

1 **SEC. \_\_. AMENDMENT TO PROVIDE FOR PARTICIPATION BY ALL OF THE**  
2 **MILITARY DEPARTMENTS IN THE AMERICAN, BRITISH,**  
3 **CANADIAN, AND AUSTRALIAN ARMIES' PROGRAM.**

4 (a) IN GENERAL.—Section 1274(a) of the National Defense Authorization Act for Fiscal  
5 Year 2013 (10 U.S.C. 2350a(a) note) is amended—

6 (1) by inserting “a military department of” after “the participation by”; and

7 (2) by striking “the land force program known as the American, British,  
8 Canadian, and Australian Armies’ Program” and inserting “an interoperability program  
9 with the armed forces of the participating countries specified in subsection (b)”.

10 (b) HEADING AMENDMENT.—The heading of section 1274 of such Act is amended to read  
11 as follows:

12 **“1274. PARTICIPATION BY MILITARY DEPARTMENTS IN INTEROPERABILITY**  
13 **PROGRAMS WITH ARMED FORCES OF AUSTRALIA, CANADA, NEW**  
14 **ZEALAND, AND THE UNITED KINGDOM.”.**

### **Section-by-Section Analysis**

This proposal would amend 1274 of the National Defense Authorization Act for Fiscal Year (FY) 2013 (Public Law 112–239; 10 U.S.C. 2350a note), a land-forces program administered by the U.S. Army, to allow for participation by the other military departments.

Section 1274 permits the Army to create a joint agreement with the United Kingdom (U.K.), Canada, Australia, and New Zealand for their land-forces activities but does not extend that authority to the other Services to cover similar Service-specific efforts. For example, for the U.S. Air Force, the equivalent program is called the “FVEY Air Force Interoperability Council (AFIC).” Due to the lack of legal clarity in section 1274, the Air Force relies on a variety of agreements with the U.K., Canada, Australia, and New Zealand to achieve a similar outcome. However, this creates inefficiencies in pursuing mutual objectives to advance critical and mutually beneficial defense capabilities.

**Resource Information:** The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget that are impacted by this proposal.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
AFIC	0.325	0.332	0.338	0.345	0.352	Operation & Maintenance, Air Force	Various	--	Various
The Navy does not intend to use this authority in FY 2024. Resources may be included in future budget submissions.									
Total	0.325	0.325	0.325	0.325	0.325	--	--	--	--

**Changes to Existing Law:** This proposal would amend section 1274 of the National Defense Authorization Act for Fiscal Year 2013 (10 U.S.C. 2350a note) as follows:

**SEC. 1274. ADMINISTRATION OF THE AMERICAN, BRITISH, CANADIAN, AND AUSTRALIAN ARMIES' PROGRAM. PARTICIPATION BY MILITARY DEPARTMENTS IN INTEROPERABILITY PROGRAMS WITH ARMED FORCES OF AUSTRALIA, CANADA, NEW ZEALAND, AND THE UNITED KINGDOM**

(a) **AUTHORITY.**—As part of the participation by a military department of the United States in ~~the land force program known as the American, British, Canadian, and Australian Armies' Program~~ an interoperability program with the armed forces of the participating countries specified in subsection (b) (in this section referred to as the “Program”), the Secretary of Defense may, with the concurrence of the Secretary of State, enter into agreements with the other participating countries in accordance with this section, and the Program shall be managed pursuant to a joint agreement among the participating countries.

(b) **PARTICIPATING COUNTRIES.**—In addition to the United States, the countries participating in the Program are the following:

- (1) Australia.
- (2) Canada.
- (3) New Zealand.
- (4) The United Kingdom.

(c) **CONTRIBUTIONS BY PARTICIPANTS.**—

- (1) **IN GENERAL.**—An agreement under subsection (a) shall provide that-
  - (A) the United States, as the host country for the Program, shall provide office facilities and related office equipment and supplies for the Program; and
  - (B) each participating country shall contribute its equitable share of the remaining costs for the Program, including-
    - (i) the agreed upon share of administrative costs related to the Program, except the costs for facilities and equipment and supplies described in subparagraph (A); and

(ii) any amount allocated against the country for monetary claims as a result of participation in the Program, in accordance with the agreement.

(2) EQUITABLE CONTRIBUTIONS.—The contributions, as allocated under paragraph (1) and set forth in an agreement under subsection (a), shall be considered equitable for purposes of this subsection and section 27(c) of the Arms Export Control Act (22 U.S.C. 2767(c)).

(3) AUTHORIZED CONTRIBUTION.—An agreement under subsection (a) shall provide that each participating country may provide its contribution in funds, in personal property, in services required for the Program, or any combination thereof.

(4) FUNDING FOR UNITED STATES CONTRIBUTION.—Any monetary contribution by the United States to the Program that is provided in funds shall be made from funds available to the Department of Defense for operation and maintenance.

(5) CONTRIBUTIONS AND REIMBURSEMENTS FROM OTHER PARTICIPATING COUNTRIES.—

(A) IN GENERAL.—The Secretary of Defense may accept from any other participating country a contribution or reimbursement of funds, personal property, or services made by the participating country in furtherance of the Program.

(B) CREDIT TO APPROPRIATIONS.—Any contribution or reimbursement of funds received by the United States from any other participating country to meet that country's share of the costs of the Program shall be credited to the appropriations available to the appropriate military department, as determined by the Secretary of Defense.

(C) TREATMENT OF PERSONAL PROPERTY.—Any contribution or reimbursement of personal property received under this paragraph may be-

(i) retained and used by the Program in the form in which it was contributed;

(ii) sold or otherwise disposed of in accordance with such terms, conditions, and procedures as the members of the Program consider appropriate, and any resulting proceeds shall be credited to appropriations of the appropriate military department, as described in subparagraph (B); or

(iii) converted into a form usable by the Program.

(D) USE OF CREDITED FUNDS.—

(i) IN GENERAL.—Amounts credited under subparagraph (B) or (C)(ii) shall be-

(I) merged with amounts in the appropriation concerned;

(II) subject to the same conditions and limitations as amounts in such appropriation; and

(III) available for payment of Program expenses described in clause (ii).

(ii) PROGRAM EXPENSES DESCRIBED.—The Program expenses described in this clause include—

(I) payments to contractors and other suppliers, including the Department of Defense and participating countries acting as suppliers, for necessary goods and services of the Program;

(II) payments for any damages or costs resulting from the performance or cancellation of any contract or other obligation in support of the Program;

(III) payments or reimbursements for other Program expenses; or

(IV) refunds to other participating countries.

(d) **AUTHORITY TO CONTRACT FOR PROGRAM ACTIVITIES.**—As part of the participation by the United States in the Program, the Secretary of Defense may enter into contracts or incur other obligations on behalf of the other participating countries for activities under the Program. Any payment for such a contract or other obligation under this subsection may be paid only from contributions credited to an appropriation under subsection (c)(4).

(e) **DISPOSAL OF PROPERTY.**—As part of the participation by the United States in the Program, the Secretary of Defense may, with respect to any property that is jointly acquired by the countries participating in the Program, agree to the disposal of the property without regard to any law of the United States that is otherwise applicable to the disposal of property owned by the United States. Such disposal may include the transfer of the interest of the United States in the property to one or more of the other participating countries or the sale of the property. Reimbursement for the value of the property disposed of (including the value of the interest of the United States in the property) shall be made in accordance with an agreement under subsection (a).

(f) **REPORTS.**—Not later than 60 days before the expiration date of any agreement under subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the activities, costs, and accomplishments of the Program during the five-year period ending on the date of such report.

1 **SEC. \_\_\_\_ . AUTHORITY TO LEASE LAND PARCEL FOR HOSPITAL AND MEDICAL**  
2 **CAMPUS, BARRIGADA TRANSMITTER SITE, GUAM.**

3 (a) NO-COST LEASE AUTHORIZED.—Notwithstanding any other provision of law, the  
4 Secretary of the Navy (in this section referred to as the “Secretary”) may lease to the  
5 Government of Guam parcels of real property, including any improvements thereon, consisting  
6 of approximately 102 acres of undeveloped land and approximately 10.877 acres of utility  
7 easements in the municipality of Barrigada and Mangilao, Guam, known as the Barrigada  
8 Transmitter Site, for construction of a public hospital and medical campus, without fair market  
9 consideration.

10 (b) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property  
11 to be leased under subsection (a) shall be determined by a survey satisfactory to the Secretary.

12 (c) APPRAISAL NOT REQUIRED.—The lease in subsection (a) shall not require an  
13 appraisal.

14 (d) CONDITIONS OF LEASE.—

15 (1) Lease of real property under this section shall be subject to all existing  
16 easements, restrictions, and covenants of record and such restrictive covenants as the  
17 Secretary determines to be necessary to ensure that—

18 (A) the use of the property is compatible with continued military activities  
19 in Guam;

20 (B) the environmental condition of the property is compatible with the use  
21 of the property as a public hospital and medical campus;

22 (C) access is available to the United States to conduct environmental  
23 remediation or monitoring as required under the provisions of section 120(h) of

1 the Comprehensive Environmental Response, Compensation, and Liability Act of  
2 1980 (42 U.S.C. 9620(h));

3 (D) the property is used only for a public hospital and medical campus,  
4 which may include ancillary facilities in support the hospital and campus, or as set  
5 forth in subsection (e); and

6 (E) the public hospital and medical campus shall include an MV-22-  
7 capable helipad, a recompression chamber capability, and perimeter fencing, and  
8 allow for the relocation of United States-owned weather radar equipment on the  
9 facility.

10 (2) The Secretary shall have no obligation to fund the construction or operation of  
11 the hospital or medical campus.

12 (3) All direct and indirect administrative costs, including surveys, title work,  
13 document drafting, closing, and labor costs incurred by the Secretary, related to any lease  
14 under this section, shall be borne by the Government of Guam.

15 (e) ADDITIONAL TERMS.—The Secretary may require such additional terms and  
16 conditions in connection with the lease under subsection (a) as the Secretary considers  
17 appropriate to protect the interests of the United States.

18 (f) NOT TO BE CONSIDERED EXCESS, TRANSFERRED, OR DISPOSED OF.—The real property  
19 subject to any lease under this section may not be declared to be excess real property to the needs  
20 of the Navy or transferred or otherwise disposed of by the Navy or any Federal agency.

### **Section-by-Section Analysis**

In support of the Marine Corps Relocation to Guam, Under Secretary of the Navy Robert Work reiterated the “Four Pillars” that would guide the approach of the Department of Defense (DoD) to the military buildup to the Governor of Guam in a letter dated February 7, 2011. One of these pillars, the “Net Negative” strategy, committed DoD to having a smaller footprint on

Guam after the military build-up and returning underutilized land to the Government of Guam. In support of this policy, section 2847 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 40 U.S.C. 521 note) required the Department of the Navy (DON) to create and publish an Inventory of Potentially Excess Lands. The authority also permits the Governor of Guam to request expansion of the list via written request and the specification of a public use to be served by the requested land.

Another of these pillars, the “One Guam” initiative, committed DoD to improving the quality of life for the people of Guam and the military personnel who will call Guam home through advocacy for Federal investment in Guam’s socio-economic needs.

The Governor of Guam requested the lease or return of land specifically to support the construction of a public hospital and medical campus via letter on October 5, 2020. On January 15, 2021, the Secretary of the Navy (SECNAV) identified a suitable parcel to satisfy the Governor’s request.

Guam’s existing public hospital and healthcare facilities are structurally failing and do not meet modern building codes as reflected in a U.S. Department of the Interior-funded assessment performed by the U.S. Army Corps of Engineers (USACE). According to USACE, the replacement of all hospital facilities is required to ensure renewed compliance with hospital accreditation standards and to protect the life, health, and safety of staff, patients, and visitors. The DON concurs with this assessment and believes the lease of identified Federal property for public hospital construction furthers its “Net Negative” and “One Guam” commitments.

A no-cost lease of the property to the Government of Guam for the construction of the public hospital and medical campus was explored but would be constrained by the DON’s requirement to receive not less than the fair market rental value under section 2667(b)(4) of title 10, United States Code.

Subsection (a) authorizes the SECNAV to lease land to the Government of Guam without fair market value consideration for the construction of a public hospital and medical campus.

Subsection (b) permits the acreage and legal description of the property to be determined by a survey satisfactory to SECNAV.

Subsection (c) states that no appraisal is required since this is a no-cost lease.

Subsection (d) places conditions on the lease to include, among other things, safeguards to ensure the property is used as a public hospital and medical campus, and that certain facilities are built to support DON operations. Further, this subsection places the financial burden on the Government of Guam for administrative costs to execute the lease, construction, and operation of the public hospital and medical campus, and for facilities for DON operations.

Subsection (e) permits SECNAV to require other terms as SECNAV considers appropriate to protect the interests of the United States.

Subsection (f) mirrors language in the statute pertaining to the U.S. Naval Academy Dairy Farm (section 8476, title 10, U.S.C.) which prevents the property in question from being determined to be excess real property to the needs of the Navy or transferred or otherwise disposed of by the Navy or any Federal agency. This lease must be long-term to support financing. The length of the lease and the use of the property may cause other agencies and the public to question whether the property is excess to the needs of the DON or transferred or disposed of. This will ensure the DON's use of the property as needed in the future.

**Resource Information:** This proposal has no impact on the use of resources requested within the Fiscal Year 2024 President's Budget. The Government of Guam will bear the cost of the transfer under the proposed legislation. However, because the lease would be without fair market value consideration, the United States will not benefit from receiving fair market value rent consideration.

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



1 **SEC. \_\_\_\_ . CONFORMING AMENDMENTS TO CARRY OUT ELIMINATION OF**  
2 **POSITION OF CHIEF MANAGEMENT OFFICER.**

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

5 (1) in section 133a(c)—

6 (A) in paragraph (1), by striking “, the Deputy Secretary of Defense, and  
7 the Chief Management Officer of the Department of Defense” and inserting “and  
8 the Deputy Secretary of Defense”; and

9 (B) in paragraph (2), by striking “the Chief Management Officer,”;

10 (2) in section 133b(c)—

11 (A) in paragraph (1), by striking “the Chief Management Officer of the  
12 Department of Defense,”; and

13 (B) in paragraph (2), by striking “the Chief Management Officer,”;

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

16 (4) in section 138(d), by striking “the Chief Management Officer of the  
17 Department of Defense,”.

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

20 (1) in paragraph (1)—

21 (A) in subparagraph (A), by striking “the Chief Management Officer of  
22 the Department of Defense” and inserting “the Secretary of Defense”; and

1 (B) in subparagraphs (B) and (C), by striking “the Chief Management  
2 Officer” and inserting “the Secretary”; and

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

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

8 (1) in subsection (a)(1), by striking “The Chief Management Officer of the  
9 Department of Defense shall, in consultation with the Under Secretary of Defense  
10 (Comptroller),” and inserting “The Under Secretary of Defense (Comptroller) shall, in  
11 consultation with the Performance Improvement Officer of the Department of Defense,”;  
12 and

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

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

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

20 (1) in section 130e—

21 (A) by striking subsection (d);

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

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

2 (i) by striking “, or the Secretary's designee,”; and

3 (ii) by striking “, through the Office of the Director of

4 Administration and Management”; and

5 (2) in section 2254a—

6 (A) by striking subsection (c);

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

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

9 (i) by striking “, or the Secretary's designee,”; and

10 (ii) by striking “, through the Office of the Director of

11 Administration and Management”.

12 (f) ASSIGNMENT OF RESPONSIBILITY FOR ANNUAL REVIEW OF AGENCY INFORMATION

13 TECHNOLOGY PORTFOLIO TO THE CHIEF INFORMATION OFFICER.—Section 11319(d)(4) of title 40,

14 United States Code, is amended, in the second sentence, by striking “the Chief Management

15 Officer of the Department of Defense (or any successor to such Officer), in consultation with the

16 Chief Information Officer, the Under Secretary of Defense for Acquisition and Sustainment,

17 and” and inserting “the Chief Information Officer of the Department of Defense, in consultation

18 with the Under Secretary of Defense for Acquisition and Sustainment and”.

19 (g) REMOVAL OF CHIEF MANAGEMENT OFFICER AS REQUIRED COORDINATOR ON DEFENSE

20 RESALE MATTERS.—Section 631(a) of the National Defense Authorization Act for Fiscal Year

21 2020 (Public Law 116-92; 10 U.S.C. 2481 note) is amended by striking “, in coordination with

22 the Chief Management Officer of the Department of Defense,”.

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

## Section-by-Section Analysis

This proposal would amend 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) *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.

(f) *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.

(g) *Removal of the requirement for the USD for Personnel and Readiness (USD(P&R)) to coordinate with the CMO on defense resale oversight:* Section 631 of the NDAA for FY 2020 directs 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.

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.

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### **§ 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.

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**§ 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) \*\*\*

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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 under section 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.

~~(e) 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.~~

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## 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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1 **SEC. \_\_\_\_ . ENLISTED AIRCRAFT OPERATORS PROGRAM.**

2 (a) REPEAL OF REQUIREMENT.—Section 1052 of the National Defense Authorization Act  
3 for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 9062 note) is repealed.

4 (b) REPORT ON USE OF ENLISTED AIRCRAFT OPERATORS.—Not later than March 1, 2024,  
5 and every 24 months thereafter, the Secretary of the Air Force shall submit to the Committees on  
6 Armed Services of the Senate and the House of Representatives a report on use of enlisted  
7 personnel in the operation of Air Force aircraft, including the following:

8 (1) A description of any initiative intended to result in enlisted personnel  
9 operating Air Force aircraft.

10 (2) Aircraft platforms operated by enlisted personnel.

11 (3) An update on the status and number of enlisted personnel trained to operate  
12 Air Force aircraft.

**[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 1052 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 9062 note), which required the Air Force to transition to an organizational model for all Air Force remotely piloted aircraft that uses a significant number of enlisted personnel as operators of such aircraft, and to submit annual reports on the transition.

This proposal would also direct the Air Force to submit to the Committees on Armed Services of the Senate and the House of Representatives a biennial report on its use of enlisted personnel in the operation of Air Force aircraft.

The proposal would require the submission of such a report not later than March 1, 2024, and every 24 months thereafter. The proposal would further direct the Air Force to include in such report: a description of any initiative intended to result in enlisted personnel operating Air Force aircraft; the aircraft platforms operated by enlisted personnel; and the status and number of enlisted personnel trained to operate Air Force aircraft.

**Resource Information:** This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget.

**Changes to Existing Law:** This proposal would amend section 1052 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328), as follows:

**Section 1052 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 9062 note):**

**~~SEC. 1052. TRANSITION OF AIR FORCE TO OPERATION OF REMOTELY PILOTED AIRCRAFT BY ENLISTED PERSONNEL.~~**

~~(a) TRANSITION REQUIRED.— The Secretary of the Air Force shall transition the Air Force to an organizational model for all Air Force remotely piloted aircraft that uses a significant number of enlisted personnel as operators of such aircraft rather than officers only.~~

~~(b) DEADLINES.—~~

~~(1) REGULAR COMPONENT.— For the regular component of the Air Force, the transition required by subsection (a) shall be completed not later than September 30, 2020.~~

~~(2) RESERVE COMPONENTS.— For the Air Force Reserve and Air National Guard, the transition required by subsection (a) shall be completed not later than September 30, 2023.~~

~~(c) TRANSITION MATTERS.— The transition required by subsection (a) shall account for the following:~~

~~(1) Training infrastructure for enlisted personnel operating Air Force remotely piloted aircraft.~~

~~(2) Supervisory roles for officers and senior enlisted personnel for enlisted personnel operating Air Force remotely piloted aircraft.~~

~~(d) REPORTS.—~~

~~(1) INITIAL REPORT.— Not later than March 1, 2017, the Secretary of the Air Force shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report that sets forth a detailed description of the plan for the transition required by subsection (a), including the following:~~

~~(A) The objectives of the transition.~~

~~(B) The timeline of the transition.~~

~~(C) The resources required to implement the transition.~~

~~(D) Recommendations for any legislation action required to implement the transition.~~

~~(E) The assumptions used to complete the transition.~~

~~(F) Risks associated with implementing the transition.~~

~~(2) REPORTS ON PROGRESS OF IMPLEMENTATION.— Not later than March 1, 2018, and each March 1 thereafter until the transition required by subsection (a) is completed, the Secretary shall submit to the committees referred to in paragraph (1) a report on the progress of the Air Force in implementing the plan required under that paragraph and in achieving the transition required by subsection (a).~~

1 **SEC. \_\_\_. EXCLUSION OF NONAPPROPRIATED FUND EMPLOYEES FROM**  
2 **LIMITATIONS ON DUAL PAY.**

3 Section 5531(2) of title 5, United States Code, is amended by striking “Government  
4 corporation and” and inserting “Government corporation, but excluding”.

**[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 create a blanket, statutory exception for individuals employed by nonappropriated fund instrumentalities (NAFIs) under the jurisdiction of the armed forces from the limitation on receiving basic pay from more than one position. Such a statutory exception, if adopted, would increase the speed and efficiency of hiring actions and expand recruiting pools, thereby alleviating one of the conditions that is contributing to NAFI labor shortages.<sup>1</sup>

Pursuant to section 5533 of title 5, United States Code (U.S.C.), an individual is not entitled to receive basic pay from more than one position for more than an aggregate of 40 hours of work in one calendar week. 5 U.S.C. 5531 defines “position” broadly to include a position within a NAFI under the jurisdiction of the armed forces. These statutory provisions restrict the ability of a full-time NAFI employee to take a second NAFI position unless granted an exception. Accordingly, any NAFI employee who wishes to work more than 40 hours each week must generally request an exception or seek additional employment elsewhere, usually off the installation. This proposal would make it clear that the definition of “position” in 5 U.S.C. 5531 does not include a position with a nonappropriated fund instrumentality under the jurisdiction of the armed forces.

Numerous military installations are experiencing severe NAFI labor shortages in areas including child care and Morale, Welfare, and Recreation (MWR) facilities. As a result of these labor shortages, many installations are being forced to reduce the availability of services or temporarily shutter certain MWR programs. Recent analysis of Child and Youth Services (CYS) hiring and loss actions demonstrates that the Army has experienced an increase in demand in CYS leading up to and during the COVID-19 pandemic, as evidenced by the increased number of new employees. The Army’s analysis further indicates that this demand is expected to continue in the future. However, the Army also anticipates even higher rates of employee loss and turnover.<sup>2,3</sup> The cause of increased turnover is difficult to precisely ascertain as there are

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<sup>1</sup> This proposal would not impact overtime payments or practices to the extent that such entitlements are triggered based on the number of hours worked across the multiple positions by an individual.

<sup>2</sup> Civilian Hiring Resource Agency reported 3,459 CYS position vacancies in March of 2022, which is almost double the amount reported in March of 2021. Although 343 CYS employees were hired in March of 2022, 341 CYS employees also left their position during the same time period.

<sup>3</sup> In a trend analysis of more than 20,000 gain and loss transactions provided by the CYS Proponent, NAF PPD evaluated the data back to August of 2019. The data revealed an increased demand during, and prior to, the COVID-19 pandemic. Both periods, analyzed together and apart, indicate moderate predictive support for future demand and

numerous contributing factors; however, one primary factor appears to be the improved labor market conditions in the local economies surrounding military installations. Private sector employment generally offers comparable or higher levels of compensation and the hiring process is significantly faster and easier to navigate.

The Army is actively seeking low-cost methods to mitigate current and future NAFI labor shortages. In addition to exploring increased pay and other incentives to attract new employees, a blanket exemption for NAFIs from the dual-pay limitations would improve the speed of NAFI hiring actions and potentially increase the volume of applicants, thereby alleviating, at least partially, some of the workforce issues.<sup>4</sup> Managers are always in search of expanded authorities to address retention, job satisfaction, quality of life, and hiring efficiency and this is one additional tool that could support their efforts.

A blanket exception will also allow managers to recruit current NAFI employees more actively in order to fill existing openings. Current NAFI employees already have established connections with military installations and work schedules that may allow them to fill part-time positions at other facilities, but managers are hesitant to actively recruit from this pool because of uncertainty resulting from dual-pay limitations. As a result, an easily identifiable and recruitable sector of the workforce is largely overlooked when seeking to fill new NAFI openings.

Although the military departments currently have the authority to grant exceptions to the dual pay limitations at the installation level, such exceptions are generally performed on a case-by-case basis and can cause substantial delays in the appointment process.<sup>5</sup> Even when exceptions are granted, it can take several weeks to receive, process, and approve the request. Some potential applicants never apply because they are deterred by the limitations on dual pay. A recent evaluation of 21 years of data generated from NAF and APF supervisory input indicated that managers consistently expressed frustration with the dual-pay restriction.

In a competitive labor market, where prospective employees often have their choice of job openings, any delay is likely to result in the loss of viable candidates. Given the current shortages, increasing the speed of hiring actions will alleviate some of the pressure on the NAFI labor pool. Reports from several installation NAFI officials indicate that hiring delays associated with seeking exceptions to the dual-pay limitations are resulting in the loss of qualified applicants because the applicants are offered employment elsewhere during the processing period. Informal analysis of NAFI employees indicates that many are already working multiple jobs. By making it more likely that these employees could work a second job on the installation where they already have employment may actually improve their quality of life by reducing commuting times.

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even greater predictive support for losses over the COVID-19 period. Using data like this, it is estimated these trends will continue on course without action.

<sup>4</sup> For example, a NAFI employee that works a traditional 9:00-5:00 schedule could accept a position working extra hours (in excess of 40 hours per week) to provide CYS support before or after the employee's normal duty period. If this proposal is adopted, the approval process would be accelerated, reducing the likelihood that the employee would accept employment elsewhere why the application for an exception was pending.

<sup>5</sup> See Administrative Assistant to the Secretary of the Army (AASA) memorandum (Delegations of Civilian Human Resources Authorities for Headquarters, Department of the Army (Version 01-2022)), 14 January 2022.



Maximizing the pool of available candidates for NAFI positions on military installations is essential to maintaining the consistency and quality of services on military installations during labor shortages. Creating a blanket exemption to the dual-pay limitation for NAFI employees is a no cost mechanism to increase the speed and efficiency of NAFI hiring actions and expand the pool of possible candidates for recruitment, thereby offering some relief to address an increasing labor shortage. While this legislative change will not completely resolve the NAFI employment problems, it will improve the current situation. Even a small increase in the number of available NAFI employees could make a significant difference in the availability of NAFI services on an installation, which directly impacts the morale of members and their dependents. One or two additional employees can often make the difference between completely closing a facility and keeping it open for at least partial operation.

**Resource Information:** As this proposal references nonappropriated fund positions, it has no impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget request.

**Changes to Existing Law:** This proposal would amend section 5531 of title 5, United States Code, as follows:

### § 5531. Definitions

For the purpose of section 5533 of this title—

- (1) “member” has the meaning given such term by section 101(23) of title 37;
- (2) “position” means a civilian office or position (including a temporary, part-time, or intermittent position), appointive or elective, in the legislative, executive, or judicial branch of the Government of the United States (including a Government corporation ~~and~~, but excluding a nonappropriated fund instrumentality under the jurisdiction of the armed forces) or in the government of the District of Columbia;
- (3) “retired or retainer pay” means retired pay, as defined in section 8311(3) of this title, determined without regard to subparagraphs (B) through (D) of such section 8311(3); except that such term does not include an annuity payable to an eligible beneficiary of a member or former member of a uniformed service under chapter 73 of title 10;
- (4) “agency in the legislative branch” means the Government Accountability Office, the Government Publishing Office, the Library of Congress, the Office of Technology Assessment, the Office of the Architect of the Capitol, the United States Botanic Garden, the Congressional Budget Office, and the United States Capitol Police;
- (5) “employee of the House of Representatives” means a congressional employee whose pay is disbursed by the Chief Administrative Officer of the House of Representatives;
- (6) “employee of the Senate” means a congressional employee whose pay is disbursed by the Secretary of the Senate; and
- (7) “congressional employee” has the meaning given that term by section 2107 of this title, excluding an employee of an agency in the legislative branch.

1 **SEC. \_\_\_. MODIFICATION TO MINIMUM INVENTORY REQUIREMENT FOR A-10**  
2 **AIRCRAFT.**

3 (a) FISCAL YEAR 2017 NDAA.—Section 134(d) of the National Defense Authorization  
4 Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2038) , as amended by section  
5 141(b)(1) of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023  
6 (Public Law 117–263), is amended by striking “153 A-10 aircraft” and inserting “135 A-10  
7 aircraft”.

8 (b) FISCAL YEAR 2016 NDAA.—Section 142(b)(2) of the National Defense  
9 Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 755), as amended by  
10 section 141(b)(2) of the James M. Inhofe National Defense Authorization Act for Fiscal Year  
11 2023 (Public Law 117–263), is amended by striking “153 A-10 aircraft” and inserting “135 A-10  
12 aircraft”.

**[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.

This proposal would reduce statutory minimum inventory requirements for A-10 aircraft. Both the FY2017 and FY2016 NDAAAs (in sections 134(d) and 142(b)(2), respectively), as amended by section 141(b) the James M. Inhofe National Defense Authorization Act of Fiscal Year 2023 (FY203 NDAA), state that 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”. The amendments made by this proposal would reduce that minimum to 135 A-10 aircraft.

The FY2024 President’s Budget calls for the decrement of 42 A-10s in FY2024, to right size the fleet to 218 total aircraft inventory (TAI). The administration argues that “requiring the Department to maintain a minimum inventory of major platforms limits the Secretary’s ability to optimize future force structure, increases the long-term cost of sustaining the force, and further delays necessary efforts to keep pace with the People’s Republic of China’s challenge in key warfighting areas.”

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. FY2023 divestment to transition the Fort Wayne Air National Guard from A-10s to F-16s resulted in a reduction from 171 A-10 primary mission aircraft inventory (PMAI) to 153. The FY2024 PB submission will continue the divestment of the A-10 by retiring 42 additional aircraft, bringing TAI down to 218 and PMAI to 150.

The Air Force strategy is to develop a fighter force that transitions from seven to four platforms, focusing on the Next Generation Air Dominance (NGAD) aircraft, the F-35 aircraft, 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. 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.

**Resource Information:** The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget request that are impacted by this proposal. If this proposal is not supported, funding will need to be restored in the FY2024 Defense Appropriations Bill to maintain the current A-10 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 2024	FY 2025	FY 2026	FY 2027	FY 2028	Approp	Budget Activity	BLI/SAG	Program Element
A-10	\$722	\$659	\$1,054	\$1,387	\$2,189	Multiple	Multiple	Multiple	Multiple

**Changes to Existing Law:** This proposal would amend section 134 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2037) and section 142 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 755) as follows:

**Section 134 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328), as amended by section 141(b)(1) of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263):**

**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 ~~453~~135 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.—\*\*\*

**Section 142 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 755), as amended by section 141(b)(2) of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263):**

**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 ~~453~~135 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.

1 **SEC. \_\_\_\_ . RAPID RESPONSE TO EMERGENT TECHNOLOGY ADVANCEMENTS**  
2 **OR THREATS.**

3 (a) **AUTHORITIES.**—Upon approval by the Secretary of Defense of a determination  
4 described in subsection (b), the Secretary of a military department may use the rapid acquisition  
5 and funding authorities established pursuant to section 3601 of title 10, United States Code, to  
6 initiate new start development activities, up to a preliminary design review level of maturity, in  
7 order to—

8 (1) leverage an emergent technological advancement of value to the national  
9 defense; or

10 (2) provide a rapid response to an emerging threat.

11 (b) **DETERMINATION.**—A determination described in this subsection is a determination by  
12 the Secretary of a military department submitted in writing to the Secretary of Defense that  
13 provides the following:

14 (1) There is a compelling national security need to immediately initiate  
15 development activity up to a preliminary design review level of maturity, in order to  
16 leverage an emergent technological advancement or provide a rapid response to an  
17 emerging threat.

18 (2) The effort cannot be delayed until the next submission of the budget of the  
19 President (under section 1105(a) of title 31, United States Code) without harming the  
20 national defense.

21 (3) Funding is identified for the effort in the current fiscal year.

22 (c) **ADDITIONAL PROCEDURES.**—

1 (1) IN GENERAL.—Not later than 180 days after the date of the enactment of this  
2 Act, the Secretary of Defense shall amend the procedures for the rapid acquisition and  
3 deployment of capabilities needed in response to urgent operational needs prescribed  
4 pursuant to such section 3601 to carry out this section.

5 (2) REQUIREMENTS TO BE INCLUDED.—The procedures amended under paragraph  
6 (1) shall include the following requirements:

7 (A) FUNDING.—(i) Subject to clause (ii), in any fiscal year in which a  
8 determination described in subsection (b) is made, the Secretary of the military  
9 department making the determination may initiate the activities authorized under  
10 subsection (a) using any funds available to the Secretary for procurement or  
11 research, development, test, and evaluation for such fiscal year.

12 (ii) The total cost of all developmental activities within the Department of  
13 Defense, funded under this section, may not exceed \$300,000,000 for any fiscal  
14 year.

15 (B) WAIVER AUTHORITY. —(i) Subject to clause (ii), the Secretary of the  
16 military department making a determination under subsection (b) may issue a  
17 waiver under subsection (d) of such section 3601.

18 (ii) Chapter 221 of title 10, United States Code, may not be waived  
19 pursuant to clause (i).

20 (C) TRANSITION.—Any acquisition initiated under subsection (a) shall  
21 transition to an acquisition pathway after completion and approval of a  
22 preliminary design review or its functional equivalent.

1 (d) CONGRESSIONAL NOTIFICATION.—Within 15 days after the Secretary of Defense  
2 approves a determination described in subsection (b), the Secretary of the military department  
3 making the determination shall provide written notification of such determination to the  
4 congressional defense committees following the procedures for notification in subsections  
5 (c)(4)(D) and (c)(4)(F) of such section 3601. A notice under this subsection shall be sufficient to  
6 fulfill any requirement to provide notification to Congress for a new start program.

### **Section-by-Section Analysis**

The Department of Defense (DoD) must reduce the lead time to fielding a program of record by starting development activities immediately in the year-of-execution, to take advantage of emerging technology or responding to emerging threats, instead of waiting in the 2-year budgeting cycle for funding or new start authorization. Initially the DoD must have the authority to use existing funds for this purpose while awaiting a specific appropriation from a future budget submission.

Our pacing challenge, China, is moving aggressively to field systems designed to defeat the U.S. and our standard practices are not responsive to this threat. Failure to capitalize on emerging technology or respond to emerging threats in a timely manner affords strategic competitors the ability to gain advantage in a given technology or mission, creating future challenges to counter, deter, and defeat new threats. If we want to be competitive with China, we can't cede 2 years of schedule to them.

In prior decades, United States military advantage was built on technological advantage driven primarily by DoD investment. DoD was able to plan, develop, and field technology years before adversaries. Today DoD investment totals less than 3% of all dollars spent globally on research. Therefore, emerging technology is not always predictable and is not confined to the United States. Peer adversaries are able to take advantage of emerging technology at the same time as, or faster than, the United States. Adoption of these emerging technologies will result in adversaries fielding capabilities designed to defeat the United States' ability to project power in the Western Pacific and across the globe. Therefore, the DoD must be able to act quickly in such circumstances.

Under the existing authority for rapid acquisition and deployment, DoD is able to procure urgently needed items that are currently under development or commercially available. However, it does not extend the same flexibility for the Military Departments to initiate not-yet programmed research and development activities to leverage an emergent technological advancement or provide a rapid response to an emerging threat. This proposal aims to leverage and bolster the existing authority by applying it to allow for initial development activities up to a

Preliminary Design Review level of maturity for service-level requirements for future programs of record when the nation is faced with an emergent technological advancement or threat. Akin to rapidly responding to a battle field threat, this gives the Military Departments a tool to respond to unexpected threats from and emergent opportunities against our pacing challenge (China) and other acute threats. The current delay in the Department's response until the next budget cycle and approval of a new start request, particularly given the routine practice of extended continuing resolutions in which new start reprogrammings are not allowed, restricts the Department's ability to rapidly take advantage of technological innovations or respond to new threats where there is a necessity to begin development of a response immediately.

In sum, this proposal would reduce lead time to fielding a program of record by expediting the start of initial development activities. This is done by creating a limited ability for the Service Secretaries to internally initiate section 3601 acquisition in order to start development activities for up to \$300 million dollars for advanced component development and prototypes and system development and demonstration activities up to a Preliminary Design Review level of maturity for a future program of record when the Service Secretary identifies a compelling national security need. Service Secretary determinations must be submitted to the Secretary of Defense for approval. Efforts begun under this authority would transition to an acquisition pathway after completion and approval of a Preliminary Design Review or its functional equivalent. Post-decision notification would be provided to Congress. Expanding use of section 3601 Rapid Acquisition Authority in this way will provide the Department the ability to assess and capitalize on emergent technology and outpace peer R&D advancements.

Subsection (a) of the proposal applies authorities set forth in section 3601 of title 10, United States Code (which was added by the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (FY23 NDAA) (Public Law 117-263) and replaces section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 3201 note prec.)) to initiate new start development activities, up to a Preliminary Design Review level of maturity, when it is determined by a Secretary of a military department, and approved by the Secretary of Defense, that the United States faces an emergent technological advancement or threat. The subsequent subsections place conditions and limits on the use of this authority.

Subsection (b) requires a written determination that: (1) there is a national security requirement that cannot be delayed until submission of the next budget; and (2) identifies funding for current and future years.

Subsection (c) requires the Secretary of Defense to issue updated procedures to effectuate this proposal. This would provide for initiation of new start development activities, up to a Preliminary Design Review level of maturity, within the section 3601 regulations. It also provides additional limitations, such as specifying transition to an acquisition pathway and prohibiting waiver of the Competition in Contracting Act of 1984.



Finally, subsection (d) requires notification to the congressional defense committees in accordance with certain provisions of section 3601.

**Resource Information:** Resources for this authority are limited to the existing authorized and appropriated Procurement and RDT&E funds available to the Secretary making the determination within the fiscal year.

**Changes to Existing Law:** No changes to existing law.

1 **SEC. \_\_\_. REPEAL OF LIMITATIONS ON F-22 AIRCRAFT FORCE STRUCTURE.**

2 Section 9062 of title 10, United States Code, is amended by striking subsection (k).

**[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 by repealing subsection (k) of section 9062 of title 10, United States Code, which was added by section 143(a) of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263). That subsection (k) enacted new statutory limitations on the structure of the F-22 fighter force in effect through September 30, 2027 – prohibiting retirement of any F-22 aircraft and establishing a minimum inventory for the platform.

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 from which we may be unable to recover. We must reduce our oldest and least relevant fighter aircraft that cannot be modernized to meet mission requirements. The intent is to focus resources to modernize to ensure a more lethal, resilient, sustainable, survivable, agile, and responsive force. To accomplish this goal, and in accordance with this legislative proposal, the Department of the Air Force (DAF) would divest 32 F-22 Block 20 aircraft in fiscal year 2024 (FY24).

**Resource Information:** The table below provides the estimated savings from the proposed structure changes which were applied to higher priorities included in the FY 2024 President’s Budget. If this proposal is not supported, funding will need to be realigned to maintain the current F-22 Aircraft fleet size.

RESOURCE SAVINGS IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
F-22	22.7	17.3	24.3	30.5	3.7	Operation and Maintenance, Air Force	01	011M	
F-22	363.9	343.6	333.7	343.4	152.3	Operation and Maintenance, Air Force	01	011W	
F-22	35.2	36.9	34.2	33.7	21.3	Operation and Maintenance, Air Force	01	011Y	
Total	421.8	397.8	392.2	410.4	177.3				

**Changes to Existing Law:** This proposal would amend section 9062 of title 10, United States Code, as follows:

**Title 10, United States Code**

**§9062. Policy; composition; aircraft authorization**

\*\*\*\*\*

~~(k)(1) During the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2023 and ending on September 30, 2027, the Secretary of the Air Force may not—~~

~~(A) retire an F-22 aircraft;~~

~~(B) reduce funding for unit personnel or weapon system sustainment activities for F-22 aircraft in a manner that presumes future congressional authority to divest such aircraft;~~

~~(C) keep an F-22 aircraft in a status considered excess to the requirements of the possessing command and awaiting disposition instructions (commonly referred to as ‘XJ’ status); or~~

~~(D) decrease the total aircraft inventory of F-22 aircraft below 184 aircraft.~~

~~(2) The prohibition under paragraph (1) shall not apply to individual F-22 aircraft that the Secretary of the Air Force determines, on a case-by-case basis, to be no longer mission capable and uneconomical to repair because of aircraft accidents, mishaps, or excessive material degradation and non-airworthiness status of certain aircraft.~~

1 **SEC. \_\_. MODIFICATION TO TOTAL AIR FORCE PRIMARY MISSION AIRCRAFT**  
 2 **INVENTORY.**

3 Section 9062(i)(1) of title 10, United States Code, is amended by striking “1,145 fighter  
 4 aircraft” and inserting “1,081 fighter aircraft”.

**[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 by modifying the total primary mission aircraft inventory (combat-coded) of not less than 1,145 fighter aircraft down to 1,081 fighter aircraft.

The Air Force strategy is to develop a fighter force that transitions from seven to four platforms, focusing on the Next Generation Air Dominance (NGAD) aircraft, the F-35 aircraft, 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.

**Resource Information:** The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2024 President’s Budget request that are impacted by this proposal. If this proposal is not supported, funding will need to be restored in the FY2024 Defense Appropriations Bill to maintain the current fighter aircraft inventories. 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 2024	FY 2025	FY 2026	FY 2027	FY 2028	Approp	Budget Activity	BLI/SAG	Program Element
Fighters	\$2,576	\$4,094	\$4,539	\$4,209	\$2,118	Multiple	Multiple	Multiple	Multiple

*\* Savings numbers provided depict the cost the USAF would incur to retain the fighter fleet at FY23 PB submission levels with full modernization of retained 4<sup>th</sup> generation fighters and procurement of F-15EX to 144 TAI.*

**Changes to Existing Law:** This proposal would amend section 9062 of title 10, United States Code, as follows:

**Title 10, United States Code**

**§9062. Policy; composition; aircraft authorization**

(a) \*\*\*

\*\*\*\*\*

(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 1,800 aircraft, and a total primary mission aircraft inventory (combat-coded) of not less than ~~1,145~~ 1,081 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.

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