff, the acquisition community, and the research and development community, including-

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

(B) a process for the acquisition community and the research and development community to propose ~~supplies and associated support services~~ capability that meet the needs communicated by the combatant commands and the Chairman of the Joint Chiefs of Staff.

(2) Procedures for demonstrating, ~~rapidly~~ urgently acquiring, and deploying ~~supplies and associated support services~~ a capability proposed pursuant to paragraph (1)(B), including-

(A) a process for demonstrating performance and evaluating for current operational purposes the ~~existing capability~~ performance of the ~~supplies and associated support services~~ capability;

(B) a process for developing an acquisition and funding strategy for the deployment of the ~~supplies and associated support services~~ capability; and

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

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

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

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

(1) DETERMINATION OF NEED FOR ~~RAPID~~ URGENT ACQUISITION AND DEPLOYMENT.—(A) In the case of any ~~supplies and associated support services~~ capability that, as determined in writing by the Secretary of Defense, ~~are~~ is urgently needed to eliminate a documented deficiency that has resulted in combat casualties, or is likely to result in combat casualties, the Secretary may use the procedures developed under this section in order to accomplish the ~~rapid~~ urgent acquisition and deployment of the needed ~~supplies and associated support services~~ capability.

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

(C)(i) In the case of any ~~supplies and associated support services~~ cyber capability that, as determined in writing by the Secretary of Defense ~~without delegation~~, ~~are~~ is urgently needed to eliminate a deficiency that as the result of a cyber attack has resulted in critical

mission failure, the loss of life, property destruction, or economic effects, or if left unfilled is likely to result in critical mission failure, the loss of life, property destruction, or economic effects, the Secretary may use the procedures developed under this section in order to accomplish the ~~rapid~~ urgent acquisition and deployment of the needed offensive or defensive cyber ~~capabilities, supplies, and associated support services~~ capability.

(ii) In this subparagraph, the term "cyber attack" means a deliberate action to alter, disrupt, deceive, degrade, or destroy computer systems or networks or the information or programs resident in or transiting these systems or networks.

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

(ii) Clause (i) does not apply to an acquisition ~~acquisitions~~ initiated in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 rapid acquisition pathway ~~of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note)~~ if the designated official for acquisitions using such pathway ~~pathways~~ is the service acquisition executive.

(B) Upon designation of a senior official under subparagraph (A) with respect to a needed capability, the Secretary shall authorize that official to waive any provision of law, ~~policy, directive,~~ or regulation described in subsection (d) that such official determines in writing would unnecessarily impede the ~~rapid~~ urgent acquisition and deployment of the needed ~~supplies and associated support services~~ capability. In a case in which the needed ~~supplies and associated support services~~ capability cannot be acquired without an extensive delay, the senior official shall require that an interim solution be implemented and deployed using the procedures developed under this section to minimize adverse consequences resulting from the urgent need.

(3) USE OF FUNDS.—(A) In any fiscal year in which the Secretary makes a determination described in subparagraph (A), (B), or (C) of paragraph (1), or upon the Secretary making a determination that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 rapid acquisition pathway ~~of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note)~~ based on a compelling national security need, the Secretary may use any funds available to the Department of Defense ~~for acquisitions of supplies and associated support services~~ if the determination includes a written finding that the use of such funds is necessary to address ~~the deficiency~~ in a timely manner the deficiency documented or identified under such subparagraph (A), (B), or (C) or the compelling national security need identified for purposes of such section 804 rapid acquisition pathway, respectively.

(B) ~~The authority of~~ Except as provided under subparagraph (C), the authority of provided by this section may only be used to acquire ~~supplies and associated support services~~ capability—

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

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

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

(iv) in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 rapid acquisition pathway ~~of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note),~~ in an amount not more than ~~$200,000,000~~ $50,000,000 during any fiscal year.

(C) For each ~~of~~ fiscal year ~~years 2017 and 2018~~, the limits set forth in clauses (i) and (ii) of subparagraph (B) do not apply to the exercise of authority under such clauses provided that the total amount of ~~supplies and associated support services~~ capability acquired as provided under such subparagraph does not exceed ~~$800,000,000~~ $650,000,000 during such fiscal year.

(4) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—(A) In the case of a determination by the Secretary under paragraph (1)(A) and (1)(C), the Secretary shall notify the congressional defense committees ~~[Committees on Armed Services and Appropriations of the senate and the House of Representatives]~~ of the determination within 15 days after the date of the determination.

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

(C) In the case of a determination by the Secretary under paragraph (3)(A) that funds are necessary to immediately initiate a project under a ~~the rapid fielding or rapid prototyping acquisition pathways under~~ section 804 rapid acquisition pathway ~~of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note)~~, the Secretary shall notify the congressional defense committees ~~[Committees on Armed Services and Appropriations of the Senate and the House of Representatives]~~ of the determination within 10 days after the date of the use of such funds.

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

(i) Identification of t~~T~~he ~~supplies and associated support services~~ capability to be acquired.

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

(iii) The source of funds for the acquisition.

(E) A notice under this paragraph shall ~~be sufficient to~~ fulfill any requirement to provide notification to Congress for a program (referred to as a "new start program") that has not previously been specifically authorized by law or for which funds have not previously been appropriated.

(F) A notice under this paragraph shall be provided in consultation with the Director of the Office of Management and Budget.

~~(5) TIME FOR TRANSITIONING TO NORMAL ACQUISITION SYSTEM.—(A) Any acquisition initiated under this subsection shall transition to the normal acquisition system not later than two years after the date on which the Secretary makes the determination described in paragraph (1) with respect to the supplies and associated support services concerned.~~

~~(B) Subparagraph (A) does not apply to acquisitions initiated in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under~~

~~the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note).~~
(~~6~~5) LIMITATION ON OFFICERS WITH AUTHORITY ~~TO MAKE A DETERMINATION~~.—The authority to make a determination under subparagraph (A), (B), or (C) of paragraph (1) and under paragraph (3)(A), that funds are necessary to immediately initiate a project under a section 804 rapid acquisition pathway, to designate a senior official responsible under paragraph (3), and to provide notification to the congressional defense committees under paragraph (4) may be exercised only by the Secretary or Deputy Secretary of Defense.

(d) AUTHORITY TO WAIVE~~R OF~~ CERTAIN LAWS~~STATUTES~~ AND REGULATIONS.-(1) The Secretary and Deputy Secretary of Defense, for a capability required to address the needs described in subsection (c)(1), or, upon ~~Upon~~ a determination described in subsection (c)(1), the senior official designated in accordance with subsection (c)(2) with respect to that designation, is authorized to waive any provision of law~~, policy, directive~~ or regulation addressing-

(A) the establishment of ~~the~~a requirement or specification for the ~~supplies and associated support services~~ capability to be acquired;

(B) the research, development, test, and evaluation of the ~~supplies and associated support services~~ capability to be acquired; ~~or~~

(C) the production, fielding, and sustainment of the capability to be acquired, or

(~~C~~D) the solicitation, ~~and~~ selection of sources, and ~~the~~ award of the contracts for procurement of the ~~supplies and associated support services~~ capability to be acquired.

(2) LIMITATIONS. - Nothing in this subsection authorizes the waiver of-

(A) the requirements of this section ~~or the regulations implementing this section; or~~

(B) any provision of law imposing civil or criminal penalties~~.~~; or

(C) any provision of law governing the proper expenditure of appropriated funds.

(e) ~~Testing Requirement.~~OPERATIONAL ASSESSMENTS.-(1) The process prescribed under subsection (b)(2)(A) for demonstrating performance and evaluating ~~for~~the current operational ~~purposes~~performance ~~the existing capability~~of a~~the supplies and associated support services~~ capability proposed pursuant to subsection (b)(1)(B) ~~prescribed under subsection (b)(2)(A)~~ shall include the following:-

(A) ~~a~~An operational assessment in accordance with procedures prescribed by the Director of Operational Test and Evaluation~~; and~~

(B) ~~a~~A requirement to provide information about any deficiency of the ~~supplies and associated support services~~ capability in meeting the original requirements for the ~~supplies and associated support services~~ capability (as stated in a statement of the urgent operational need or similar document) to the deployment decisionmaking authority.

(2) The process may not include a requirement for any deficiency of ~~supplies and associated support services~~ capability identified in the operational assessment to be the determining factor in deciding whether to deploy the ~~supplies and associated support services~~ capability.

(3) If ~~supplies and associated support services~~ a capability ~~are~~is deployed under the ~~rapid acquisition and deployment~~ procedures prescribed pursuant to this section, or under any other authority, before ~~the completion of~~ operational test and evaluation of the ~~supplies and associated support services~~ capability is completed, the Director of Operational Test and Evaluation shall

have access to operational records and data relevant to such ~~supplies and associated support services~~ capability in accordance with section 139(e)(3) of this title ~~10, United States Code~~, for the purpose of completing operational test and evaluation of the ~~supplies and associated support services~~ capability. ~~The~~Such access ~~to the operational records and data~~ shall be provided in a time and manner determined by the Secretary of Defense consistent with requirements of operational security and other relevant operational requirements.

~~(f) Limitation. In the case of supplies that are part of a major system for which a low-rate initial production quantity determination has been made pursuant to section 2400 of title 10, United States Code, the quantity of such supplies acquired using the procedures prescribed pursuant to this section may not exceed an amount consistent with complying with limitations on the quantity of articles approved for low-rate initial production for such system. Any such supplies shall be included in any relevant calculation of quantities for low-rate initial production for the system concerned.~~

~~(g) Associated Support Services Defined. In this section, the term 'associated support services' means training, operation, maintenance, and support services needed in connection with the deployment of supplies to be acquired pursuant to the authority of this section. The term does not include functions that are inherently governmental or otherwise exempted from private sector performance.~~

* * * * *

SEC. ___. SELECTED RESERVE AND READY RESERVE ORDER TO ACTIVE DUTY TO RESPOND TO A SIGNIFICANT CYBER INCIDENT.

Section 12304 of title 10, United States Code, is amended—

(1) in subsection (a) in the heading, by striking "AUTHORITY" and inserting "OPERATIONAL MISSIONS AND CERTAIN OTHER EMERGENCIES";

(2) by redesignating subsections (c) through (j) as subsections (d) through (k), respectively;

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

"(c) SIGNIFICANT CYBER INCIDENTS.—The Secretary of Defense may, without the consent of the member affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of the Selected Reserve or Individual Ready Reserve to active duty for a continuous period of not more than 365 days when the Secretary of Defense determines it is necessary to augment the active forces for a Department of Defense response to a covered incident.";

(4) in paragraph (1) of subsection (d), as redesignated by paragraph (2) of this section, by inserting "or subsection (c)" after "subsection (b)";

(5) in subsection (h) (as so redesignated)—

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

(B) by striking "Whenever any" and inserting "(1) Whenever any"; and

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

"(2) Whenever any unit of the Selected Reserve or any member of the Selected Reserve not assigned to a unit organized to serve as a unit, or any member of the

Individual Ready Reserve, is ordered to active duty under authority of subsection (c), the service of all units or members so ordered to active duty may be terminated by—

"(A) order of the Secretary of Defense, or

"(B) law."; and

(6) in subsection (k) (as so redesignated)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) The term 'covered incident' means—

"(A) a cyber incident involving a Department of Defense information system, or a breach of a Department of Defense system that involves personally identifiable information, that the Secretary of Defense determines is likely to result in demonstrable harm to the national security interests, foreign relations, or the economy of the United States, or to the public confidence, civil liberties, or public health and safety of the American people;

"(B) a cyber incident or collection of related cyber incidents that are determined by the President to be likely to result in demonstrable harm to the national security interests, foreign relations, or economy of the United States or to the public confidence, civil liberties, or public health and safety of the people of the United States; or

"(C) a significant incident declared pursuant to section 2233 of the Homeland Security Act of 2002 (6 U.S.C. 677b).".

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

Section-by-Section Analysis

This proposal would amend section 12304 of title 10, United States Code, to authorize the Secretary of Defense to order units and members of the Ready Reserve, without the consent of the members, to active duty. The activation of these reserve units and members would be to participate in a Department of Defense (DoD) response to a significant cyber incident, including DoD support, as requested by the Department of Homeland Security in response to a significant cyber incident pursuant to a request for assistance under the section 1535 of title 31, United States Code (commonly referred to as the 'Economy Act'), or other legal reimbursable mechanisms, as applicable.

This proposal is intended to address the growing cyber threat, as well as recommendations from Congress and the Cyberspace Solarium Commission that DoD increase its cyber force capacity and leverage reserve component (RC) personnel more effectively. This new authority would assist the Department in planning for how to respond to a significant cyber incident by providing clarity over the ability to access RC personnel in carrying out that response.

Although this proposal would not grow the cyber mission force and would not provide authority for new missions, it would provide enhanced access to the existing DoD cyber force (i.e., RC units and members of the DoD cyber force) when DoD missions require additional forces. This enhanced access would make additional capacity available to the Department when DoD needs to respond to a significant cyber incident affecting personnel, assets, installations, and operations, including the DoD Information Network (DoDIN), or support the request of the Department of Homeland Security as the lead Federal agency for asset response to a significant cyber incident.

This new authority is necessary because unless a significant cyber incident is directly related to a declaration of war or national emergency, the Secretary of Defense would have to rely on other, less effective options, such as: (1) a temporary presidential authorization to mobilize RC forces pursuant to section 12304 for a named operational mission; (2) determining if the Secretaries of the Military Departments programmed and budgeted, and were appropriated funds by Congress, to use section 12304b of title 10, United States Code, to mobilize RC forces; or volunteers and the consent of Governors (i.e., Section 12301(d) of Title 10, U.S. Code, and section 502(f) of title 32, United States Code). Seeking presidential authorization or volunteers and the consent of Governors for an emerging crisis involving a significant cyber incident would pose potentially critical risks (e.g., delays in, and insufficient personnel or duration for, the Department's response). This proposal would eliminate such risks by establishing a permanent authority.

By establishing this new authority in section 12304, this proposal would ensure that RC members are eligible for the appropriate benefits and entitlements when mobilized to respond to a significant cyber incident (e.g., pre-mobilization health care; transitional health care; consideration of active duty service to reduce the age for retired pay; the high-deployment allowance for lengthy or numerous deployments and frequent mobilizations; Post-9/11 educational assistance; and non-reduction in pay while serving in the uniformed services or National Guard).

The definition of the term "covered incident" used by this proposal is adopted from: (a) the definition of a "major incident" provided by the Office of Management Budget Memorandum 22-05, "Fiscal Year 2021-2022 Guidance on Federal Information Security and Privacy Management Requirements," (i.e., any incident [involving a Federal information system] that is likely to result in demonstrable harm to the national security interests, foreign relations, or the economy of the United States or to the public confidence, civil liberties, or public health and safety of the American people; or a breach [in a Federal information system] that involves personally identifiable information (PII) that, if exfiltrated, modified, deleted, or otherwise compromised, is likely to result in demonstrable harm to the national security interests, foreign relations, or the economy of the United States, or to the public confidence, civil liberties, or public health and safety of the American people); (b) the definition of a "significant cyber incident" included in Presidential Policy Directive 41, "United States Cyber Incident Coordination"; and (c) the Secretary of Homeland Security's authority to declare a significant incident pursuant to Section 2233 of the Homeland Security Act of 2002, as amended by Section 70602 of the Infrastructure and Jobs Act (Public Law 117-58). Adopting these criteria would help ensure that this authority is used consistent with established national policy. Consistent with these definitions, the Secretary of Defense's determination on the necessity to augment the active forces for a DoD response to a covered incident would follow: (1) the Secretary of Defense's determination that DoD has experienced a "major incident"; (2) the President's determination, including as exercised through an existing or specially tailored process established by the President, that the Nation has experienced a "significant cyber incident"; or (3) the Secretary of Homeland Security's declaration of a "significant incident."

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. Either DoD will use applicable existing military personnel funds: (a) for the purpose of employing mobilized RC personnel to respond to a significant cyber incident affecting DoD personnel, assets, installations, and operations, including the DoDIN; or (b) for the purpose of providing support, on a reimbursable basis, to a lead Federal agency's response.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2023	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Activated RC personnel	$0.441 - $1.763	$0.441 - $1.763	$0.441 - $1.763	$0.441 - $1.763	$0.441 - $1.763	Military Personnel, Multiple	Multiple	Multiple	Multiple
Travel & Per Diem	$0.176 - $0.702	$0.176 - $0.702	$0.176 - $0.702	$0.176 - $0.702	$0.176 - $0.702	Operation and Maintenance, Multiple	Multiple	Multiple	Multiple

Total	$0.617 - $2.465	$0.617 - $2.465	$0.617 - $2.465	$0.617 - $2.465	$0.617 - $2.465				

Note: The estimates above reflect personnel and travel and per diem costs for one 39-person RC Cyber Protection Team (CPT) mobilized for 30 days and one 39-person RC CPT mobilized for 120 days. Actual numbers of personnel and appropriation impacted will depend on the specific circumstances of the significant cyber incident.

Changes to Existing Law: This proposal would make the following changes to section 12304 of title 10, United States Code:

§ 12304. Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency

(a) ~~AUTHORITY~~ OPERATIONAL MISSIONS AND CERTAIN OTHER EMERGENCIES.—Notwithstanding the provisions of section 12302(a) or any other provision of law, when the President determines that it is necessary to augment the active forces for any named operational mission or that it is necessary to provide assistance referred to in subsection (b), he may authorize the Secretary of Defense and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit of the Selected Reserve (as defined in section 10143(a) of this title), or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, under their respective jurisdictions, to active duty for not more than 365 consecutive days.

(b) SUPPORT FOR RESPONSES TO CERTAIN EMERGENCIES.—The authority under subsection (a) includes authority to order a unit or member to active duty to provide assistance in responding to an emergency involving—

(1) a use or threatened use of a weapon of mass destruction; or

(2) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in significant loss of life or property.

(c) SIGNIFICANT CYBER INCIDENTS.—The Secretary of Defense may, without the consent of the member affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of the Selected Reserve or Individual Ready Reserve to active duty for a continuous period of not more than 365 days when the Secretary of Defense determines it is necessary to augment the active forces for a Department of Defense response to a covered incident.

(~~c~~d) LIMITATIONS.—(1) No unit or member of a reserve component may be ordered to active duty under this section to perform any of the functions authorized by chapter 13 or section 12406 of this title or, except as provided in subsection (b) or subsection (c), to provide assistance

to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe.

(2) Not more than 200,000 members of the Selected Reserve and the Individual Ready Reserve may be on active duty under this section at any one time, of whom not more than 30,000 may be members of the Individual Ready Reserve.

(3) No unit or member of a reserve component may be ordered to active duty under this section to provide assistance referred to in subsection (b) unless the President determines that the requirements for responding to an emergency referred to in that subsection have exceeded, or will exceed, the response capabilities of local, State, and Federal civilian agencies.

(~~d~~e) EXCLUSION FROM STRENGTH LIMITATIONS.—Members ordered to active duty under this section shall not be counted in computing authorized strength in members on active duty or members in grade under this title or any other law.

(~~e~~f) POLICIES AND PROCEDURES.—The Secretary of Defense and the Secretary of Homeland Security shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section.

(~~f~~g) NOTIFICATION OF CONGRESS.—Whenever the President authorizes the Secretary of Defense or the Secretary of Homeland Security to order any unit or member of the Selected Reserve or Individual Ready Reserve to active duty, under the authority of subsection (a), he shall, within 24 hours after exercising such authority, submit to Congress a report, in writing, setting forth the circumstances necessitating the action taken under this section and describing the anticipated use of these units or members.

(~~g~~h) TERMINATION OF DUTY.—(1) Whenever any unit of the Selected Reserve or any member of the Selected Reserve not assigned to a unit organized to serve as a unit, or any member of the Individual Ready Reserve, is ordered to active duty under authority of subsection (a), the service of all units or members so ordered to active duty may be terminated by—

(~~1~~A) order of the President, or

(~~2~~B) law.

(2) Whenever any unit of the Selected Reserve or any member of the Selected Reserve not assigned to a unit organized to serve as a unit, or any member of the Individual Ready Reserve, is ordered to active duty under authority of subsection (b), the service of all units or members so ordered to active duty may be terminated by—

(A) order of the Secretary of Defense, or

(B) law.

(~~h~~i) RELATIONSHIP TO WAR POWERS RESOLUTION.—Nothing contained in this section shall be construed as amending or limiting the application of the provisions of the War Powers Resolution (50 U.S.C. 1541 et seq.).

(~~i~~j) CONSIDERATIONS FOR INVOLUNTARY ORDER TO ACTIVE DUTY.—(1) In determining which members of the Selected Reserve and Individual Ready Reserve will be ordered to duty without their consent under this section, appropriate consideration shall be given to—

(A) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

(B) the frequency of assignments during service career;

(C) family responsibilities; and

(D) employment necessary to maintain the national health, safety, or interest.

(2) The Secretary of Defense shall prescribe such policies and procedures as the Secretary considers necessary to carry out this subsection.

(~~j~~k) DEFINITIONS.—In this section:

(1) The term "Individual Ready Reserve mobilization category" means, in the case of any reserve component, the category of the Individual Ready Reserve described in section 10144(b) of this title.

(2) The term "covered incident" means—

(A) a cyber incident involving a Department of Defense information system, or a breach of a Department of Defense system that involves personally identifiable information, that the Secretary of Defense determines is likely to result in demonstrable harm to the national security interests, foreign relations, or the economy of the United States, or to the public confidence, civil liberties, or public health and safety of the American people;

(B) a cyber incident or collection of related cyber incidents that are determined by the President to be likely to result in demonstrable harm to the national security interests, foreign relations, or economy of the United States or to the public confidence, civil liberties, or public health and safety of the people of the United States; or

(C) a significant incident declared pursuant to section 2233 of the Homeland Security Act of 2002 (6 U.S.C. 677b).

(~~2~~3) The term "weapon of mass destruction" has the meaning given that term in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).

SEC. ___. EXTENSION OF AUTHORITY FOR REIMBURSEMENT OF CERTAIN COALITION NATIONS FOR SUPPORT PROVIDED TO UNITED STATES MILITARY OPERATIONS.

(a) EXTENSION.—Subsection (a) of section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 393), as most recently amended by section 1212 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81), is further amended in the matter preceding paragraph (1) by striking "beginning on October 1, 2021, and ending on December 31, 2022" and inserting "beginning on October 1, 2022, and ending on December 31, 2023".

(b) MODIFICATION TO LIMITATIONS.—Subsection (d)(1) of such section is amended by striking "beginning on October 1, 2021, and ending on December 31, 2022" and inserting "beginning on October 1, 2022, and ending on December 31, 2023".

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

Section-by-Section Analysis

This proposal would extend through December 31, 2023, the current authority to use funds made available for the Department of Defense for operation and maintenance, Defense-wide activities: (1) to reimburse any key cooperating nation (other than Pakistan) for certain support provided by that nation to U.S. military operations in Afghanistan, Iraq, or Syria; and (2) to provide certain assistance to any key cooperating nation supporting U.S. military operations in Afghanistan, Iraq, or Syria, subject to the conditions and limitations in the statute.

Resource Information: The resources impacted 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)									
	FY 2023	**FY 2024**	**FY 2025**	**FY 2026**	**FY 2027**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Coalition Support Funds (CSF)	$30					Operations and Maintenance, Defense-Wide	04	4GTD, DSCA	

Total	$30								

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

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

(a) AUTHORITY.—From funds made available for the Department of Defense for the period beginning on ~~October 1, 2021~~ October 1, 2022, and ending on ~~December 31, 2022~~ December 31, 2023, for operation and maintenance, Defense-wide activities, the Secretary of Defense may reimburse any key cooperating nation (other than Pakistan) for—

(1) logistical and military support provided by that nation to or in connection with United States military operations in Afghanistan, Iraq, or Syria; and

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

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

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

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

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

(c) AMOUNTS OF REIMBURSEMENT.—

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

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

(d) LIMITATIONS.—

(1) LIMITATION ON AMOUNT.— The aggregate amount of reimbursements made under subsection (a) and support provided under subsection (b) during the period beginning on ~~October 1, 2021~~ October 1, 2022, and ending on ~~December 31, 2022~~ December 31, 2023, may not exceed $60,000,000.

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

(e) NOTICE TO CONGRESS.—

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

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

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

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

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

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

SEC. ___. REPEAL OF REQUIREMENT FOR INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE TO CONDUCT CERTAIN REVIEWS.

Section 847(b) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–18; 10 U.S.C. 1701 note) is amended—

(1) by striking "REQUIREMENT.—" and all that follows through "Each review" and inserting "REQUIREMENT.—Each review"; and

(2) by striking paragraph (2).

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

Section-by-Section Analysis

This proposal would repeal section 847(b)(2) of Public Law 110-181, the National Defense Authorization Act for Fiscal Year 2008, as amended by Public Law 113-291, the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015. Section 847(b)(2) requires the Department of Defense Office of Inspector General (DoD OIG) to conduct periodic reviews of the program that was intended to ensure that written opinions are provided and retained in accordance with the requirements of section 847.

The DoD OIG conducts periodic review of the DoD's compliance with post-Government employment ethics regulations to ensure that written opinions are provided and retained in accordance with section 847. This law requires DoD "covered" officials or former officials (a designation determined by their rank and/or duties) seeking post-Government employment with a contractor to request a written opinion regarding the applicability of post-employment restrictions to activities the official or former official may undertake on behalf of a contractor. The law also requires DoD ethics counselors to provide such officials or formal officials a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of the contractor.

As of April 2017, the DoD OIG has performed four reviews of the DoD program created to implement the requirements of section 847. The DoD OIG has discovered that, while a DoD OIG review can assess whether written opinions are provided and retained in accordance with the statute, such a review cannot identify or quantify those covered officials or former officials who failed to request a written post-Government employment ethics opinion as they were required to do. If a covered official does not request the opinion, there is no way for the DoD to know what post-Government activities the official or former official is or will be engaged in. Accordingly, there is no way to know whether they are complying with post-Government employment requirements and nothing for the DoD OIG to review or assess. As a result, the DoD OIG can review only the system and opinions of those covered officials who comply with

the law in the first place. In other words, there is no mechanism for systematically identifying covered officials who violate section 847 because the trigger for identifying covered officials who intend to work for a DoD contractor is for the covered officials to voluntarily identify themselves by seeking the mandated ethics opinion. If they do not comply with the law by voluntarily identifying themselves, there are no records to review.

Because the DoD OIG is only able to evaluate the process of those covered officials who request ethics opinion letters from their ethics counselors, the required periodic report cannot address a significant issue about which the Congress needs to be informed. Furthermore, the most recent DoD OIG report on section 847, issued on December 20, 2019, found that section 847 covered officials and DoD ethics counselors generally complied with the section 847 requirements. The report contained no recommendations. The DoD OIG therefore requests that this reporting requirement be repealed.

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 847 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 1701 note) as follows:

SEC. 847. REQUIREMENTS FOR SENIOR DEPARTMENT OF DEFENSE OFFICIALS SEEKING EMPLOYMENT WITH DEFENSE CONTRACTORS

(a) REQUIREMENT TO SEEK AND OBTAIN WRITTEN OPINION.-

(1) REQUEST.-An official or former official of the Department of Defense described in subsection (c) who, within two years after leaving service in the Department of Defense, expects to receive compensation from a Department of Defense contractor, shall, prior to accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

(2) SUBMISSION OF REQUEST.-A request for a written opinion under paragraph (1) shall be submitted in writing to an ethics official of the Department of Defense having responsibility for the organization in which the official or former official serves or served and shall set forth all information relevant to the request, including information relating to government positions held and major duties in those positions, actions taken concerning future employment, positions sought, and future job descriptions, if applicable.

(3) WRITTEN OPINION.-Not later than 30 days after receiving a request by an official or former official of the Department of Defense described in subsection (c), the appropriate ethics counselor shall provide such official or former official a written opinion regarding the applicability or inapplicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

(4) CONTRACTOR REQUIREMENT.-A Department of Defense contractor may not knowingly provide compensation to a former Department of Defense official described in subsection (c) within two years after such former official leaves service in the Department of Defense, without first determining that the former official has sought and received (or has not received after 30 days of seeking) a written opinion from the appropriate ethics counselor regarding the applicability of post-employment restrictions to the activities that the former official is expected to undertake on behalf of the contractor.

(5) ADMINISTRATIVE ACTIONS.-In the event that an official or former official of the Department of Defense described in subsection (c), or a Department of Defense contractor, knowingly fails to comply with the requirements of this subsection, the Secretary of Defense may take any of the administrative actions set forth in section 2105 of title 41, United States Code[,] that the Secretary of Defense determines to be appropriate.

(b) RECORDKEEPING REQUIREMENT.—

(~~1) DATABASE.-~~Each request for a written opinion made pursuant to this section, and each written opinion provided pursuant to such a request, shall be retained by the Department of Defense in a central database or repository maintained by the General Counsel of the Department for not less than five years beginning on the date on which the written opinion was provided.

~~(2) INSPECTOR GENERAL REVIEW.-The Inspector General of the Department of Defense shall conduct periodic reviews to ensure that written opinions are being provided and retained in accordance with the requirements of this section. The first such review shall be conducted no later than two years after the date of the enactment of this Act.~~

(c) COVERED DEPARTMENT OF DEFENSE OFFICIALS.-An official or former official of the Department of Defense is covered by the requirements of this section if such official or former official-

(1) participated personally and substantially in an acquisition as defined in section 131 of title 41, United States Code[,] with a value in excess of $10,000,000 and serves or served-

(A) in an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code;

(B) in a position in the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code; or

(C) in a general or flag officer position compensated at a rate of pay for grade O–7 or above under section 201 of title 37, United States Code; or

(2) serves or served as a program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of $10,000,000.

(d) DEFINITION.-In this section, the term “post-employment restrictions” includes-

(1) chapter 21 of title 41, United States Code;

(2) section 207 of title 18, United States Code; and

(3) any other statute or regulation restricting the employment or activities of individuals who leave government service in the Department of Defense.

SEC.___. REPEAL OF REQUIREMENT FOR INTERAGENCY COORDINATION GROUP OF INSPECTORS GENERAL FOR GUAM REALIGNMENT.

Section 2835 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 2687 note) is repealed.

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

Section-by-Section Analysis

This proposal would repeal section 2835 of Public Law 111-84, the National Defense Authorization Act for FY 2010. Section 2835 establishes the Interagency Coordination Group (ICG) of Inspectors General for Guam Realignment, and requires the Department of Defense Inspector General (DoD IG), as the chairperson of the ICG, to submit reports summarizing the activities of the ICG and the programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam. Section 2835 also requires the DoD IG to submit a final report containing a notice of termination and a final forensic audit on programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam.

The DoD IG believes that these reporting requirements are outdated, unnecessary, and do not align with traditional Office of Inspector General (OIG) oversight work. When originally planned, the Guam realignment included relocating a large number of service members and completing multiple projects in a compressed timeframe. However, since the plan's inception, the number of people relocating to Guam and the number and complexity of military construction projects to be completed have decreased while the timeframe for the realignment completion has increased substantially. The table below shows some of these changes.

	Originally Planned	Current Plan
Approximate Number of Marines and Dependents	8,000 Marines 5,000 Dependents	5,000 Marines 1,300 Dependents
Timeline	FYs 2010 to 2014 5 years	FYs 2010 to 2028 19 years

While regular oversight and recurring reports were originally essential to ensure this massive effort could be completed within extremely compressed timeframes, significant changes to the realignment scope and timeline render the ICG and its reporting requirements unnecessary. In addition, the annual reports required under this requirement do not align with traditional oversight work because the DoD OIG and its ICG partners gather data from multiple organizations, but do not independently verify, analyze, or validate the data provided. This data could be obtained directly from the DoD and other organizations when needed.

Repealing section 2835 requirements would not remove oversight of the programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam. The DoD OIG, in coordination with other members of the ICG and the oversight community, would continue to conduct individual audits and investigations as part of the larger effort to provide oversight of the Pacific Deterrence Initiative. In fact, we believe that oversight would be better accomplished through timely and relevant incremental audits and reviews conducted by OIGs throughout the realignment process rather than through biennial reports and a final forensic audit of the realignment effort spanning nearly 20 years.

The DoD IG has coordinated this proposal with other members of the ICG and there is consensus that this requirement should be repealed. The members will continue to coordinate through the Council of the Inspectors General on Integrity and Efficiency and provide appropriate oversight of this important area, but believe that repealing section 2835 would free up OIG resources for necessary oversight of the Pacific Deterrence Initiative, including programs and operations in Guam.

Resource Information: This proposal has no significant impact on the use of resources. Resources saved by the repeal of the reporting requirement in 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 repeal section 2835 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 2687 note):

~~**SEC. 2835. INTERAGENCY COORDINATION GROUP OF INSPECTORS GENERAL FOR GUAM REALIGNMENT.**~~

~~(a) INTERAGENCY COORDINATION GROUP.—There is hereby established the Interagency Coordination Group of Inspectors General for Guam Realignment (in this section referred to as the ''Interagency Coordination Group'').~~

~~(1) to provide for the objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam in connection with the realignment of military installations and the relocation of military personnel on Guam; and~~

~~(2) to provide for coordination of, and recommendations on, policies designed—~~

~~(A) to promote economic efficiency and effectiveness in the administration of the programs and operations described in paragraph (1); and~~

~~(B) to prevent and detect waste, fraud, and abuse in such programs and operations.~~

~~(b) MEMBERSHIP.—~~

~~(1) CHAIRPERSON.—The Inspector General of the Department of Defense shall serve as chairperson of the Interagency Coordination Group.~~

~~(2) ADDITIONAL MEMBERS.—Additional members of the Interagency Coordination Group shall include the Inspector General of the Department of Interior and the Inspector General of such other Federal agencies as the chairperson considers appropriate to carry out the duties of the Interagency Coordination Group.~~

~~(c) DUTIES.—~~

(1) OVERSIGHT OF GUAM CONSTRUCTION.—It shall be the duty of the Interagency Coordination Group to conduct, supervise, and coordinate audits and investigations of the treatment, handling, and expenditure of amounts appropriated or otherwise made available for military construction on Guam and of the programs, operations, and contracts carried out utilizing such funds, including—

(A) the oversight and accounting of the obligation and expenditure of such funds;

(B) the monitoring and review of construction activities funded by such funds;

(C) the monitoring and review of contracts funded by such funds;

(D) the monitoring and review of the transfer of such funds and associated information between and among departments, agencies, and entities of the United States and private and nongovernmental entities;

(E) the maintenance of records on the use of such funds to facilitate future audits and investigations of the use of such fund; and

(F) the monitoring and review of the implementation of the Defense Posture Review Initiative relating to the realignment of military installations and the relocation of military personnel on Guam.

(2) OTHER DUTIES RELATED TO OVERSIGHT.—The Interagency Coordination Group shall establish, maintain, and oversee such systems, procedures, and controls as the Interagency Coordination Group considers appropriate to discharge the duties under paragraph (1).

(3) OVERSIGHT PLAN.—The chairperson of the Interagency Coordination Group shall prepare an annual oversight plan detailing planned audits and reviews related to the Guam realignment.

(d) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) PROVISION OF ASSISTANCE.—Upon request of the Interagency Coordination Group for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Interagency Coordination Group.

(2) REPORTING OF REFUSED ASSISTANCE.—Whenever information or assistance requested by the Interagency Coordination Group is, in the judgment of the chairperson of the Interagency Coordination Group, unreasonably refused or not provided, the chairperson shall report the circumstances to the Secretary of Defense and to the congressional defense committees without delay.

(e) REPORTS.—

(1) BIENNIEL REPORTS. Not later than February 1, 2022, and every second February 1 thereafter, the chairperson of the Interagency Coordination Group shall submit to the congressional defense committees, the Secretary of Defense, and the Secretary of the Interior a report summarizing, for the preceding two fiscal years, the activities of the Interagency Coordination Group during such years and the activities under programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam. Each report shall include, for the years covered by the report, a detailed statement of all obligations, expenditures, and revenues associated with such construction, including the following:

(A) Obligations and expenditures of appropriated funds.

(B) A project-by-project and program-by-program accounting of the costs incurred to date for military construction in connection with the realignment of military installations and the relocation of military personnel on Guam, together with the estimate

~~of the Department of Defense and the Department of the Interior, as applicable, of the costs to complete each project and each program.~~

~~(C) Revenues attributable to or consisting of funds contributed by the Government of Japan in connection with the realignment of military installations and the relocation of military personnel on Guam and any obligations or expenditures of such revenues.~~

~~(D) Operating expenses of agencies or entities receiving amounts appropriated or otherwise made available for military construction on Guam.~~

~~(E) In the case of any contract, grant, agreement, or other funding mechanism described in paragraph (2)—~~

~~(i) the amount of the contract, grant, agreement, or other funding mechanism;~~

~~(ii) a brief discussion of the scope of the contract, grant, agreement, or other funding mechanism;~~

~~(iii) a discussion of how the department or agency of the United States Government involved in the contract, grant, agreement, or other funding mechanism identified, and solicited offers from, potential individuals or entities to perform the contract, grant, agreement, or other funding mechanism, together with a list of the potential individuals or entities that were issued solicitations for the offers; and~~

~~(iv) the justification and approval documents on which was based the determination to use procedures other than procedures that provide for full and open competition.~~

~~(2) COVERED CONTRACTS, GRANTS, AGREEMENTS, AND FUNDING MECHANISMS.—A contract, grant, agreement, or other funding mechanism described in this paragraph is any major contract, grant, agreement, or other funding mechanism that—~~

~~(A) is entered into by any department or agency of the United States Government with any public or private sector entity; and~~

~~(B) involves the use of amounts appropriated or otherwise made available for military construction on Guam.~~

~~(3) FORM.—Each report required under this subsection shall be submitted in unclassified form, but may include a classified annex if the Interagency Coordination Group considers it necessary.~~

~~(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the public disclosure of information that is—~~

~~(A) specifically prohibited from disclosure by any other provision of law;~~

~~(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or~~

~~(C) a part of an ongoing criminal investigation.~~

~~(5) SUBMISSION OF COMMENTS.—Not later than 30 days after receipt of a report under paragraph (1), the Secretary of Defense or the Secretary of the Interior may submit to the congressional defense committees any comments on the matters covered by the report as the Secretary concerned considers appropriate. Any comments on the matters covered by the report shall be submitted in unclassified form, but may include a classified annex if the Secretary concerned considers it necessary.~~

~~(f) PUBLIC AVAILABILITY; WAIVER.—~~

(1) PUBLIC AVAILABILITY.—The Interagency Coordination Group shall publish on a publically-available Internet website each report prepared under subsection (e). Any comments on the report submitted under paragraph (5) of such subsection shall also be published on such website.

(2) WAIVER AUTHORITY.—The President may waive the requirement under paragraph (1) with respect to availability to the public of any element in a report under subsection (e), or any comment with respect to a report, if the President determines that the waiver is justified for national security reasons.

(3) NOTICE OF WAIVER.—The President shall publish a notice of each waiver made under this subsection in the Federal Register no later than the date on which a report required under subsection (e), or any comment under paragraph (5) of such subsection, is submitted to the congressional defense committees. The report and comments shall specify whether waivers under this subsection were made and with respect to which elements in the report or which comments, as appropriate.

(g) DEFINITIONS.—In this section:

(1) AMOUNTS APPROPRIATED OR OTHERWISE MADE AVAILABLE.—The term ''amounts appropriated or otherwise made available for military construction on Guam'' includes amounts derived from the Support for United States Relocation to Guam Account.

(2) GUAM.—The term ''Guam'' includes any island in the Northern Mariana Islands.

(h) TERMINATION.—

(1) IN GENERAL.—The Interagency Coordination Group shall terminate upon the expenditure of 90 percent of all funds appropriated or otherwise made available for Guam realignment.

(2) FINAL REPORT.—Before the termination of the Interagency Coordination Group pursuant to paragraph (1), the chairperson of the Interagency Coordination Group shall prepare and submit to the congressional defense committees a final report containing—

(A) notice that the termination condition in paragraph (1) has occurred; and

(B) a final forensic audit on programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam.

SEC. ___. POLICIES WITH RESPECT TO SPECIAL TRIAL COUNSEL.

(a) EXCLUSION OF OFFICERS SERVING AS LEAD SPECIAL TRIAL COUNSEL FROM LIMITATIONS ON AUTHORIZED STRENGTHS FOR GENERAL AND FLAG OFFICERS.—Section 526a of title 10, United States Code, is amended—

(1) by redesignating subsections (g), (h), and (i) as subsections (h), (i), and (j), respectively; and

(2) by inserting after subsection (f) the following new subsection:

"(g) EXCLUSION OF OFFICERS SERVING AS LEAD SPECIAL TRIAL COUNSEL.—During the two-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2023, the limitations in subsection (a) do not apply to a general or flag officer serving in the position of lead special trial counsel pursuant to an appointment under section 1044f(a)(2) of this title.".

(b) SPECIAL TRIAL COUNSEL OF DEPARTMENT OF THE AIR FORCE.—Section 1044f of title 10, United States Code, is further amended—

(1) in subsection (a), in the matter preceding paragraph (1), by striking "The policies shall" and inserting "Subject to subsection (c), the policies shall";

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

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

"(c) SPECIAL TRIAL COUNSEL OF DEPARTMENT OF THE AIR FORCE.—In establishing policies under subsection (a), the Secretary of Defense shall—

"(1) in lieu of providing for separate offices for the Air Force and Space Force under subsection (a)(1), provide for the establishment of a single dedicated office from

which office the activities of the special trial counsel of the Department of the Air Force shall be supervised and overseen; and

"(2) in lieu of providing for separate lead special trial counsels for the Air Force and Space Force under subsection (a)(2), provide for the appointment of one lead special trial counsel who shall be responsible for the overall supervision and oversight of the activities of the special trial counsel of the Department of the Air Force.".

SEC. ___. CLARIFICATION OF APPLICABILITY OF DOMESTIC VIOLENCE AND STALKING TO DATING PARTNERS.

(a) ARTICLE 128B; DOMESTIC VIOLENCE.—Section 928b of title 10, United States Code (article 128b of the Uniform Code of Military Justice), is amended—

(1) in the matter preceding paragraph (1), by striking "Any person" and inserting "(a) IN GENERAL.—Any person";

(2) in subsection (a), as designated by paragraph (1) of this section, by inserting "a dating partner," after "an intimate partner," each place it appears; and

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

"(b) DEFINITIONS.—In this section (article), the terms 'dating partner', 'immediate family', and 'intimate partner' have the meaning given such terms in section 930 of this title (article 130 of the Uniform Code of Military Justice).".

(b) ARTICLE 130; STALKING.—Section 930 of such title (article 130 of the Uniform Code of Military Justice) is amended—

(1) in subsection (a), by striking "or to his or her intimate partner" each place it appears and inserting "to his or her intimate partner, or to his or her dating partner";

(2) in subsection (b)—

(A) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively; and

(B) by inserting after paragraph (2) the following new paragraph:

"(3) The term 'dating partner', in the case of a specific person, means a person who is or has been in a social relationship of a romantic or intimate nature with such specific person based on a consideration of—

"(A) the length of the relationship;

"(B) the type of relationship; and

"(C) the frequency of interaction between the persons involved in the relationship.".

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

Section-by-Section Analysis

Exclusion of Lead Special Trial Counsel from Strength Limitations

During the two-year period beginning on the date of enactment, this proposal would exclude a general or flag officer serving in the position of lead special trial counsel from counting against the strength limitations of section 526a(a) of title 10, United States Code (U.S.C.). Section 532(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Public Law 117-81) added section 1044f of title 10, U.S.C., which establishes policies with respect to special trial counsels. Subsection (a)(1) of section 1044f requires the Secretary of each military department to establish a dedicated office from which the activities of the special trial counsel of each military service will be supervised and overseen. Subsection (a)(2) of section 1044f requires this office in each military service to be headed by a lead special trial counsel who is a judge advocate of that service in a grade no lower than O–7, with significant experience in military justice. Subsection (a)(2) of section 1044f also directs the lead special trial counsel to report directly to the Secretary concerned, without intervening authority.

The exclusion from strength limitations that would result from this proposal is needed because, pursuant to section 501 of the NDAA for FY 2017 (Public Law 114-328), after December 31, 2022, the authorized number of active duty general and flag officers will be reduced by 111. Since the enactment of that law, the Department of Defense has not sought legislative relief from the reduction despite emerging general and flag officer requirements, such as those resulting from establishment of the U.S. Space Force. However, the Department

believes that the relief sought in this proposal is warranted in response to the new requirement to appoint additional general or flag officers as lead special trial counsels pursuant to subsection (a)(2) of section 1044f.

Single Office of Special Trial Counsel within the Department of the Air Force

This proposal would promote efficiency by providing for a single Office of Special Trial Counsel within the Department of the Air Force. Pursuant to 10 U.S.C. § 9063(g), judge advocate functions in the Space Force are performed by Air Force judge advocates. Accordingly, there are no Space Force judge advocates. Requiring that a lead special trial counsel be named for the Space Force would result in a single judge advocate in that service, who would serve in the grade of brigadier general or higher. The case load of covered offenses in the Space Force may also be too small for the development of expertise in the handling of such cases. Accordingly, a single Office of Special Trial Counsel for the Department of the Air Force is preferable to separate offices, headed by separate lead special trial counsel, for each of the military services within the Department of the Air Force.

Clarification of applicability of domestic violence and stalking to dating partners.

This proposal adds dating partners to the victims covered by the UCMJ's domestic violence article (article 128b UCMJ (10 U.S.C. § 928b)). It also adds a stalking victim's dating partner to the class of individuals threats against whom is addressed by the UCMJ's stalking article (article 130, UCMJ, 10 U.S.C. § 930)). It also provides a definition of dating partner modeled on that in 18 U.S.C. § 2266.

Section 2261 of title 18, United States Code, the Federal civilian counterpart to the UCMJ's domestic violence article, separately lists intimate partners and dating partners among those who fall within its protection. Despite that the proposed definition of dating partners may appear similar to the definition of intimate partners, as defined in title 10 U.S.C. section 930(b)(5)(B), the approach of listing each separately ensures the provision's applicability without the necessity for courts to make intrusive inquiries into a couple's level of intimacy and ensures the provision applies to those persons who could reasonably be considered to be dating the accused but who might not be considered intimate with the accused based on the considerations outlined in the definition of intimate partner.

The UCMJ's punitive articles would benefit from following the title 18 model. The Independent Review Commission on Sexual Assault in the Military expressly recommended adding dating partners to those protected by the UCMJ's domestic violence punitive article (Independent Revision Commission on Sexual Assault in the Military, *Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military*, recommendation 1.7 f (July 2, 2021)). The UCMJ's stalking punitive article would be similarly improved by including threats against an individual's dating partner as a prohibited means by which that individual may be stalked.

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

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

TITLE 10, UNITED STATES CODE

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

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

(1) For the Army, 220.

(2) For the Navy, 151.

(3) For the Air Force, 187.

(4) For the Marine Corps, 62.

(b) LIMITED EXCLUSION FOR JOINT DUTY REQUIREMENTS.—

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

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

(A) For the Army, 75.

(B) For the Navy, 53.

(C) For the Air Force, 68.

(D) For the Marine Corps, 17.

(c) EXCLUSION OF CERTAIN OFFICERS OF RESERVE COMPONENTS.—The limitations of this section do not apply to the following:

(1) A general or flag officer of a reserve component who is on active duty—

(A) for training; or

(B) under a call or order specifying a period of less than 180 days.

(2)(A) A general or flag officer of a reserve component who is authorized by the Secretary of the military department concerned to serve on active duty for a period of at least 180 days and not longer than 365 days.

(B) The Secretary of the military department concerned may authorize a number, determined under subparagraph (C), of officers in the reserve component of each armed force under the jurisdiction of that Secretary to serve as described in subparagraph (A).

(C) Each number described in subparagraph (B) may not exceed 10 percent of the number of general or flag officers, as the case may be, authorized to serve in the armed force concerned under section 12004 of this title. In determining a number under this subparagraph, any fraction shall be rounded down to the next whole number that is greater than zero.

(3)(A) A general or flag officer of a reserve component who is on active duty for a period longer than 365 days and not longer than three years.

(B) The number of officers described in subparagraph (A) who do not serve in a position that is a joint duty assignment for purposes of chapter 38 of this title may not exceed five per armed force, unless authorized by the Secretary of Defense.

(d) EXCLUSION OF CERTAIN OFFICERS PENDING SEPARATION OR RETIREMENT OR BETWEEN SENIOR POSITIONS.—The limitations of this section do not apply to—

(1) an officer of an armed force in the grade of brigadier general or above or, in the case of the Navy, in the grade of rear admiral (lower half) or above, who is on leave pending the retirement, separation, or release of that officer from active duty, but only during the 60-day period beginning on the date of the commencement of such leave of such officer; or

(2) an officer of an armed force who has been relieved from a position designated under section 601(a) of this title or by law to carry one of the grades specified in such section, but only during the 60-day period beginning on the date on which the assignment of the officer to the first position is terminated or until the officer is assigned to a second such position, whichever occurs first.

(e) TEMPORARY EXCLUSION FOR ASSIGNMENT TO CERTAIN TEMPORARY BILLETS.—

(1) IN GENERAL.—The limitations in subsection (a) do not apply to a general officer or flag officer assigned to a temporary joint duty assignment designated by the Secretary of Defense.

(2) DURATION OF EXCLUSION.—A general officer or flag officer assigned to a temporary joint duty assignment as described in paragraph (1) may not be excluded under this subsection from the limitations in subsection (a) for a period of longer than one year.

(f) EXCLUSION OF OFFICERS DEPARTING FROM JOINT DUTY ASSIGNMENTS.—The limitations in subsection (a) do not apply to an officer released from a joint duty assignment, but only during the 60-day period beginning on the date the officer departs the joint duty assignment. The Secretary of Defense may authorize the Secretary of a military department to extend the 60-day period by an additional 120 days, except that not more than three officers on active duty from each armed force may be covered by the additional extension at the same time.

(g) EXCLUSION OF OFFICERS SERVING AS LEAD SPECIAL TRIAL COUNSEL.—During the two-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2023, the limitations in subsection (a) do not apply to a general or flag officer serving in the position of lead special trial counsel pursuant to an appointment under section 1044f(a)(2) of this title.

~~(g)~~ (h) ACTIVE-DUTY BASELINE.—

(1) Notice and wait requirements.—If the Secretary of a military department proposes an action that would increase above the baseline the number of general officers or flag officers of an armed force under the jurisdiction of that Secretary who would be on active duty and would count against the statutory limit applicable to that armed force under subsection (a), the action shall not take effect until after the end of the 60-calendar day period beginning on the date on which the Secretary provides notice of the proposed

action, including the rationale for the action, to the Committees on Armed Services of the Senate and the House of Representatives.

(2) BASELINE DEFINED.—In paragraph (1), the term "baseline" for an armed force means the lower of—

(A) the statutory limit of general officers or flag officers of that armed force under subsection (a); or

(B) the actual number of general officers or flag officers of that armed force who, as of January 1, 2023, counted toward the statutory limit of general officers or flag officers of that armed force under subsection (a).

~~(h)~~ (i) JOINT DUTY ASSIGNMENT BASELINE.—

(1) Notice and wait requirement.—If the Secretary of Defense, the Secretary of a military department, or the Chairman of the Joint Chiefs of Staff proposes an action that would increase above the baseline the number of general officers and flag officers of the armed forces in joint duty assignments who count against the statutory limit under subsection (b)(1), the action shall not take effect until after the end of the 60-calendar day period beginning on the date on which such Secretary or the Chairman, as the case may be, provides notice of the proposed action, including the rationale for the action, to the Committees on Armed Services of the Senate and the House of Representatives.

(2) BASELINE DEFINED.—In paragraph (1), the term "baseline" means the lower of—

(A) the statutory limit on general officer and flag officer positions that are joint duty assignments under subsection (b)(1); or

(B) the actual number of general officers and flag officers who, as of January 1, 2023, were in joint duty assignments counted toward the statutory limit under subsection (b)(1).

~~(i)~~ (j) ANNUAL REPORT.—Not later than March 1 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report specifying the following:

(1) The numbers of general officers and flag officers who, as of January 1 of the calendar year in which the report is submitted, counted toward the service-specific limits of subsection (a).

(2) The number of general officers and flag officers in joint duty assignments who, as of such January 1, counted toward the statutory limit under subsection (b)(1).

* * * * *

§ 928b. Art. 128b. Domestic violence

(a) IN GENERAL.—Any person who—

(1) commits a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person;

(2) with intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person—

(A) commits an offense under this chapter against any person; or

(B) commits an offense under this chapter against any property, including an animal;

(3) with intent to threaten or intimidate a spouse, an intimate partner, a dating partner, or an immediate family member of that person, violates a protection order;

(4) with intent to commit a violent offense against a spouse, an intimate partner, a dating partner, or an immediate family member of that person, violates a protection order; or

(5) assaults a spouse, an intimate partner, a dating partner, or an immediate family member of that person by strangling or suffocating;

shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section (article), the terms "dating partner", "immediate family", and "intimate partner" have the meaning given such terms in section 930 of this title (article 130 of the Uniform Code of Military Justice).

* * * * *

§ 930. Art. 130. Stalking

(a) IN GENERAL.—Any person subject to this chapter-

(1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, ~~or~~ to his or her intimate partner, or to his or her dating partner;

(2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, ~~or~~ to his or her intimate partner, or to his or her dating partner; and

(3) whose conduct induces reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, ~~or~~ to his or her intimate partner, or to his or her dating partner;

is guilty of stalking and shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section:

(1) The term "conduct" means conduct of any kind, including use of surveillance, the mails, an interactive computer service, an electronic communication service, or an electronic communication system.

(2) The term "course of conduct" means—

(A) a repeated maintenance of visual or physical proximity to a specific person;

(B) a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person; or

(C) a pattern of conduct composed of repeated acts evidencing a continuity of purpose.

(3) The term "dating partner", in the case of a specific person, means a person who is or has been in a social relationship of a romantic or intimate nature with such specific person based on a consideration of—

(A) the length of the relationship;

(B) the type of relationship; and

(C) the frequency of interaction between the persons involved in the relationship.

(~~3~~4) The term "repeated", with respect to conduct, means two or more occasions of such conduct.

(4~~5~~) The term "immediate family", in the case of a specific person, means—

(A) that person's spouse, parent, brother or sister, child, or other person to whom he or she stands in loco parentis; or

(B) any other person living in his or her household and related to him or her by blood or marriage.

(~~5~~6) The term "intimate partner", in the case of a specific person, means—

(A) a former spouse of the specific person, a person who shares a child in common with the specific person, or a person who cohabits with or has cohabited as a spouse with the specific person; or

(B) a person who has been in a social relationship of a romantic or intimate nature with the specific person, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

* * * * *

§ 1044f. Policies with respect to special trial counsel

(a) POLICIES REQUIRED.—~~The~~ Secretary of Defense shall establish policies with respect to the appropriate mechanisms and procedures that the Secretaries of the military departments shall establish relating to the activities of special trial counsel, including expected milestones for such Secretaries to fully implement such mechanisms and procedures. ~~The~~ Subject to subsection (c), the policies shall—

(1) provide for the establishment of a dedicated office within each military service from which office the activities of the special trial counsel of the military service concerned shall be supervised and overseen;

(2) provide for the appointment of one lead special trial counsel, who shall—

(A) be a judge advocate of that service in a grade no lower than O-7, with significant experience in military justice;

(B) be responsible for the overall supervision and oversight of the activities of the special trial counsel of that service; and

(C) report directly to the Secretary concerned, without intervening authority;

(3) ensure that within each office created pursuant to paragraph (1), the special trial counsel and other personnel assigned or detailed to the office—

(A) are independent of the military chains of command of both the victims and those accused of covered offenses and any other offenses over which a

special trial counsel at any time exercises authority in accordance with section 824a of this title (article 24a); and

(B) conduct assigned activities free from unlawful or unauthorized influence or coercion;

(4) provide that special trial counsel shall be well-trained, experienced, highly skilled, and competent in handling cases involving covered offenses; and

(5) provide that commanders of the victim and the accused in a case involving a covered offense shall have the opportunity to provide input to the special trial counsel regarding case disposition, but that the input is not binding on the special trial counsel.

(b) UNIFORMITY.—The Secretary of Defense shall ensure that any lack of uniformity in the implementation of policies, mechanisms, and procedures established under subsection (a) does not render unconstitutional any such policy, mechanism, or procedure.

(c) SPECIAL TRIAL COUNSEL OF DEPARTMENT OF THE AIR FORCE.—In establishing policies under subsection (a), the Secretary of Defense shall—

(1) in lieu of providing for separate offices for the Air Force and Space Force under subsection (a)(1), provide for the establishment of a single dedicated office from which office the activities of the special trial counsel of the Department of the Air Force shall be supervised and overseen; and

(2) in lieu of providing for separate lead special trial counsels for the Air Force and Space Force under subsection (a)(2), provide for the appointment of one lead special trial counsel who shall be responsible for the overall supervision and oversight of the activities of the special trial counsel of the Department of the Air Force.

(~~c~~d) MILITARY SERVICE DEFINED.—In this section, the term "military service" means the Army, Navy, Air Force, Marine Corps, and Space Force.

SEC. ___. SECURITY VETTING FOR RISKS ASSOCIATED WITH ALLEGIANCE, FOREIGN INFLUENCE, AND FOREIGN PREFERENCE.

(a) IN GENERAL.—Section 1564b of title 10, United States Code, is amended—

(1) in the heading, by striking "**foreign nationals**" and inserting "**risks associated with allegiance, foreign influence, and foreign preference**";

(2) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ", in coordination" and all that follows through "note),"; and

(ii) by striking "covered foreign individuals" and all that follows and inserting "covered individuals for risks associated with allegiance, foreign influence, or foreign preference.";

(B) by amending paragraph (2) to read as follows:

"(2) The process established under paragraph (1) may include fingerprint processing by the Federal Bureau of Investigation."; and

(C) in paragraph (3), by striking "an official" and inserting "officials"; and

(3) by striking subsections (b) and (c) and inserting the following new subsections:

"(b) OTHER USES.—In addition to using the centralized process developed under subsection (a)(1) for covered individuals, the Secretary, in coordination with the Security Executive Agent and the Suitability and Credentialing Executive Agent established pursuant to Executive Order 13467 (73 Fed. Reg. 38103; 50 U.S.C. 3161 note), may use the centralized process to support determinations for initial or continued eligibility for a national security

position, or to inform a suitability, fitness, or credentialing decision, for any individual with allegiance, foreign influence, or foreign preference risks.

"(c) COVERED INDIVIDUAL DEFINED.—In this section, the term 'covered individual' means an individual who—

"(1) is not subject to vetting required under Executive Orders 12968, 13467, or 12829, part 731 of title 5, Code of Federal Regulations, or Homeland Security Presidential Directive 12; and

"(2)(A) has, or is seeking, physical or logical access to data or information in support of research funded by the Department of Defense; or

"(B) has, or is seeking, access to Department of Defense systems, facilities, personnel, information, or operations.".

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of chapter 80 of title 10, United States Code, is amended by striking the item relating to section 1564b and inserting the following new item:

"1564b. Security vetting for risks associated with allegiance, foreign influence, and foreign preference.".

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

Section-by-Section Analysis

This proposal would clarify populations for which the Department has authority to use the centralized screening process established under section 1564b of chapter 80 of title 10, United States Code. This proposal would provide the Secretary of Defense with authority to screen lawfully obtained personally identifiable information of individuals participating in Department of Defense (DoD)-funded research to determine whether such individuals pose a threat to critical technologies relevant to national security, by screening for undue foreign influence, participation in foreign talent programs, and other personnel security concerns. Currently, the Department lacks authority to screen non-DoD affiliated individuals who are participating in DoD funded research.

Budget Implications: The proposal has no anticipated budgetary impact because it would clarify the population that may be vetted by the Department.

Changes to Existing Law: This proposal would make the following changes to section 1564b of title 10, United States Code:

§1564b. Security vetting for ~~foreign nationals~~ risks associated with allegiance, foreign influence, and foreign preference

(a) STANDARDS AND PROCESS.—(1) The Secretary of Defense~~, in coordination with the Security Executive Agent established pursuant to Executive Order 13467 (73 Fed. Reg. 38103; 50 U.S.C. 3161 note),~~ shall develop uniform and consistent standards and a centralized process for the screening and vetting of covered ~~foreign~~ individuals for risks associated with allegiance, foreign influence, or foreign preference. ~~requiring access to systems, facilities, personnel, information, or operations, of the Department of Defense,, including with respect to the background investigations of covered foreign individuals requiring access to classified information.~~

~~(2) The Secretary shall ensure that the standards developed under paragraph (1) are consistent with relevant directives of the Security Executive Agent.~~

(2) The process established under paragraph (1) may include fingerprint processing by the Federal Bureau of Investigation.

(3) The Secretary shall designate ~~an official~~ officials of the Department of Defense to be responsible for executing the centralized process developed under paragraph (1) and adjudicating any information discovered pursuant to such process.

(b) OTHER USES.—In addition to using the centralized process developed under subsection (a)(1) for covered ~~foreign~~ individuals, the Secretary, in coordination with the Security Executive Agent and Suitability and Credentialing Executive Agent established pursuant to Executive Order 13467 (73 Fed. Reg. 38103; 50 U.S.C. 3161 note), may use the centralized process to support determinations ~~in determining whether grant a security clearance~~ for initial or continued eligibility for a national security position, or to inform a suitability, fitness, or credentialing decision, for ~~to~~ any individual with allegiance, foreign influence, or foreign preference risks. ~~significant foreign influence or foreign preference issues, in accordance with the adjudicative guidelines under part 147 of title 32, Code of Federal Regulations, or such successor regulation.~~

~~(c) COVERED FOREIGN INDIVIDUAL DEFINED.—In this section, the term "covered foreign individual" means an individual who meets the following criteria:~~

~~(1) The individual is—~~

~~(A) a national of a foreign state;~~

~~(B) a national of the United States (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)) and also a national of a foreign state; or~~

~~(C) an alien who is lawfully admitted for permanent residence (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).~~

~~(2) The individual is either—~~

~~(A) a civilian employee of the Department of Defense or a contractor of the Department; or~~

~~(B) a member of the armed forces.~~

(c) COVERED INDIVIDUAL DEFINED.—In this section, the term "covered individual" means an individual who—

(1) is not subject to vetting required under Executive Orders 12968, 13467, or 12829, part 731 of title 5, Code of Federal Regulations, or Homeland Security Presidential Directive 12; and

(2)(A) includes researchers at academic research institutions, independent research institutes, medical centers and institutes, private companies, and Federal Government research centers and laboratories, performing on Department of Defense funded research; or

(B) has, or is seeking, access to Department of Defense systems, facilities, personnel, information, or operations

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle D—United States Space Force

Sec. 931. Modification of Personnel Limitations.
Sec. 932. Vice Chief of Space Operations.
Sec. 933. Space Staff.
Sec. 934. Extension of one-time uniform allowance for officers who transfer to the Space Force.
Sec. 935. Authority to employ civilian faculty members at Space Force schools.
Sec. 936. Technical and conforming amendments.

Subtitle D—United States Space Force

SEC. 931. MODIFICATION OF PERSONNEL LIMITATIONS.

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

(1) in paragraph (1)—

(A) by striking "and on the Air Staff" and inserting ", on the Air Staff, and on the Space Staff"; and

(B) by striking "2,750" and inserting "3,484";

(2) in paragraph (2)—

(A) by striking "1,650 officers of the Air Force" and inserting "1,948 officers of the Air Force and Space Force"; and

(B) by striking "and on the Air Staff" and inserting ", on the Air Staff, and on the Space Staff"; and

(3) in paragraph (3)—

(A) by striking "and on the Air Staff" and inserting ", on the Air Staff, and on the Space Staff"; and

(B) by striking "60" and inserting "69".

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

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

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

"(A) 2 officers in the grade of general;

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

"(C) 6 officers in the grade of major general.";

(2) in subsection (c)—

(A) in paragraph (1)(A), by striking "and Marine Corps" and inserting "Marine Corps, and Space Force"; and

(B) in paragraph (2), by striking "or Marine Corps" and inserting "Marine Corps, or Space Force"; and

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

(c) AUTHORIZED STRENGTH AFTER DECEMBER 31, 2023: GENERAL OFFICERS AND FLAG OFFICERS ON ACTIVE DUTY.—Section 526a of such title is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking "and Marine Corps" and inserting "Marine Corps, and Space Force";

(B) in paragraph (1), by striking "220" and inserting "218";

(C) in paragraph (2), by striking "151" and inserting "149";

(D) in paragraph (3), by striking "187" and inserting "170"; and

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

"(5) For the Space Force, 21."; and

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

"(E) For the Space Force, 6.".

(d) LIMITATION ON NUMBER OF DOD SES POSITIONS.—Section 1109(a)(1) of the National Defense Authorization Act for Fiscal Year 2017 (5 U.S.C. 3133 note; Public Law 114-328; 130 Stat. 2449) is amended by striking "1,260" and inserting "1,272".

(e) EXTENSION OF ADDITIONAL AUTHORITY TO VARY SPACE FORCE END STRENGTH.—Section 403(b) of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81; 135 Stat. 1674) is amended by striking "December 31, 2022" and inserting "October 1, 2024".

(f) EXTENSION OF TEMPORARY EXEMPTION FROM END STRENGTH GRADE RESTRICTIONS FOR THE SPACE FORCE.—Section 528(a) of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81; 135 Stat. 1690; 10 U.S.C. 517 note) is amended by striking "January 1, 2023" and inserting "October 1, 2026".

SEC. 932. VICE CHIEF OF SPACE OPERATIONS.

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

(1) by redesignating sections 9083, 9084, 9085, and 9086 (as redesignated by section 1081(a)(33) of Public Law 117-81; 135 Stat. 1921) as sections 9084, 9085, 9086, and 9087, respectively; and

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

"**§ 9083. Vice Chief of Space Operations**

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

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

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

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

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

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

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of such chapter is amended by striking the items related to sections 9083 through 9086 and inserting the following new items:

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

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act.

SEC. 933. SPACE STAFF.

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

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

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

(1) in the heading, by striking "**Office of the Chief of Space Operations**" and inserting " ";

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

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

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

(1) in the heading, by striking "**Office of the Chief of Space Operations**" and inserting "**Space Staff**"; and

(2) by striking "Office of the Chief of Space Operations" each place it appears and inserting "Space Staff".

(e) EFFECTIVE DATE.—The amendments made by subsections (c) and (d) shall take effect on the date of the enactment of this Act.

SEC. 934. EXTENSION OF ONE-TIME UNIFORM ALLOWANCE FOR OFFICERS WHO TRANSFER TO THE SPACE FORCE.

Subsection (d)(1) of section 606 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 134 Stat. 3672; 37 U.S.C. 416 note) is amended by striking "ending on September 30, 2022" and inserting "ending on September 30, 2023".

SEC. 935. AUTHORITY TO EMPLOY CIVILIAN FACULTY MEMBERS AT SPACE FORCE SCHOOLS.

(a) IN GENERAL.—Section 9371 of title 10, United States Code, is amended—

(1) in subsection (a), by inserting "or of the Space Delta 13" after "Air University"; and

(2) in subsection (b), in paragraphs (1) and (2), inserting "or of the Space Delta 13" after "Air University" each place it appears.

(b) HEADING.—The heading of such section 9371 is amended to read as follows:

"§9371. Air University and Space Delta 13: civilian faculty members".

(c) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of chapter 947 of such title is amended by striking the item relating to section 9371 and inserting the following new item:

"9371. Air University and Space Delta 13: civilian faculty members.".

SEC. 936. TECHNICAL AND CONFORMING AMENDMENTS.

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

(1) by striking "general, in the case" and inserting "general or, in the case"; and

(2) by striking "or, in the case of an officer of the Space Force, the equivalent grade,".

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

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

(1) in paragraph (1), by striking "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" and inserting "Regular Marine Corps, and Regular Space Force, and in the grades of ensign, lieutenant (junior grade), and lieutenant in the Regular Navy"; and

(2) in paragraph (2), by striking "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" and inserting "Regular Marine Corps, and

Regular Space Force, and in the grades of lieutenant commander, commander, and captain in the Regular Navy".

(d) SERVICE CREDIT UPON ORIGINAL APPOINTMENT AS A COMMISSIONED OFFICER.—Section 533(b)(2) of such title is amended—

(1) by striking ", or equivalent grade in the Space Force"; and

(2) by striking ", or Marine Corps" and inserting "Marine Corps, or Space Force, or".

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

(1) by striking "or Marine Corps" and inserting "Marine Corps, or Space Force, or"; and

(2) by striking "or the commensurate grades in the Space Force,".

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

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

(1) in subparagraph (B)(i), by striking ", in the case of the Navy, lieutenant, or in the case of the Space Force, the equivalent grade" and inserting "or, in the case of the Navy, lieutenant"; and

(2) in subparagraph (D), by striking "in the case of the Navy, rear admiral, or, in the case of the Space Force, the equivalent grade" and inserting "or, in the case of the Navy, rear admiral".

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

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

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

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

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking "or Marine Corps, lieutenant in the Navy, or the equivalent grade in the Space Force" and inserting "Marine Corps, or Space Force, or lieutenant in the Navy"; and

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

(B) in paragraph (4), by striking "or Marine Corps, captain in the Navy, or the equivalent grade in the Space Force" and inserting "Marine Corps, or Space Force, or captain in the Navy";

(C) in paragraph (5)—

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

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

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

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

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

(4) in subsection (d)—

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

(B) in paragraph (3), by striking "or Marine Corps, captain in the Navy, or the equivalent grade in the Space Force" and inserting "Marine Corps, or Space Force, or captain in the Navy";

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

(6) in subsection (f)—

(A) in paragraph (3)—

(i) in subparagraph (A), by striking "or Marine Corps, rear admiral in the Navy, or the equivalent grade in the Space Force" and inserting "Marine Corps, or Space Force, or rear admiral in the Navy"; and

(ii) in subparagraph (B), by striking "or Marine Corps, vice admiral or admiral in the Navy, or an equivalent grade in the Space Force" and inserting "Marine Corps, or Space Force, or vice admiral or admiral in the Navy"; and

(B) in paragraph (6)—

(i) in subparagraph (A), by striking "or Marine Corps, rear admiral in the Navy, or the equivalent grade in the Space Force" and inserting ", Marine Corps, or Space Force, or rear admiral in the Navy"; and

(ii) in subparagraph (B), by striking "or Marine Corps, vice admiral or admiral in the Navy, or an equivalent grade in the Space Force" and inserting "Marine Corps, or Space Force, or vice admiral or admiral in the Navy"; and

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

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

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

(2) in subsection (h), by striking "or Marine Corps" and inserting "Marine Corps, or Space Force".

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

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

(1) in subsection (a)—

(A) by striking ", as a" and inserting "or as a"; and

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

(2) in subsection (d), by striking "lieutenant, ensign, or an equivalent grade in the Space Force," and inserting "lieutenant or ensign,"

(n) DESIGNATION OF SPACE SYSTEMS COMMAND AS A FIELD COMMAND OF THE UNITED STATES SPACE FORCE—Section 9016(b)(6)(B)(iv)(II) of title 10, United States Code, is amended by striking "Space and Missile Systems Center" and inserting "Space Systems Command".

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

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

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

(p) DISTINGUISHED FLYING CROSS.—Section 9279(a) of such title is amended–

(1) by adding "or Space Force" after "Air Force"; and

(2) by adding "or space" after "aerial".

(q) AIRMAN'S MEDAL.—Section 9280(a)(1) of such title is amended by adding "or Space Force" after "Air Force".

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

(1) in subsection (a)(2), by striking "or the Space Force"; and

(2) in subsection (b), by striking "or Reserve".

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

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

(1) in subsection (a)—

(A) in the first sentence, by striking "in the Air Force or the equivalent grade in the Space Force";

(B) in the second sentence—

(i) by inserting "or Regular Space Force" after "Regular Air Force"; and

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

(C) in the third sentence, by striking "in the Air Force or the equivalent grade in the Space Force"; and

(2) in subsection (b)—

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

(B) in the second sentence—

(i) by inserting "or Regular Space Force" after "Regular Air Force"; and

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

(u) CADETS: DEGREE AND COMMISSION ON GRADUATION.—Section 9453(b) of such title is amended by striking "in the equivalent grade in".

(v) BASIC PAY RATES FOR ENLISTED MEMBERS.—Footnote 2 of the table titled "ENLISTED MEMBERS" in section 601(c) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 37 U.S.C. 1009 note) is amended by striking "the senior enlisted advisor of the Space Force" and inserting "Chief Master Sergeant of the Space Force".

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

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

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

Section-by-Section Analysis

SEC. 931. MODIFICATION OF PERSONNEL LIMITATIONS.

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

Subsections (b) and (c) would establish limitations on the number of Space Force general officers overall and in specific grades, similar to limitations that currently exist for the other military services. This section establishes a cap of 21 general officers in the Space Force and would designate a minimum of six Space Force general officers for joint duty assignments. Section 501(b)(1) of the National Defense Authorization Act for Fiscal Year 2021 requires the Secretary of Defense to submit a report to the House Armed Services Committee and Senate Armed Services Committee on the results of a study of the allocation among the armed forces of billets and positions for general and flag officers, including a final plan to meet the general officer caps provided in 10 U.S.C. § 526a after December 31, 2023. The language specifically requires a recommendation as to allocation of billets and positions for the Space Force, within the current limits of 10 U.S.C. § 526a. Therefore, the complete report will include decrements from the other armed forces to offset the 21 general officer Space Force requirement, within the current general and flag officer caps contained in 10 U.S.C. §§ 525, and 526a, such that there is zero requested general officer growth across the Department of Defense.

Subsection (d) would increase by twelve the number of Senior Executive Service (SES) positions authorized for the Department of Defense in order to account for new Space Force SES positions within the Department of the Air Force, to include transfer of the Space Development Agency to the Space Force.

Subsection (e) would extend the authority provided to the Secretary of the Air Force in the FY2022 NDAA, after making a determination that a change in end strength would enhance manning and readiness in essential units or in critical specialties in the Space Force, to vary the

Congressionally authorized end strength of the Space Force by increasing up to five percent, and decreasing up to ten percent. This subsection would extend the authority though fiscal year 2024.

Subsection (f) would extend the FY2022 NDAA temporary exemption from end strength grade restrictions for the Space Force through fiscal year 2025.

SEC. 932. VICE CHIEF OF SPACE OPERATIONS.

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

SEC. 933. SPACE STAFF.

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

SEC. 934. EXTENSION OF ONE-TIME UNIFORM ALLOWANCE FOR OFFICERS WHO TRANSFER TO THE SPACE FORCE.

The Fiscal Year 2021 NDAA, section 606, created a one-time uniform allowance for officers transferring into the Space Force through September 30, 2022. In the practical execution of transferring officers to the Space Force, the initial wave of transfers will continue through the end of FY23. In order to avoid an equity issue between officers, solely based on the timing of their transfer, the Department of the Air Force needs to extend the expiration of the one-time uniform allowance through September 30, 2023. This section would accomplish that need.

SEC. 935. AUTHORITY TO EMPLOY CIVILIAN FACULTY MEMBERS AT SPACE FORCE SCHOOLS.

The United States Space Force requires unique Professional Military and Professional Continuing Education (PME/PCE) schools (Space Delta 13) to ensure the rigorous professional development of its Guardians throughout their careers and to fulfill its mandated roll to organize, train, and equip bold leaders capable of preserving freedom of action, enabling Joint lethality and effectiveness, with the ability to provide independent options to senior leaders. PME schools will include basic, intermediate, and senior developmental education for officer, enlisted and civilian Guardians. PCE schools will include educational opportunities along a Guardian's career that enhance the knowledge, skills, and attributes necessary for them to maintain and enhance military advantage in space. To ensure the highest level of education for PME and PCE students, the Space Force requires flexibility in hiring faculty at the Space Delta 13.

Such faculty members must have the requisite specialized education and academic experience equivalent to our national civilian colleges and universities. Due to its structure, the flexibility to hire select faculty talent is not always readily accessible via the traditional hiring process under title 5, United States Code, which does not normally provide faculty members of this caliber in a timely manner. The Space Force requires the same title 10 faculty hiring flexibility provided to other armed service academic institutions within the PME/PCE system.

This section of this proposal would amend section 9371 of title 10, United States Code, to grant the Secretary of the Air Force the authority to hire and appropriately compensate the best qualified faculty for Space Delta 13. These critical faculty will better support the Space Force in providing the best prepared forces to Combatant Commanders as required. Without this authority, the Space Force will be unable to hire the caliber of faculty required to properly educate its Guardians and to meet its obligations as a force provider.

Approval of this proposal will not amend any authorities of the Air University. Manpower authorizations for this proposal are those already approved and assigned to the Space Delta 13 Unit Manpower Document through previously authorized Space Training and Readiness Command FIELDCOM, and the Space Delta 13, which activated on 23 Aug 2021. The Space Delta 13 requires appropriate subject matter experts in the space enterprise today in order to begin development of an independent PME.

The Space Force intends to follow the Department of the Air Force's use of pay caps based on locality, which does allow for EX-III based on specific locations.

SEC. 936. TECHNICAL AND CONFORMING AMENDMENTS.

This section would make technical and conforming amendments to various provisions of existing law to incorporate Space Force officer grade names, "Chief Master Sergeant of the Space Force" vice "senior enlisted advisor of the Space Force," add "Space Force" to a military personnel authority revision in the FY21 NDAA that inadvertently left out the Space Force, make technical corrections to military decoration and awards provisions to make Space Force members eligible for the Distinguished Flying Cross and Airman's Medal, and update the designation of the Space and Missile Systems Center to Space Systems Command.

Resource Information: The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2023 President's Budget request. The section of this proposal addressing civilian faculty will not increase the overall budget requirements of the Department of Defense; Space Delta 13 will utilize already programmed resources and will not exceed existing salary levels to hire the appropriate mix of highly qualified faculty to fulfill specific educational requirements.

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)**

Officer Clothing Allowance	.001	0	0	0	0	Operation and Maintenance, Space Force	01		
Total	.001	0	0	0	0				

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

TITLE 10, UNITED STATES CODE

§ 152. Chairman: appointment; grade and rank

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

* * * * *

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

* * * * *

§ 181. Joint Requirements Oversight Council

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

* * * * *

(c) COMPOSITION.—

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

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

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

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

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

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

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

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

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

* * * * *

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

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

(1) in the Army, if that appointment would result in more than—
- (A) 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 officers in a grade above the grade of rear admiral; or
- (C) 50 officers in the grade of rear admiral;

(4) in the Marine Corps, if that appointment would result in more than—
- (A) 2 officers in the grade of general;
- (B) 17 officers in a grade above the grade of major general; or
- (C) 22 officers in the grade of major general.

(5) in the Space Force, if that appointment would result in more than—
- (A) 2 officers in the grade of general;
- (B) 7 officers in a grade above the grade of major general; or
- (C) 6 officers in the grade of major general.

* * * * *

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

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

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

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

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

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

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

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

* * * * *

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

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

(1) For the Army, ~~220~~ 218.
(2) For the Navy, ~~151~~ 149.
(3) For the Air Force, ~~187~~ 170.
(4) For the Marine Corps, 62.
(5) For the Space Force, 21.

(b) LIMITED EXCLUSION FOR JOINT DUTY REQUIREMENTS.—

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

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

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

* * * * *

§ 531. Original appointments of commissioned officers

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

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

* * * * *

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

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

* * * * *

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

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

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

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

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

(D) Additional credit as follows:

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

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

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

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

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

* * * * *

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

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

* * * * *

(e) Prior to making a recommendation to the Secretary of Defense for the nomination of an officer for appointment to a position of importance and responsibility under this section, which appointment would result in the initial appointment of the officer concerned in the grade of lieutenant general or general in the Army, Air Force, ~~or~~ Marine Corps, or Space Force, vice admiral or admiral in the Navy, ~~or the commensurate grades in the Space Force,~~ the Secretary concerned shall consider all officers determined to be among the best qualified for such position.

* * * * *

§ 611. Convening of selection boards

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

* * * * *

§ 615. Information furnished to selection boards

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

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

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

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

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

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

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

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

(i) In the case of a regular officer, a grade above captain <u>or, in the case of the Navy, lieutenant</u>~~, 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, <u>or, in the case of the Navy, rear admiral</u> ~~in the case of the Navy, rear admiral, or, in the case of the Space Force, the equivalent grade~~, the requirements in subparagraphs (A) and (C) may be met through the convening and actions of a special selection review board with respect to the officer under section 628a of this title.

* * * * *

§ 628a. Special selection review boards

(a) IN GENERAL.—(1) If the Secretary of the military department concerned determines that a person recommended by a promotion board for promotion to a grade at or below the grade

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

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

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

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

* * * * *

§ 741. Rank: commissioned officers of the armed forces

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

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

* * * * *

§ **1370. Regular commissioned officers**

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

(1) IN GENERAL.—Unless entitled to a different retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, Marine Corps, or Space Force who retires under any

provision of law other than chapter 61 or 1223 of this title shall be retired in the highest permanent grade in which such officer is determined to have served on active duty satisfactorily.

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

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

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

* * * * *

(b) RETIREMENT OF OFFICERS RETIRING VOLUNTARILY.—

(1) SERVICE-IN-GRADE REQUIREMENT.—In order to be eligible for voluntary retirement under any provision of this title in a grade above the grade of captain in the Army, Air Force, ~~or~~ Marine Corps, or Space Force, or lieutenant in the Navy ~~or the equivalent grade in the Space Force~~, a commissioned officer of the Army, Navy, Air Force, Marine Corps, or Space Force must have served on active duty in that grade for a period of not less than three years, except that—

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

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

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

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

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

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

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

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

(C) in the case of officers to be retired in the grade of brigadier general or major general in the Army, Air Force, ~~or~~ Marine Corps, or Space Force, or rear admiral (lower half) or rear admiral in the Navy ~~or an equivalent grade in the Space Force~~, the number equal to 10 percent of the authorized active-duty strength for that fiscal year for officers of that armed force in the applicable grade.

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

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

(c) OFFICERS IN O-9 AND O-10 GRADES.—

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

House of Representatives that the officer served on active duty satisfactorily in such grade.

* * * * *

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

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

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

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

* * * * *

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

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

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

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

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

~~Force,~~ the requirements in subsection (c) shall apply in connection with the retirement of the officer in such final retirement grade.

* * * * *

(f) FINALITY OF RETIRED GRADE DETERMINATIONS.—

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

* * * * *

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

* * * * *

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

(a) RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.—Unless entitled to a different grade, or to credit for satisfactory service in a different grade under some other provision of law, a person who is entitled to retired pay under chapter 1223 of this title shall, upon application under section 12731 of this title, be credited with satisfactory service in the highest permanent grade in which that person served satisfactorily at any time in the armed forces, as determined by the Secretary of the military department concerned in accordance with this section.

* * * * *

(d) OFFICERS IN O-9 AND O-10 GRADES.—

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

* * * * *

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

* * * * *

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

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

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

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

* * * * *

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

(1) IN GENERAL.—For the purposes of subsections (b) through (e), in determining the rate of basic pay to apply in the determination of the retired pay base of a member who has served as Chairman or Vice Chairman of the Joint Chiefs of Staff, as a Chief of Service, as Chief of the National Guard Bureau, as a commander of a unified or specified combatant command (as defined in section 161(c) of this title), or as the senior enlisted member of an armed force or the senior enlisted advisor to the Chairman of the Joint Chiefs of Staff or the Chief of the National Guard Bureau, the highest rate of basic pay applicable to the member while serving in that position shall be used, if that rate is higher than the rate otherwise authorized by this section.

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

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

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

(3) DEFINITIONS.—In this subsection:

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

(i) Chief of Staff of the Army.

(ii) Chief of Naval Operations.

(iii) Chief of Staff of the Air Force.

(iv) Commandant of the Marine Corps.

(v) Chief of Space Operations.

(vi) Commandant of the Coast Guard.

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

(i) Sergeant Major of the Army.

(ii) Master Chief Petty Officer of the Navy.

(iii) Chief Master Sergeant of the Air Force.

(iv) Sergeant Major of the Marine Corps.

(v) ~~The senior enlisted advisor of the Space Force.~~ Chief Master Sergeant of the Space Force.

(vi) Master Chief Petty Officer of the Coast Guard.

* * * * *

§ 2107. Financial assistance program for specially selected members

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

* * * * *

(d) Upon satisfactorily completing the academic and military requirements of the four-year program, a cadet or midshipman may be appointed as a regular or reserve officer in the appropriate armed force in the grade of second lieutenant~~,~~ or ensign, ~~or an equivalent grade in the Space Force,~~ even though he is under 21 years of age.

* * * * *

§ 9014. Office of the Secretary of the Air Force

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

* * * * *

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

(A) Acquisition.

(B) Auditing.

(C) Comptroller (including financial management).

(D) Information management.

(E) Inspector General.

(F) Legislative affairs.

(G) Public affairs.

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

within the Air Staff or the Space Staff ~~Office of the Chief of Space Operations~~ to conduct any of the functions specified in paragraph (1).

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

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

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

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

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

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

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

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

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

(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Air Force assigned or detailed to permanent duty in the Office of the Secretary of the Air Force, ~~and~~ on the Air Staff, and on the Space Staff may not exceed 3,484 ~~2,750~~.

(2) Not more than 1,948 ~~1,650~~ officers of the Air Force and the Space Force on the active-duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Air Force, ~~and~~ on the Air Staff, and on the Space Staff.

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

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

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

* * * * *

§ 9016. Assistant Secretaries of the Air Force

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Oversee and direct each of the following:

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

(II) The ~~Space and Missile Systems Center~~ Space Systems Command.

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

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

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

* * * * *

§ 9082. Chief of Space Operations

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

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

(3) The President may appoint an officer as Chief of Space Operations only if—

(A) the officer has had significant experience in joint duty assignments; and

(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(d) of this title) as a general~~, flag, or equivalent~~ officer of the Space Force.

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

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

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

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

(1) preside over the Space Staff ~~Office of the Chief of Space Operations~~;

(2) transmit the plans and recommendations of the Space Staff ~~Office of the Chief of Space Operations~~ to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) after approval of the plans or recommendations of the Space Staff ~~Office of the Chief of Space Operations~~ by the Secretary, act as the agent of the Secretary in carrying them into effect;

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

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

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

* * * * *

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

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

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

(1) The Chief of Space Operations.

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

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

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

* * * * *

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

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

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

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

(2) investigate and report upon the efficiency of the Space Force and its preparation to support military operations by commanders of the combatant commands;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) as directed by the Secretary of the Air Force or the Chief of Space Operations, coordinate the action of organizations of the Space Force; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary of the Air Force.

* * * * *

§9279. Distinguished flying cross: award; limitations

(a) The President may award a distinguished flying cross of appropriate design with accompanying ribbon to any person who, while serving in any capacity with the Air Force or Space Force, distinguishes himself by heroism or extraordinary achievement while participating in an aerial or space flight.

(b) Not more than one distinguished flying cross may be awarded to a person. However, for each succeeding act that would otherwise justify award of such a cross, the President may award a suitable bar or other device to be worn as he directs.

§9280. Airman's Medal: award; limitations

(a) (1) The President may award a decoration called the "Airman's Medal", of appropriate design with accompanying ribbon, to any person who, while serving in any capacity

with the Air Force or Space Force, distinguishes himself by heroism not involving actual conflict with an enemy.

(2) The authority in paragraph (1) includes authority to award the medal to a member of the Ready Reserve who was not in a duty status defined in section 101(d) of this title when the member distinguished himself by heroism.

(b) Not more than one Airman's Medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal, the President may award a suitable bar or other device to be worn as he directs.

* * * * *

§ 9341. General rule

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

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

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

* * * * *

§9371. Air University and Space Delta 13: civilian faculty members

(a) Authority of Secretary.-The Secretary of the Air Force may employ as many civilians as professors, instructors, and lecturers at a school of the Air University or of the Space Delta 13 as the Secretary considers necessary.

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

(c) Application to Certain Faculty Members.-(1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at a school of the Air University or of the Space Delta 13 after February 27, 1990.

(2) This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Air University or of the Space Delta 13 if the duration of the principal course of instruction offered at that school is less than 10 months.

* * * * *

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

(a) DIRECTOR AND CHANCELLOR.—

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

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

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

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

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

* * * * *

§ 9436. Permanent professors; director of admissions

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

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

* * * * *

§ 9453. Cadets: degree and commission on graduation

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

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

* * * * *

JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007
(PUBLIC LAW 109–364; 37 U.S.C. 1009 note)

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

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

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

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

* * * * *

ENLISTED MEMBERS[1]

* * * * *

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

[2] Subject to the preceding footnote, the rate of basic pay for an enlisted member in this grade while serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, ~~the senior enlisted advisory of the Space Force~~ Chief Master Sergeant of the Space Force, Master Chief Petty Officer of the Coast Guard, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of

Staff is $6,642.60, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

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

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2017
(PUBLIC LAW 114–328; 130 STAT. 2449)

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

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

(1) IN GENERAL.—Not later than December 31, 2022, the total number of Senior Executive Service positions authorized under section 3133 of title 5, United States Code, for the Department of Defense may not exceed ~~1,260~~ 1,272.

* * * * *

WILLIAM M. (MAC) THORNBERRY NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2021
(PUBLIC LAW 116–283; 134 STAT. 3672)

SEC. 606. ONE-TIME UNIFORM ALLOWANCE FOR OFFICERS WHO TRANSFER TO THE SPACE FORCE.

(a) IN GENERAL.— The Secretary of the Air Force may provide an officer who transfers from the Army, Navy, Air Force, or Marine Corps to the Space Force an allowance of not more than $400 as reimbursement for the purchase of required uniforms and equipment.

(b) RELATIONSHIP TO OTHER ALLOWANCES.—The allowance under this section is in addition to any allowance available under any other provision of law.

(c) SOURCE OF FUNDS.—Funds for allowances provided under subsection (a) in a fiscal year may be derived only from amounts authorized to be appropriated for military personnel of the Space Force for such fiscal year.

(d) APPLICABILITY.—The authority for an allowance under this section shall apply with respect to any officer described in subsection (a) who transfers to the Space Force—

(1) during the period beginning on December 20, 2019, and ending on September 30, ~~2022~~ 2023; and

(2) on or after the date the Secretary of the Air Force prescribes the official uniform for the Space Force.10

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NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2022
(PUBLIC LAW 117–81)

SEC. 403. ADDITIONAL AUTHORITY TO VARY SPACE FORCE END STRENGTH.

(a) IN GENERAL.— Notwithstanding section 115(g) of title 10, United States Code, upon determination by the Secretary of the Air Force that such action would enhance manning and readiness in essential units or in critical specialties, the Secretary may vary the end strength authorized by Congress for each fiscal year as follows:

(1) Increase the end strength authorized pursuant to section 115(a)(1)(A) for a fiscal year for the Space Force by a number equal to not more than 5 percent of such authorized end strength.

(2) Decrease the end strength authorized pursuant to section 115(a)(1)(A) for a fiscal year for the Space Force by a number equal to not more than 10 percent of such authorized end strength.

(b) TERMINATION.—The authority provided under subsection (a) shall terminate on ~~December 31, 2022~~ October 1, 2024.

* * * * *

SEC. 528. TEMPORARY EXEMPTION FROM END STRENGTH GRADE RESTRICTIONS FOR THE SPACE FORCE.

(a) EXEMPTION.—Sections 517 and 523 of title 10, United States Code, shall not apply to the Space Force until ~~January 1, 2023~~ October 1, 2026.

(b) SUBMITTAL.—Not later than April 1, 2022, the Secretary of the Air Force shall establish and submit to the Committees on Armed Services for the Senate and House of Representatives for inclusion in the National Defense Authorization Act for fiscal year 2023, the number of officers who—

(1) may be serving on active duty in each of the grades of major, lieutenant colonel, and colonel; and

(2) may not, as of the end of such fiscal year, exceed a number determined in accordance with section 523(a)(1) of such title.

TITLE 37, UNITED STATES CODE

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

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

* * * * *

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

(1) The Sergeant Major of the Army.

(2) The Master Chief Petty Officer of the Navy.

(3) The Chief Master Sergeant of the Air Force.

(4) The Sergeant Major of the Marine Corps.

(5) ~~The senior enlisted advisor of the Space Force.~~ The Chief Master Sergeant of the Space Force.

(6) The Master Chief Petty Officer of the Coast Guard.

* * * * *

§ 414. Personal money allowance

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

(1) $500 a year, while serving in the grade of lieutenant general or vice admiral, or in an equivalent grade or rank;

(2) $1,200 a year, in place of any other personal money allowance authorized by this section while serving as Surgeon General of the Public Health Service;

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

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

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

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

SEC. ___. EXTENSION OF AUTHORITY TO SUPPORT A UNIFIED COUNTERDRUG AND COUNTERTERRORISM CAMPAIGN IN COLOMBIA.

Section 1021 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 2042), as most recently amended by section 1007 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81), is further amended—

(1) in subsection (a)(1), by striking "2023" and inserting "2024"; and

(2) in subsection (c) in the matter preceding paragraph (1), by striking "2023" and inserting "2024".

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

Section-by-Section Analysis

This proposal would extend section 1021 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) through September 30, 2024. Department of Defense (DoD) support is linked to continued implementation of the 2016 Colombian peace accord. Extension of this authority enhances DoD support for the National Drug Control Strategy and Executive Order 13773, which calls for efforts to "identify, interdict, disrupt, and dismantle transnational criminal organizations and subsidiary organizations" and to "enhance cooperation with foreign counterparts against transnational criminal organizations."

Section 1021, and similar expanded authorities that were provided to the Department of State, were tailored to support Colombia's unique operational environment. These authorities have been instrumental to the Government of Colombia's efforts to bring about a lasting end to the longest running civil war in the Western Hemisphere. As Colombia continues to implement a peace agreement with the Revolutionary Armed Forces of Colombia (FARC), it will continue to be challenged by terrorist organizations and other illegal armed groups that threaten Colombian and U.S. national security interests via sophisticated attacks against Colombian security forces, assassinations, and kidnappings – while maintaining control of lucrative cocaine production and trafficking routes.

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)
Drug Interdiction and Counter Drug Activities, Defense	$19	$19	$0.0	$0.0	$0.0	Drug Interdiction and Counter Drug Activities, Defense (0105D)	BA1	1FU1	N/A
Total	$19	$19							

Changes to Existing Law: This proposal would amend section 1021 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) as follows:

SEC. 1021. USE OF FUNDS FOR UNIFIED COUNTERDRUG AND COUNTERTERRORISM CAMPAIGN IN COLOMBIA.

(a) AUTHORITY.—(1) In fiscal years 2005 through ~~2023~~ 2024, funds available to the Department of Defense to provide assistance to the Government of Colombia may be used by the Secretary of Defense to support a unified campaign by the Government of Colombia against narcotics trafficking and against activities by the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), the United Self-Defense Forces of Colombia (AUC), and any covered organization that the Secretary of Defense, with the concurrence of the Secretary of State, determines poses a threat to the national security interests of the United States.

(2) For purposes of paragraph (1), a covered organization is any foreign terrorist organization, or other organization that is a non-state armed group, that—

(A) promotes illicit economies;

(B) employs violence to protect its interests;

(C) has a military type structure, tactics, and weapons that provide it the ability to carry out large-scale violence;

(D) challenges the security response capacity of Colombia; and

(E) has the capability to control territory.

(3) The authority to provide assistance for a campaign under this subsection includes authority to take actions to protect human health and welfare in emergency circumstances, including the undertaking of rescue operations.

(b) APPLICABILITY OF CERTAIN LAWS AND LIMITATIONS.—The use of funds pursuant to the authority in subsection (a) shall be subject to the following:

(1) Sections 556, 567, and 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2160, 2165, and 2166).

(2) Section 8076 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 988).

(c) NUMERICAL LIMITATION ON ASSIGNMENT OF UNITED STATES PERSONNEL.—Notwithstanding section 3204(b) of the Emergency Supplemental Act, 2000 (Division B of Public Law 106–246; 114 Stat. 575), as amended by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2131), the number of United States personnel assigned to conduct activities in Colombia in connection with support of Plan Colombia under subsection (a) in fiscal years 2005 through ~~2023~~ 2024 shall be subject to the following limitations:

(1) The number of United States military personnel assigned for temporary or permanent duty in Colombia in connection with support of Plan Colombia may not exceed 800.

(2) The number of United States individual citizens retained as contractors in Colombia in connection with support of Plan Colombia who are funded by Federal funds may not exceed 600.

(d) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—No United States Armed Forces personnel, United States civilian employees, or United States civilian contractor personnel employed by the United States may participate in any combat operation in connection with assistance using funds pursuant to the authority in subsection (a), except for the purpose of acting in self-defense or of rescuing any United States citizen, including any United States Armed Forces personnel, United States civilian employee, or civilian contractor employed by the United States.

(e) NOTICE ON ASSISTANCE WITH RESPECT TO COVERED ORGANIZATIONS.—(1) Not later than 30 days before providing assistance pursuant to the authority in subsection (a) with respect to a covered organization, the Secretary of Defense shall submit to the appropriate committees of Congress a written notification of the intent to use such authority with respect to such organization, including the name of such organization, the characteristics of such organization, and threat posed by such organization.

(2) In this subsection, the term "appropriate committees of Congress" means—

(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(B) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

(f) RELATION TO OTHER AUTHORITY.—The authority provided by subsection (a) is in addition to any other authority in law to provide assistance to the Government of Colombia.

(g) REPORT ON RELATIONSHIPS BETWEEN TERRORIST ORGANIZATIONS IN COLOMBIA AND FOREIGN GOVERNMENTS AND ORGANIZATIONS.—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Secretary of Defense and the Director of Central Intelligence, shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report that describes—

(A) any relationships between foreign governments or organizations and organizations based in Colombia that have been designated as foreign terrorist

organizations under United States law, including the provision of any direct or indirect assistance to such organizations; and

(B) United States policies that are designed to address such relationships.

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

SEC. ___. UPDATE AND PERMANENT AUTHORIZATION OF DISTRIBUTION SUPPORT AND SERVICES FOR CONTRACTORS PROGRAM.

(a) PERMANENT AUTHORIZATION AND REMOVAL OF LIMITATION.—Section 883 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2302 note) is amended—

(1) in subsection (b)—

(A) by striking paragraph (2); and

(B) by striking "CONTRACTS.—" through "Any storage" and inserting "CONTRACTS.—Any storage"; and

(2) by striking subsection (g).

(b) REMOVAL OF PILOT PROGRAM REFERENCES.—Such section is further amended—

(1) in the section heading, by striking "**PILOT**";

(2) in subsection (a), by striking "six-year pilot"; and

(3) in subsections (b), (d), and (e), by striking "pilot" each place it appears.

(c) EXPANSION.—Such section is further amended—

(1) in the section heading, by striking "**WEAPON SYSTEMS**";

(2) in subsection (a), by striking "for the production, modification, maintenance, or repair of a weapon system that is"; and

(3) in subsection (c), by striking "described in subsection (a) are" and inserting "entered into by the Department include".

(d) AMENDMENTS TO REGULATIONS.—Subsection (d) of such section is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A)—

(i) by striking "the solicitation of offers for a contract described in subsection (a)," and inserting "notifying a contractor or potential contractor"; and

(ii) by striking "are to" and inserting may";

(B) in subparagraph (A), by striking "to any contractor awarded the contract, but only"; and

(C) in subparagraph (B), by striking "to be made"; and

(2) in paragraph (6), by striking "shall include" and all that follows and inserting the following: "shall include a requirement that any failure by the contractor to perform the supported contract is not excusable based on use of the support contract, and the contractor is to remain responsible for performance of the primary contract.".

(e) REPEAL OF REPORT REQUIREMENTS.—Such section is further amended by striking subsection (f).

Section-by-Section Analysis

This proposal would expand and make permanent the Pilot Program for Distribution Support and Services for Weapon Systems Contractors authorized by Section 883 of the National Defense Authorization Act for Fiscal Year 2017 and rename it as Program for Distribution Support and Services for Contractors. The section currently limits the program to a "pilot" status with a maximum of five (5) support contracts over the six (6) year life of the program. The section also places limits on the types of material and products that can use the pilot program. This proposal would broaden the program to store and distribute material and products beyond those parts and components for weapons systems authorized in the pilot program.

This proposal would strike subsections (b)(2) and (g), that limit the number of partnerships that can be established and sunsets the authority of this section after six (6) years, respectively. Striking this language will make the program permanent, thus bringing DLA warehousing in alignment with the industrial maintenance community it serves, reducing program costs while optimizing Defense Working Capital Fund revenue, and innovating how DLA partners with industry.

This proposal would strike "pilot" language throughout the section and revise the language to expand the program. This proposal would strike language from subsections (a), (b),

and (c) that limit the types of contracts that may be supported, and accordingly the material for which the agreements can be established. Eliminating the "weapons system" requirement would allow for the expansion of the program and provide the DoD the necessary authority to partner with industry to increase mission assurance for non-weapons systems, such as the medical supply chain. The proposal also provides more flexibility by providing that DLA may enter into a single support contract with a DoD contractor to provide support for multiple DoD contracts performed by that contractor.

This proposal also includes technical amendments to subsection (d), relating to regulations, based on DLA's experience in entering into public-private partnerships for storage and distribution support contracts using the authority provided by Section 883. In particular, because all instances of use of the Section 883 authority have resulted from interest shown by existing contractors, the requirement that solicitations include language referring to the program is revised to eliminate the reference to solicitations and instead requires notification concerning the program, which includes both solicitations and existing contracts. Another revision in the proposal eliminates reference to indemnification by supported contractors and clarifies that the supported contractors remain responsible for their contract performance despite use of support under this program.

This proposal would repeal the reporting requirements of subsection (f), as the dates are past and the reports have been completed.

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

DLA has executed four agreements under the Section 883 pilot program which represent a $3.8M actual/projected financial impact. The ~$3.8M combination of increased revenue, cost avoidance, and cost reduction comes at a cost of additional resources to DLA of just $23K, a superior return on investment for DoD.

At a high level, improving DLA's warehouse utilization decreases overhead costs per unit and positively impacts storage rates for DLA's entire customer base. Viewed more tactically, the components of the financial impact include program cost reduction, program cost avoidance, and Defense Working Capital Fund (DWCF) sales. Program cost reductions result when the agreement under the pilot program reduces (versus the status quo) program costs to DoD. Program cost avoidance occurs when the agreement under the pilot program is executed in parallel with the award of a supported weapons systems contract, with the agreement under the pilot program eliminating or reducing what would have been additional program costs to DoD had the contract awardee NOT partnered with DLA via the pilot program. Whether through outright cost reduction or cost avoidance, both DoD and taxpayers benefit from lower prime contractor storage and distribution costs.

The four executed agreements are of varying lengths. The financial impacts on a per year basis are summarized in the following table:

	Agreement #1	#2	#3	#4	Total*

DWCF Sales	$40,279	$82,546	$150,623	$48,172	$321,621
Cost Avoidance	$72,801	-	$175,675	$86,275	$334,751
Cost Reduction	-	$200,000	-	-	$200,000
DLA Resourcing Costs	$2,027	$3,241	-	-	$5,268
Net Impact (DWCF Sales + Cost Avoidance + Cost Reduction – Resourcing)	**$111,053**	**$275,559**	**$326,299**	**$134,447**	**$851,103**
Agreement Length	6.75 Years	3 Years	5 Years	5 Years	N/A
Total Net Impact over length of Agreement	$749,607	$837,915	$1,631,493	$672,235	$3,891,250

*Numbers may not add up precisely due to rounding.

The per year totals for each financial component are the basis for the below budgetary impact estimates. The below estimates do not factor in program growth, which will contribute to additional revenue and opportunities for cost avoidance and cost reduction.

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)**
DLA DWCF Sales	-$0.3	-$0.3	-$0.3	-$0.3	-$0.3	Defense-Wide Working Capital Fund 493005D	20	ES08	N/A
Cost Avoidance/ Reduction	-$0.5	-$0.5	-$0.5	-$0.5	-$0.5	Defense-Wide Working Capital Fund 493005D	20	ES08	N/A
Resourcing Costs	$0.01	$0.01	$0.01	$0.01	$0.01	Defense-Wide Working	20	ES08	N/A

						Capital Fund 493005D			
Total	-$0.8	-$0.8	-$0.8	-$0.8	-$0.8				

Changes to Existing Law: This proposal would amend Section 883 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328); 10 U.S.C. §2302 note) as follows:

SEC. 883. ~~PILOT~~ PROGRAM FOR DISTRIBUTION SUPPORT AND SERVICES FOR ~~WEAPON SYSTEMS~~ CONTRACTORS.

(a) AUTHORITY.—The Secretary of Defense may carry out a ~~six-year pilot~~ program under which the Secretary may make available storage and distribution services support to a contractor in support of the performance by the contractor of a contract or contracts ~~for the production, modification, maintenance, or repair of a weapon system that is~~ entered into by the Department of Defense.

(b) SUPPORT CONTRACTS.— ~~(1) IN GENERAL.—~~Any storage and distribution services to be provided under the ~~pilot~~ program under this section to a contractor in support of the performance of a contract or contracts described in subsection (a) shall be provided under a separate contract that is entered into by the Director of the Defense Logistics Agency with that contractor. The requirements of section 2208(h) of title 10, United States Code, and the regulations prescribed pursuant to such section shall apply to any such separate support contract between the Director of the Defense Logistics Agency and the contractor.

~~(2) LIMITATION.—Not more than five support contracts between the Director and the contractor may be awarded under the pilot program.~~

(c) SCOPE OF SUPPORT AND SERVICES.—The storage and distribution support services that may be provided under this section in support of the performance of a contract entered into by the Department ~~described in subsection (a) are~~ include storage and distribution of materiel and parts necessary for the performance of that contract.

(d) REGULATIONS.—Before exercising the authority under the ~~pilot~~ program under this section, the Secretary of Defense shall prescribe in regulations such requirements, conditions, and restrictions as the Secretary determines appropriate to ensure that storage and distribution services are provided under the ~~pilot~~ program only when it is in the best interests of the United States to do so. The regulations shall include, at a minimum, the following:[copied OLRC language because this was missing words!]

(1) A requirement for ~~the solicitation of offers for a contract described in subsection (a)~~ notifying a contractor or potential contractor for which storage and distribution services ~~are to~~ may be made available under the ~~pilot~~ program, including-

(A) a statement that the storage and distribution services are to be made available under the authority of the ~~pilot~~ program under this section ~~to any contractor awarded the contract, but only~~ on a basis that does not require acceptance of the support and services; and

(B) a description of the range of the storage and distribution services that are ~~to be made~~ available to the contractor.

(2) A requirement for the rates charged a contractor for storage and distribution services provided to a contractor under the ~~pilot~~ program to reflect the full cost to the United States of the resources used in providing the support and services, including the costs of resources used, but not paid for, by the Department of Defense.

(3) With respect to a contract described in subsection (a) that is being performed for a department or agency outside the Department of Defense, a prohibition, in accordance with applicable contracting procedures, on the imposition of any charge on that department or agency for any effort of Department of Defense personnel or the contractor to correct deficiencies in the performance of such contract.

(4) A prohibition on the imposition of any charge on a contractor for any effort of the contractor to correct a deficiency in the performance of storage and distribution services provided to the contractor under this section.

(5) A requirement that storage and distribution services provided under the ~~pilot~~ program may not interfere with the mission of the Defense Logistics Agency or of any military department involved with the pilot program.

(6) A requirement that any support contract for storage and distribution services entered into under the ~~pilot~~ program shall include a requirement that ~~clause to indemnify the Government against~~ any failure by the contractor to perform the ~~support~~ supported contract is not excusable based on use of the support contract, and the contractor is to remain responsible for performance of the primary contract.

(e) RELATIONSHIP TO TREATY OBLIGATIONS.—The Secretary shall ensure that the exercise of authority under the ~~pilot~~ program under this section does not conflict with any obligation of the United States under any treaty or other international agreement.

~~(f) REPORTS.—~~

~~(1) SECRETARY OF DEFENSE.—Not later than the end of the fourth year of operation of the pilot program, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing—~~

~~(A) the cost effectiveness for both the Government and industry of the pilot program; and~~

~~(B) how support contracts under the pilot program affected meeting the requirements of primary contracts.~~

~~(2) COMPTROLLER GENERAL.—Not later than the end of the fifth year of operation of the pilot program, the Comptroller General of the United States shall review the report of the Secretary under paragraph (1) for sufficiency and provide such recommendations in a report to the Committees on Armed Services of the Senate and House of Representatives as the Comptroller General considers appropriate.~~

~~(g) SUNSET.—The authority to enter into contracts under the pilot program shall expire six years after the date of the enactment of this Act. Any contracts entered into before such date shall continue in effect according to their terms.~~

SEC. ___. UPDATING WARRANT OFFICER SELECTION AND PROMOTION AUTHORITY.

(a) CONVENING OF SELECTION BOARDS.—Section 573 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(g)(1) Upon the request of a warrant officer, the Secretary of the military department with jurisdiction over the officer may exclude the officer from consideration by a selection board convened under this section to consider warrant officers for promotion to the next higher grade.

"(2) The Secretary concerned may approve a request of a warrant officer under paragraph (1) only if—

"(A) the basis for the request is to allow the officer to complete a deepening assignment in support of career progression, advanced education, another assignment of significant value to the Department of Defense, or a career progression requirement delayed by an assignment or education;

"(B) it is determined the exclusion from consideration is in the best interest of the military department concerned; and

"(C) the officer has not previously failed of selection for promotion to the grade for which the officer requests the exclusion from consideration.

(b) PROMOTIONS: EFFECT OF FAILURE OF SELECTION FOR.—Section 577 of title 10, United States Code, is amended by striking the period at the end of the second sentence and inserting ", or a warrant officer excluded under section 573(g) of this title.".

(c) RECOMMENDATION FOR PROMOTION BY SELECTION BOARDS.—Section 575 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(e)(1) In selecting the warrant officers to be recommended for promotion, a selection board may, when authorized by the Secretary concerned, recommend warrant officers of particular merit, from among those warrant officers selected for promotion, to be placed higher on the promotion list contained in the board's report under section 576(c) of this title.

"(2) A warrant officer may be recommended to be placed higher on a promotion list under paragraph (1) only if the warrant officer receives the recommendation of at least a majority of the members of the board, unless the Secretary concerned establishes an alternative requirement. Any such alternate requirement shall be furnished to the board as part of the guidelines furnished to the board under section 576 of this title.

"(3) For the warrant officers recommended to be placed higher on a promotion list under paragraph (1), the board shall recommend the order in which those warrant officers should be placed on the list.".

(d) INFORMATION TO BE FURNISHED TO SELECTION BOARDS; SELECTION PROCEDURES.—Section 576(c) of title 10, United States Code, is amended to read as follows:

"(c) A selection board convened under section 573(a) of this title shall, when authorized under section 575(e) of this title, include in its report to the Secretary concerned the names of those warrant officers recommended by the board to be placed higher on the promotion list and the order in which those officers should be placed on the list. The names of all other warrant officers recommended for promotion under this section shall be arranged in the board's report in the order of seniority on the warrant officer active-duty list.".

(e) PROMOTIONS: HOW MADE; EFFECTIVE DATE.—Section 578(a) of title 10, United States Code, is amended—

(1) by striking ", in the order of the seniority of such officers on the warrant officer active-duty list"; and

(2) by adding at the end the following new sentence: "Warrant officers of particular merit who were recommended by the board to be placed higher on the promotion list under section 576(c) of this title shall be listed first and, amongst themselves, in the order recommended by the board, followed by the other warrant officers approved for promotion in order of the seniority of such officers on the warrant officer active-duty list.".

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

Section-by-Section Analysis

This proposal would make a number of changes to current law governing the selection and promotion of warrant officers. The purpose of these changes is to improve flexibility within the framework of warrant officer promotions and increase the ability to reward superior performance.

Subsections (a) and (b) of this this proposal would amend sections 573 and 577 of title 10, United States Code, to authorize the Secretary of a military department to, based on the request of a warrant officer, remove the warrant officer from consideration by a selection board for promotion to the next higher grade.

By allowing for a warrant officer to request to not be considered by a selection board for promotion to the next higher grade, the military department concerned will provide the warrant officer more flexibility in developing a career path that meets both personal goals and Service-specific requirements. Army warrant officers are periodically assigned outside their core specialties or participate in technical training that enhances an aspect of their primary specialty or of a related specialty. The timing of such assignments and training can create a promotion consideration disadvantage. Warrant officers affected by broadening assignments are at particular risk early in their career. A CW2/3 is selected for promotion based on very similar career models as their peers with performance, assignments, and education remaining the critical decision factors. Warrant officers are not required to have Bachelor's degrees during accession, which may create a disparity early in their careers. Each Service has unique professional

requirements that provide deepening opportunities to become competitive for promotion. All technical warrant officers compete against each other for promotion regardless of Military Occupational Specialty (MOS). W4s are also at risk for promotion to W5 if their career management field provided unequal opportunity for civilian education or current Army requirements.

In an effort to improve talent management within the Department of Defense, this proposal would ensure that each warrant officer, with the approval of the Secretary concerned, is given the flexibility to take on assignments that broaden their utility, participate in education to strengthen their knowledge base, and explore unforeseen career-enhancing opportunities without being penalized for inopportune promotion consideration timing.

Subsections (c) through (e) of this proposal would amend sections 575, 576, and 578 of title 10, United States Code, to allow for promotion selection boards to recommend top performing warrant officers be placed at the top of a promotion list. This proposal allows the Secretary of the military department to authorize up to the number of warrant officers the selection board is authorized to select from below the promotion zone to be moved to the top of the list if the warrant officer receives a recommendation from a majority of the promotion selection board members. Such authority would provide warrant officers with the same opportunity for selection approved for commissioned officers in 2019. By enabling a promotion selection board to place high performers at the top of a promotion list, the Services will be better able to reward and encourage superior performance. This proposal would not be mandatory, but would provide the Secretaries of the military departments greater flexibility in managing talent within their services.

Resource Information: This proposal has no impact on the use of resources. This proposal does not affect the number of warrant officers that will be recommended for promotion by a future selection board.

Changes to Existing Law: This proposal would make the following changes to sections 573, 575, 576, 577, and 578 of title 10, United States Code:

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§573. Convening of selection boards

(a)(1) Whenever the Secretary concerned determines that the needs of the service so require, he shall convene a selection board to recommend for promotion to the next higher warrant officer grade warrant officers on the warrant officer active-duty list who are in the grade of chief warrant officer, W–2, chief warrant officer, W–3, or chief warrant officer, W–4.

(2) Warrant officers serving on the warrant officer active-duty list in the grade of warrant officer, W–1, shall be promoted to the grade of chief warrant officer, W–2, in accordance with regulations prescribed by the Secretary concerned. Such regulations shall require that an officer have served not less than 18 months on active duty in the grade of warrant officer, W–1, before promotion to the grade of warrant officer, W–2.

(b) A selection board shall consist of five or more officers who are on the active-duty list of the same armed force as the warrant officers under consideration by the board. At least five members of a selection board must be serving in a permanent grade above major or lieutenant commander. The Secretary concerned may appoint warrant officers, senior in grade to those under consideration, as additional members of the selection board. If warrant officers are appointed members of the selection board and if competitive categories have been established by the Secretary under section 574(b) of this title, at least one must be appointed from each warrant officer competitive category under consideration by the board, unless there is an insufficient number of warrant officers in the competitive category concerned who are senior in grade to those under consideration and qualified, as determined by the Secretary concerned, to be appointed as additional members of the board.

(c) The Secretary concerned may convene selection boards to recommend regular warrant officers for continuation on active duty under section 580 of this title and for retirement under section 581 of this title.

(d) When reserve warrant officers of one of the armed forces are to be considered by a selection board convened under subsection (a), the membership of the board shall, if practicable, include at least one reserve officer of that armed force, with the exact number of reserve officers to be determined by the Secretary concerned.

(e) No officer may serve on two consecutive boards under this section, if the second board considers any warrant officer who was considered by the first board.

(f) The Secretary concerned shall prescribe all other matters relating to the functions and duties of the boards, including the number of members constituting a quorum, and instructions concerning notice of convening of boards and communications with boards.

(g)(1) Upon the request of a warrant officer, the Secretary of the military department with jurisdiction over the officer may exclude the officer from consideration by a selection board convened under this section to consider warrant officers for promotion to the next higher grade.

(2) The Secretary concerned may approve a request of a warrant officer under paragraph (1) only if—

(A) the basis for the request is to allow the officer to complete a deepening assignment in support of career progression, advanced education, another assignment of significant value to the Department of Defense, or a career progression requirement delayed by an assignment or education;

(B) it is determined the exclusion from consideration is in the best interest of the military department concerned; and

(C) the officer has not previously failed of selection for promotion to the grade for which the officer requests the exclusion from consideration.

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§575. Recommendations for promotion by selection boards

(a) A selection board convened under section 573(a) of this title shall recommend for promotion to the next higher grade those warrant officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for warrant officers with particular skills, considers best qualified for promotion within each grade (or grade and competitive category) considered by the board.

(b)(1) In the case of a selection board to consider warrant officers for selection for promotion to the grade of chief warrant officer, W–3, chief warrant officer, W–4, or chief warrant officer, W–5, the Secretary concerned shall establish the number of warrant officers that the selection board may recommend from among warrant officers being considered from below the promotion zone within each grade (or grade and competitive category). The number of warrant officers recommended for promotion from below the promotion zone does not increase the maximum number of warrant officers which the board is authorized under section 574 of this title to recommend for promotion.

(2) The number of officers recommended for promotion from below the promotion zone may not exceed 10 percent of the total number recommended, except that the Secretary of Defense and the Secretary of Homeland Security, when the Coast Guard is not operating as a service in the Navy, may authorize such percentage to be increased to not more than 15 percent. If the number determined under this subsection with respect to a promotion zone within a grade (or grade and competitive category) is less than one, the board may recommend one such officer for promotion from below the zone within that grade (or grade and competitive category).

(c) A selection board convened under section 573(a) of this title may not recommend a warrant officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board; and

(2) a majority of the members of the board find that the officer is fully qualified for promotion.

(d) Each time a selection board is convened under section 573(a) of this title to consider warrant officers in a competitive category for promotion to the next higher grade, each warrant officer in the promotion zone, and each warrant officer above the promotion zone, for the grade and competitive category under consideration (except for a warrant officer precluded from consideration under regulations prescribed by the Secretary concerned under section 577 of this title) shall be considered for promotion.

(e)(1) In selecting the warrant officers to be recommended for promotion, a selection board may, when authorized by the Secretary concerned, recommend warrant officers of particular merit, from among those warrant officers selected for promotion, to be placed higher on the promotion list contained in the board's report under section 576(c) of this title.

(2) A warrant officer may be recommended to be placed higher on a promotion list under paragraph (1) only if the warrant officer receives the recommendation of at least a majority of the members of the board, unless the Secretary concerned establishes an alternative requirement. Any such alternate requirement shall be furnished to the board as part of the guidelines furnished to the board under section 576 of this title.

(3) For the warrant officers recommended to be placed higher on a promotion list under paragraph (1), the board shall recommend the order in which those warrant officers should be placed on the list.

§576. Information to be furnished to selection boards; selection procedures

(a) The Secretary concerned shall furnish to each selection board convened under section 573 of this title the following:

(1) The maximum number of warrant officers that may be recommended for promotion from those serving in any grade (or grade and competitive category) to be considered, as determined in accordance with section 574 of this title.

(2) The names and pertinent records of all officers in each grade (or grade and competitive category) to be considered.

(3) Such information or guidelines relating to the needs of the armed force concerned for warrant officers having particular skills, including guidelines or information relating to the need for either a minimum number or a maximum number of officers with particular skills within a grade or competitive category, as the Secretary concerned determines to be relevant in relation to the requirements of that armed force.

(b) From each promotion zone for a grade (or grade and competitive category), the selection board shall recommend for promotion to the next higher warrant officer grade those warrant officers whom it considers best qualified for promotion, but no more than the number specified by the Secretary concerned.

(c) ~~The names of warrant officers selected for promotion under this section shall be arranged in the board's report in order of the seniority on the warrant officer active-duty list.~~ A selection board convened under section 573(a) of this title shall, when authorized under section 575(e) of this title, include in its report to the Secretary concerned the names of those warrant officers recommended by the board to be placed higher on the promotion list and the order in which the board recommends that those officers should be placed on the list. The names of all other warrant officers recommended for promotion under this section shall be arranged in the board's report in the order of seniority on the warrant officer active-duty list.

(d) Under such regulations as the Secretary concerned may prescribe, the selection board shall report the names of those warrant officers considered by it whose records establish, in its opinion, their unfitness or unsatisfactory performance. A regular warrant officer whose name is so reported shall be considered, under regulations provided by the Secretary concerned, for retirement or separation under section 1166 of this title.

(e) The report of the selection board shall be submitted to the Secretary concerned. The Secretary may approve or disapprove all or part of the report.

(f)(1) Upon receipt of the report of a selection board submitted to him under subsection (e), the Secretary concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under this section.

(2) If, on the basis of a review of the report under paragraph (1), the Secretary concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under this section, the Secretary shall return the report, together with a written explanation of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this paragraph, the selection board (or a subsequent selection board convened under section 573 of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guidelines and shall resubmit the report, as revised, to the Secretary in accordance with subsection (e).

§577. Promotions: effect of failure of selection for

A warrant officer who has been considered for promotion by a selection board convened under section 573 of this title, but not selected, shall be considered for promotion by each subsequent selection board that considers officers in his grade (or grade and competitive category) until he is retired or separated or he is selected for promotion. However, the Secretary concerned may, by regulation, preclude from consideration by a selection board by which he would otherwise be eligible to be considered, a warrant officer who has an established separation date that is within 90 days after the date on which the board is convened~~.~~, or a warrant officer excluded under section 573(g) of this title**.**

§578. Promotions: how made; effective date

(a) When the report of a selection board convened under this chapter is approved by the Secretary concerned, the Secretary shall place the names of the warrant officers approved for promotion on a single promotion list for each grade (or grade and competitive category)~~, in the order of the seniority of such officers on the warrant officer active-duty list~~. Warrant officers of particular merit who were recommended by the board to be placed higher on the promotion list under section 576(c) of this title shall be listed first and, amongst themselves, in the order recommended by the board, followed by the other warrant officers approved for promotion in order of the seniority of such officers on the warrant officer active-duty list.

(b) Promotions of warrant officers on the warrant officer promotion list shall be made when, in accordance with regulations issued by the Secretary concerned, additional warrant officers in that grade (or grade and competitive category), are needed.

(c) A regular warrant officer who is promoted is appointed in the regular grade to which promoted, and a reserve warrant officer who is promoted is appointed in the reserve grade to which promoted. The date of appointment in that grade and date of rank shall be prescribed by the Secretary concerned. A warrant officer is entitled to the pay and allowances for the grade to which appointed from the date specified in the appointment order.

(d) Promotions shall be made in the order in which the names of warrant officers appear on the promotion list and after warrant officers previously selected for promotion in the applicable grade (or grade and competitive category) have been promoted.

(e) A warrant officer who is appointed to a higher grade under this section is considered to have accepted such appointment on the date on which the appointment is made unless the officer expressly declines the appointment.

(f) A warrant officer who has served continuously as an officer since subscribing 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 this section.