

1 **SEC. ____ . AUTHORITY TO DISPOSE OF MATERIALS FOR THE NATIONAL**
2 **DEFENSE STOCKPILE**

3 (a) DISPOSAL AUTHORITY.—Pursuant to section 5(b) of the Strategic and Critical
4 Materials Stock Piling Act (50 U.S.C. 98d(b)), the National Defense Stockpile Manager
5 may dispose of the following materials contained in the National Defense Stockpile in the
6 following quantities:

7 (1) 8 short tons of beryllium.

8 (2) 154,043 short dry tons of metallurgical grade manganese ore.

9 (3) 5000 kilograms of germanium.

10 (4) 91,413 pounds of pan-based carbon fibers.

11 (5) Not more than 1000 short tons of materials transferred from another
12 department or agency of the United States to the National Defense Stockpile under
13 section 4(b) of such Act (50 U.S.C. 98c(b)) that the National Defense Stockpile Manager
14 determines is no longer required from the stockpile (in addition to any amount previously
15 authorized for disposal).

16 (b) TECHNICAL CORRECTION AMENDMENTS —Section 6 of the Strategic and Critical
17 Materials Stock Piling Act (50 U.S.C. 98e) is amended—

18 (1) in subsection (c)(1), by striking “subsection (a)(5) or (a)(6)” and inserting
19 “subsection (a)(6) or (a)(7)”; and

20 (2) in subsection (d)(2), by striking “subsection (a)(5)” and inserting
21 “subsection (a)(6)”.

**[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 disposal of certain materials for the National Defense Stockpile under the Strategic and Critical Materials Stock Piling Act (Act). It also corrects cross references in section 6 of the Act that were not updated in amendments made in 2013.

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

Subsection (b) of the proposal would make technical amendments to correct cross references in subsections (c)(1) and (d)(2) of section 6 of the Act to take into account a new paragraph added into section 6(a) in 2013 by section 1411(a) of Public Law 113–66.

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.

The National Defense Stockpile Transaction Fund (T-Fund) reimbursable program ended Fiscal Year 2022 with an unobligated balance of \$303.3 million. Budgeted costs of the Stockpile reimbursable program average \$70.5 million per annum for fiscal years 2024-2028.

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)
National Defense Stockpile	.2	.2	.2	.2	.2	National Defense Stockpile Transaction Fund	04	N/A	0708039S
Total									

Changes to Existing Law: This proposal would amend subsections (c) and (d) of section 6 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98e(c) and (d)) as follows:

STOCKPILE MANAGEMENT

SEC. 6. [50 U.S.C. 98e]

* * * * *

(c) (1) The President shall encourage the use of barter in the acquisition under subsection (a)(1) of the strategic and critical materials for, and the disposal under ~~subsection (a)(5) or (a)(6)~~ subsection (a)(6) or (a)(7) of materials from, the stockpile when acquisition or barter is authorized by law and is practical and in the best interest of the United States.

(2) Materials in the stockpile (the disposition of which is authorized by paragraph (3) to finance the upgrading, refining, or processing of a material in the stockpile, or is otherwise authorized by

law) shall be available for transfer at fair market value as payment for expenses (including transportation and other incidental expenses) of acquisition of materials, or of upgrading, refining, processing, or rotating materials, under this subchapter.

(3) Notwithstanding section 98b(c) of this title or any other provision of law, whenever the President provides under subsection (a)(3) for the upgrading, refining, or processing of a material in the stockpile to convert that material into a form more suitable for storage, subsequent disposition, and immediate use in a national emergency, the President may barter a portion of the same material (or any other material in the stockpile that is authorized for disposal) to finance that upgrading, refining, or processing.

(4) To the extent otherwise authorized by law, property owned by the United States may be bartered for materials needed for the stockpile.

(d)(1) The President may waive the applicability of any provision of the first sentence of subsection (b) to any acquisition of material for, or disposal of material from, the stockpile. Whenever the President waives any such provision with respect to any such acquisition or disposal, or whenever the President determines that the application of paragraph (1) or (2) of such subsection to a particular acquisition or disposal is not feasible, the President shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives in writing of the proposed acquisition or disposal at least 45 days before any obligation of the United States is incurred in connection with such acquisition or disposal and shall include in such notification the reasons for not complying with any provision of such subsection.

(2) Materials in the stockpile may be disposed of under ~~subsection (a)(5)~~ subsection (a)(6) only if such congressional committees are notified in writing of the proposed disposal at least 45 days before any obligation of the United States is incurred in connection with such disposal.

1 **SEC. ___. ENHANCED SUPPORT FOR COUNTERDRUG ACTIVITIES AND**
2 **ACTIVITIES TO COUNTER TRANSNATIONAL ORGANIZED CRIME.**

3 (a) INCLUSION OF PLANNING SUPPORT.—Subsection (b)(9) of section 284 of title 10,
4 United States Code, is amended by striking “linguist and intelligence analysis” and inserting
5 “linguist, intelligence analysis, and planning”.

6 (b) SECRETARY OF STATE CONCURRENCE.—Such section 284 is further amended—

7 (1) in subsection (a)(2), by striking “in coordination with the Secretary of State”
8 and inserting “with the concurrence of the Secretary of State”; and

9 (2) in subsection (c), by amending paragraph (2) to read as follows:

10 “(2) SECRETARY OF STATE CONCURRENCE.—The Secretary of Defense may only
11 provide support for a purpose described in this subsection with the concurrence of the
12 Secretary of State.”.

**[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 planning services to the types of support that may be provided under section 284 of title 10, United States Code, which authorizes support for counterdrug activities and activities to counter transnational organized crime. Currently, section 284(b)(9) only allows the Department to provide “linguist and intelligence analysis services.” Updating the authorization to allow the Department to provide “planning” services would greatly assist in the development of interagency plans to counter illicit drug trafficking and transnational organized crime. Department of Defense (DoD) planners provide expert advice and assistance in the development of strategic guidance and implementation plans that advance U.S. national security interests through synchronized U.S. Government-wide efforts to target high-priority drug trafficking organizations and transnational organized criminal groups. DoD planning expertise can help synchronize efforts and minimize confusion at the strategic and operational levels; set the conditions for unified action through planning and preparation; and leverage cross-organizational authorities and capabilities for unity of effort during execution of plans.

Amending section 284(b)(9) of title 10, United States Code, by the addition of “planning” would complement the linguist and intelligence analysis services support DoD is currently authorized to provide to Federal departments and agencies and to State, local, and tribal law

enforcement agencies.

The proposal would also require Secretary of State concurrence with respect to requests for support to foreign law enforcement agencies.

Resource Information: The additional service authorized by this proposal will use the funds in the Drug Interdiction and Counter-Drug Activities, Defense appropriation in the FY 2024 President’s Budget request.

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)
Counter-Narcotics Support	638.273	638.272	638.273	638.273	638.273	Drug Interdiction and Counter-drug Activities, Defense	BA01	0105D	N/A
Total	638.273	638.273	638.273	638.273	638.273				

Changes to Existing Law: This proposal would make the following changes to section 284(b)(9) of title 10, United States Code:

§ 284. Support for counterdrug activities and activities to counter transnational organized crime

(a) SUPPORT TO OTHER AGENCIES.—The Secretary of Defense may provide support for the counterdrug activities or activities to counter transnational organized crime of any other department or agency of the Federal Government or of any State, local, tribal, or foreign law enforcement agency for any of the purposes set forth in subsection (b) or (c), as applicable, if—

(1) in the case of support described in subsection (b), such support is requested—

(A) by the official who has responsibility for the counterdrug activities or activities to counter transnational organized crime of the department or agency of the Federal Government, in the case of support for other departments or agencies of the Federal Government; or

(B) by the appropriate official of a State, local, or tribal government, in the case of support for State, local, or tribal law enforcement agencies; or

(2) in the case of support described in subsection (c), such support is requested by an appropriate official of a department or agency of the Federal Government, ~~in coordination~~ with the concurrence of the Secretary of State, that has counterdrug responsibilities or responsibilities for countering transnational organized crime.

(b) TYPES OF SUPPORT FOR AGENCIES OF UNITED STATES.—The purposes for which the Secretary may provide support under subsection (a) for other departments or agencies of the Federal Government or a State, local, or tribal law enforcement agencies, are the following:

(1) The maintenance and repair of equipment that has been made available to any department or agency of the Federal Government or to any State, local, or tribal government by the Department of Defense for the purposes of—

(A) preserving the potential future utility of such equipment for the Department of Defense; and

(B) upgrading such equipment to ensure compatibility of that equipment with other equipment used by the Department.

(2) The maintenance, repair, or upgrading of equipment (including computer software), other than equipment referred to in paragraph (1) for the purpose of—

(A) ensuring that the equipment being maintained or repaired is compatible with equipment used by the Department of Defense; and

(B) upgrading such equipment to ensure the compatibility of that equipment with equipment used by the Department.

(3) The transportation of personnel of the United States and foreign countries (including per diem expenses associated with such transportation), and the transportation of supplies and equipment, for the purpose of facilitating counterdrug activities or activities to counter transnational organized crime within or outside the United States.

(4) The establishment (including an unspecified minor military construction project) and operation of bases of operations or training facilities for the purpose of facilitating counterdrug activities or activities to counter transnational organized crime of the Department of Defense or any Federal, State, local, or tribal law enforcement agency within or outside the United States.

(5) Counterdrug or counter-transnational organized crime related training of law enforcement personnel of the Federal Government, of State, local, and tribal governments, including associated support expenses for trainees and the provision of materials necessary to carry out such training.

(6) The detection, monitoring, and communication of the movement of—

(A) air and sea traffic within 25 miles of and outside the geographic boundaries of the United States; and

(B) surface traffic outside the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

(7) Construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States.

(8) Establishment of command, control, communications, and computer networks for improved integration of law enforcement, active military, and National Guard activities.

(9) The provision of linguist, ~~and~~ intelligence analysis, and planning services.

(10) Aerial and ground reconnaissance.

(c) TYPES OF SUPPORT FOR FOREIGN LAW ENFORCEMENT AGENCIES.—

(1) PURPOSES.—The purposes for which the Secretary may provide support under subsection (a) for foreign law enforcement agencies are the following:

(A) The transportation of personnel of the United States and foreign countries (including per diem expenses associated with such transportation), and the transportation of supplies and equipment, for the purpose of facilitating

counterdrug activities or activities to counter transnational organized crime within or outside the United States.

(B) The establishment (including small scale construction) and operation of bases of operations or training facilities for the purpose of facilitating counterdrug activities or activities to counter transnational organized crime of a foreign law enforcement agency outside the United States.

(C) The detection, monitoring, and communication of the movement of-

(i) air and sea traffic within 25 miles of and outside the geographic boundaries of the United States; and

(ii) surface traffic outside the geographic boundaries of the United States.

(D) Establishment of command, control, communications, and computer networks for improved integration of United States Federal and foreign law enforcement entities and United States Armed Forces.

(E) The provision of linguist and intelligence analysis services.

(F) Aerial and ground reconnaissance.

~~(2) COORDINATION WITH SECRETARY OF STATE.—In providing support for a purpose described in this subsection, the Secretary shall coordinate with the Secretary of State.~~

(2) SECRETARY OF STATE CONCURRENCE.—The Secretary of Defense may only provide support for a purpose described in this subsection with the concurrence of the Secretary of State.

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1 **SEC. ___. EXTENSION AND REVISIONS TO NEVER CONTRACT WITH THE**
2 **ENEMY.**

3 (a) PERMANENT EXTENSION.—Section 841 of the Carl Levin and Howard P. “Buck”
4 McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 10
5 U.S.C. 4871 note prec.), as amended by section 820 of the James M. Inhofe National Defense
6 Authorization Act for Fiscal Year 2023 (Public Law 117-263), is amended by striking subsection
7 (n).

8 (b) EXPANSION OF PROGRAM.—Section 841(a) of such Act is amended—

9 (1) in the heading, by striking “IDENTIFICATION OF PERSONS AND ENTITIES” and
10 inserting “PROGRAM”;

11 (2) in the matter preceding paragraph (1), by striking “establish in” and all that
12 follows and inserting “establish a program to mitigate threats posed by vendors
13 supporting military operations. The program shall use available intelligence, security,
14 law enforcement, and acquisition information to identify persons and entities that—”;

15 (3) in paragraph (1), by striking “; or” and inserting a semicolon;

16 (4) in paragraph (2), by striking the period and inserting a semicolon; and

17 (5) by adding at the end the following new paragraphs:

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

20 “(4) pose an unacceptable national security risk.”.

21 (c) INCLUSION OF ALL CONTRACTS.—Sections 841 and 842 of such Act are further
22 amended by striking “covered contract” each place it appears and inserting “contract”.

1 (d) INCLUSION OF ALL COMBATANT COMMANDS.—Sections 841 and 842 of such Act are
2 further amended by striking “covered combatant command” each place it appears and inserting
3 “combatant command”.

4 (e) COVERED PERSON OR ENTITY.—Section 843(6) of such Act is amended to read as
5 follows:

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

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

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

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

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

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

17 (f) DELEGATION AUTHORITY OF COMBATANT COMMANDER.—

18 (1) USE OF DESIGNEES.—Sections 841 and 842 of such Act are further amended
19 by striking “specified deputies” each place it appears and inserting “designee.”.

20 (2) REMOVAL OF LIMITATIONS ON DELEGATIONS.—Section 841 of such Act is
21 further amended by striking subsection (g).

22 (g) AUTHORITIES TO TERMINATE, VOID, AND RESTRICT.—Section 841(c) of such Act is
23 further amended—

1 (1) in paragraph (1)—

2 (A) by inserting “to a person or entity” after “concerned”; and

3 (B) by striking “the contract” and all that follows and inserting “the person
4 or entity has been identified under the program established under subsection (a).”;

5 (2) in paragraph (2), by striking “has failed” and all that follows and inserting
6 “has been identified under the program established under subsection (a).”; and

7 (3) in paragraph (3), by striking “the contract” and all that follows and inserting
8 “the contractor, or the recipient of the grant or cooperative agreement, has been identified
9 under the program established under subsection (a).”.

10 (h) CONTRACT CLAUSE.—Section 841(d)(2)(B) of such Act is amended by inserting “and
11 restrict future award to any contractor, or recipient of a grant or cooperative agreement, that has
12 been identified under the program established under subsection (a)” after “subsection (c)”.

13 (i) DISCLOSURE OF INFORMATION EXCEPTION.—Section 841(e) of such Act is amended by
14 inserting after paragraph (2) the following new paragraph:

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

19 (j) PARTICIPATION OF SECRETARY OF STATE.—Section 841 of such Act is further
20 amended—

21 (1) in subsection (a) in the matter preceding paragraph (1), by striking “in
22 consultation with”; and

23 (2) in subsection (f)(1), by striking “in consultation with”.

1 (k) SHARING OF INFORMATION ON SUPPORTERS OF THE ENEMY.—Section 841(h)(1) of
2 such Act is further amended by striking “may be providing” and all that follows through “or
3 entity” and inserting “have been identified under the program established under subsection (a)”.

4 (l) REPORTS.—

5 (1) IN GENERAL.—Section 841 of such Act is amended by striking subsection (i).

6 (2) ADDITIONAL ACCESS TO RECORDS.—Section 842 of such Act is amended by
7 striking subsection (b).

8 (m) INAPPLICABILITY TO CERTAIN CONTRACTS, GRANTS, AND COOPERATIVE
9 AGREEMENTS.—Section 841 of such Act is amended by striking subsection (j).

10 (n) ADDITION OF WAIVER.—Section 841 of such Act is further amended by inserting after
11 subsection (h) the following new subsection:

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

16 (o) CONSTRUCTION WITH OTHER AUTHORITIES.—Section 841 of such Act is further
17 amended—

18 (1) in subsection (l), by striking “Except as provided in subsection (m), the” and
19 inserting “The”; and

20 (2) by striking subsection (m).

21 (p) ADDITIONAL ACCESS TO RECORDS.—Section 842 of such Act is further amended—

22 (1) in subsection (a)—

1 (A) in paragraph (1), by striking “, except as provided under subsection
2 (c)(1),”;

3 (B) in paragraph (2), by striking “ensure that funds” and all that follows
4 and inserting “support the program established under section 841(a).”;

5 (C) in paragraph (3), by striking “that funds” and all that follows and
6 inserting “that the examination of such records will support the program
7 established under section 841(a).”; and

8 (D) in paragraph (4), by striking “if the subcontract or subgrant has an
9 estimated value in excess of \$50,000”; and

10 (2) by striking subsection (c).

11 (q) TECHNICAL AND CONFORMING AMENDMENTS.—

12 (1) SECTION HEADING.—The heading of section 841 of such Act is amended by
13 striking “**PROHIBITION ON PROVIDING FUNDS TO THE ENEMY**” and inserting
14 “**THREAT MITIGATION IN COMMERCIAL SUPPORT TO OPERATIONS**”.

15 (2) REDESIGNATIONS.—

16 (A) SECTION 841.—Section 841 of such Act is further amended by
17 redesignating subsections (h), (i), (k), and (l) as subsections (g), (h), (i), and (j), ,
18 respectively.

19 (B) SECTION 842.—Section 842 of such Act is further amended—

20 (i) by striking “(a) CONTRACTS, GRANTS, AND COOPERATIVE
21 AGREEMENTS.—“;

22 (ii) by redesignating paragraphs (1) through (4) as subsections (a)
23 through (d), respectively, and conforming the margins accordingly;

1 (iii) by striking “paragraph (2)” each place it appears and inserting
2 “subsection (b)”; and
3 (iv) in subsection (b), as redesignated by clause (ii) of this
4 subparagraph—
5 (I) by striking “this paragraph” and inserting “this
6 subsection”; and
7 (II) by striking “paragraph (3)” and inserting “subsection
8 (c)”.

9 (3) DEFINITIONS.—Section 843 of such Act is amended—

- 10 (A) in paragraph (1)(A), by striking “and the Committee on
11 Appropriations” and inserting “the Committee on Appropriations, and the Select
12 Committee on Intelligence”; and
13 (B) in paragraph (1)(B), by striking “and the Committee on
14 Appropriations” and inserting “the Committee on Appropriations, and the
15 Permanent Select Committee on Intelligence”;
16 (C) by striking paragraphs (2), (4), and (5); and
17 (D) by redesignating paragraphs (3), (6), (7), (8), and (9) as paragraphs
18 (2), (3), (4), (5), and (6), 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 expand the “Never Contract with the Enemy” program and the applicability of the statutory authorities initially authorized under sections 841, 842, and 843 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Public Law 113-291). The changes will eliminate these limitations and enable the Department of Defense (DoD) to exercise the full intent of the legislation across all combatant commands (CCMDs), types of

operations, and the spectrum of vendor threats faced, and to integrate with the whole of Government in support of the Interim National Security Strategy Guidance, the National Defense Strategy (NDS), the National Military Strategy (NMS), and President of the United States (POTUS) and Secretary of Defense (SECDEF) anti-corruption objectives.

Specifically, this proposal improves the program requirement in sections 841-843 by:

- Removing the sunset date to provide permanent authority that will better support intent of the legislation and development of the capability.
- Revising criteria for identification under this authority to include persons and entities that pose a force protection or national security risk.
- Removing the limitation of applicability to certain commands and contingency operations with active hostilities, so that Heads of Contracting Activity (HCAs) in any area of operations are able to take actions to terminate or void contracts or restrict award when vendors present an unacceptable threat and/or risk.
- Exempting information from disclosure if that disclosure would pose an unacceptable threat to personnel of the U.S. or coalition forces.
- Providing a waiver of provision requirements based on coordination between the DoD and the U.S. Department of State.
- Removing a provision that authority does not apply to contracts performed entirely inside the United States unless the recipient is a foreign entity to address identified gaps that foreign vendors are able to exploit.
- Removing the \$50,000 threshold for applicability of authorities to address risks posed by small dollar value contracts. In FY 2021, the DoD awarded more than 100,000 prime contracts with a dollar value under \$50,000 and place of performance outside the United States. (Based on data from the Federal Procurement Data System-Next Generation accessed via DoD's Procurement Business Intelligence System, April 13, 2022).

These proposed amendments cannot be accomplished in regulation or policy without a statutory change due to the requirement in the Competition in Contracting Act of 1984 (CICA) that contracting agencies obtain full and open competition using competitive procedures when conducting a procurement for property or services.

Analysis of Current Authorities: The FY 2022 NDAA (Public Law 117-81) Joint Explanatory Statement included a request for the DoD to further analyze the need for the authorities outlined in this proposal. The Department conducted analyses of other acquisition authorities that support actions to help mitigate threats posed by certain vendors and found no equivalent acquisition authorities that can be used to mitigate vendor threats in all environments without the enactment of revised “Never Contract with the Enemy” authorities. Specifically, this legislative proposal will be able to address gaps the Department found that exist in authorities used in operational contracting activities such as termination for convenience, termination for default, and suspension and debarment.

CCMD Threat Assessments: Strategic great power competitors are increasingly operating across CCMDs in areas below the level of armed conflict and exploiting business relationships to gain access and information, but these situations are not covered under current authorities. In USAFRICOM, from January 1, 2017, to June 9, 2021, more than 610 vendor screenings were

completed, yielding 28 vendors assessed as a high or critical threat. In four instances, high or critical threat vendors were the successful offeror. The contracts, however, did not meet the definition of a “covered contract” pursuant to section 843, paragraph (5), of the NDAA for FY 2015, as they were not in support of a “contingency operation in which members of the Armed Forces are actively engaged in hostilities.” As a result, the contract actions were ineligible for section 841(a) authority to restrict award to those vendors; therefore, the command created risk mitigation plans to alleviate the threats.

Over a three-year time period, USTRANSCOM’s Foreign Entity Vetting capability vetted 534 foreign vendors primarily operating as first-tier subcontractors, 51 of which the USTRANSCOM Commander deemed as unsuitable for use. Nearly all cases were presented to the Departments of Treasury and Commerce to pursue through their debarment authorities, but only six of these entities were ultimately excluded. Only one case met the definition of a “covered person” or “covered contract” pursuant to section 843, paragraphs (5) and (6), of the NDAA for FY 2015. Without access to expanded authority and the ability to propagate determinations in accordance with section 841, subsection (h), USTRANSCOM has been unable to prevent other DoD Components and Government agencies from using foreign entities found to support transnational organized crime, sanctions violations, and foreign intelligence collection.

The existing authorities do not adequately consider the scope of threats that foreign entities pose to U.S. interests through contracted support, nor do the existing authorities consider the risks introduced by foreign entities serving as subcontractors in support of military campaigning activities. This limits intelligence vetting of foreign entities within and across CCMDs, masks potential threats, and prevents analysis and mitigation of the associated risks of contracting with them.

Achieving DoD Strategic Objectives: The 2021 Interim National Security Strategic Guidance envisions strengthened alliances, expanded partnerships, and mitigated threats in all domains, including the commercial space. The 2022 National Defense Strategy (NDS) emphasizes the urgency for the Department to develop integrated deterrence approaches – including denial, resilience, and cost imposition – across domains, theaters, and the spectrum of conflict. The NDS further states that campaigning, those day-after-day efforts to gain advantage and undermine competition, is the cornerstone of successful integrated deterrence.

U.S. adversaries are using asymmetric advantages and their comparative freedom of maneuver across all theaters to undertake activities they perceive to be difficult to attribute, low-risk, low-cost, and high reward. Foreign entities provide lucrative targets and means to obscure these activities enabling adversaries to gain access not only to funding from DoD contracts, but access to installations, information, and U.S. personnel. Adversaries use these entities to exploit U.S. principles and acquisition regulations and procedures while expanding their areas of influence and establishing safe havens outside of contingency environments. CCMDs must rely on campaigning activities to counter and deter advanced and persistent threats from both nation-states and non-state actors such as violent extremist and transnational crime organizations. These campaigning activities rely heavily on contracted support. However, limitations of the current “Never Contract with the Enemy” authorities restrain CCMD response options to

adversarial actions in the commercial space and expose CCMD objectives, and U.S. interests more broadly, to significant and ever-increasing risk.

In order to “never contract with the enemy,” it is imperative to have a whole-of-government vendor threat mitigation program equipped with the requisite statutory authorities, regardless of the type of operation. These statutory authorities must enable CCMDs and Federal agencies to take immediate action to terminate, void, or restrict contract(s), grant(s) and cooperative agreement(s) with individuals or entities identified as a threat. The ability to address threats posed by gray zone actions and strategic competition is essential to provide Combatant Commanders with the flexibility they need to protect the joint force and national security interests.

The provisions of this section are not intended to circumvent the rights of U.S. persons. Nothing in this section should be construed to contradict applicable intelligence oversight statutes, regulations, or policies. Any U.S. person’s information discovered incident to vetting foreign entities will be handled strictly in accordance with applicable intelligence oversight statutes, regulations, or policies.

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

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

Changes to Existing Law: This proposal would amend subtitle E of title VIII of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 4871 note prec.) as follows:

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

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

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

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

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

(4) pose an unacceptable national security risk.

(b) NOTICE OF IDENTIFIED PERSONS AND ENTITIES.—

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

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

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

(c) AUTHORITY TO TERMINATE OR VOID CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS AND TO RESTRICT FUTURE AWARD.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to provide that, upon notice from the head of an executive agency (or the designee of such head) or the commander of a ~~covered~~ combatant command (or the ~~specified deputies~~ designee of the commander) pursuant to subsection (b), the head of contracting activity of an executive agency, or other appropriate official, may do the following:

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

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

(3) Void in whole or in part any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting

activity or other appropriate official that ~~the contract, grant, or cooperative agreement provides funds directly or indirectly to a covered person or entity. the contractor, or the recipient of the grant or cooperative agreement, has been identified under the program established under subsection (a).~~

(d) CLAUSE.—

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

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

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

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

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

(B) notifies the contractor, or the recipient of the grant or cooperative agreement, of the authority of the head of contracting activity, or other appropriate official, to terminate or void the contract, grant, or cooperative agreement, in whole or in part, as provided in subsection (c) and restrict future award to any contractor, or recipient of a grant or cooperative agreement, that has been identified under the program established under subsection (a).

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

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

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

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

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

(1) To require that any head of contracting activity, or other appropriate official, taking an action under subsection (c) to terminate, void, or restrict a contract, grant, or

cooperative agreement notify in writing the contractor or recipient of the grant or cooperative agreement, as applicable, of the action.

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

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

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

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

(2) PROTECTION OF CLASSIFIED INFORMATION.—Classified information relied upon to make an identification in accordance with subsection (a) may not be disclosed to a contractor or a recipient of a grant or cooperative agreement with respect to which an action is taken pursuant to the authority provided in subsection (c), or to their representatives, in the absence of a protective order issued by a court of competent jurisdiction established under Article I or Article III of the Constitution of the United States that specifically addresses the conditions upon which such classified information may be so disclosed.

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

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

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

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

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

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

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

~~(i) REPORTS.—~~

~~(1) IN GENERAL.— Not later than March 1 of 2023, and annually thereafter, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authorities in this section in the preceding calendar year, including the following:~~

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

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

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

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

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

~~(B) For each instance in which an executive agency did not exercise the authority to terminate, void, or restrict a contract, grant, and cooperative~~

agreement pursuant to subsection (c), based on a notification under subsection (b), the following:

(i) The executive agency concerned.

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

(C) Specific examples where the authorities under this section can not be used to mitigate national security threats posed by vendors supporting Department operations because of the restriction on using such authorities only with respect to contingency operations.

(D) A description of the policies ensuring that oversight of the use of the authorities in this section is effectively carried out by a single office in the Office of the Under Secretary of Defense for Acquisition and Sustainment.

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

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

(B) be submitted in classified form.

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

~~(j) INAPPLICABILITY TO CERTAIN CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—The provisions of this section do not apply to contracts, grants, and cooperative agreements that are performed entirely inside the United States.~~

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

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

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

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

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

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

~~section 841 of the National Defense Authorization Act for Fiscal Year 2012 and section 831 of the National Defense Authorization Act for Fiscal Year 2014.~~

~~(n) SUNSET.—The provisions of this section shall cease to be effective on December 31, 2025.~~

SEC. 842. ADDITIONAL ACCESS TO RECORDS

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

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

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

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

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

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

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

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

SEC. 843. DEFINITIONS.

In this subtitle:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) engaging in other activities that present a direct or indirect risk to

the national security of the United States or coalition forces.

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

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

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

1 **SEC. __. MODIFICATION TO SERVICE COMMITMENT AND MAXIMUM**
2 **AMOUNT FOR SPECIAL AVIATION BONUS AUTHORITIES FOR**
3 **OFFICERS.**

4 Section 334 of title 37, United States Code, is amended—

5 (1) in subsection (b)—

6 (A) by striking paragraph (2);

7 (B) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3),
8 respectively; and

9 (C) in paragraph (2), as redesignated by subparagraph (B) of this
10 paragraph, by striking “for at least one year” and inserting “for at least one
11 additional year beyond any active duty service commitment incurred for
12 undergraduate aviator training”; and

13 (2) in subsection (c)(1), by striking “\$50,000” and inserting “\$75,000”.

[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 increase the maximum amount of incentive pay and bonus that Services can offer to aviation officers to encourage retention. If approved, the current maximum bonus a Service could offer would be raised from \$50,000 per year to \$75,000 per year. These higher amounts would give the Services flexibility to pay higher bonuses where needed. Additionally, the proposal would modify the eligibility timing restrictions by allowing the Services to offer incentives earlier in an aviator’s career before pilots begin considering separation. This change would impact when an agreement may be executed, but the bonus would continue to be available only as compensation for active duty service commitment beyond that incurred during undergraduate aviator training.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal (FY) 2024 President’s Budget request that are impacted by this proposal. The current bonus limit in section 334 of title 37, U.S.C., would be maintained until DoD changed the policy. The table below represents the amount of resources required if the increased bonus maximum is approved and that increased limit is applied to strike fighter aviators. If the authority is enacted

and implemented, the resources will be taken from within the FY2024 President’s Budget FYDP funding.

INCREASE IN STATUTORY MAXIMUM FOR AVIATION BONUS

NUMBER OF PERSONNEL AFFECTED (PLANNED AvB RECIPIENTS)*									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element
Navy	1,927	1,927	1,927	1,927	1,927	Military Personnel Navy	01	N/A	N/A
Total	1,927	1,927	1,927	1,927	1,927	Military Personnel Navy	01	N/A	N/A

*NOTE: Total AvB takers by Service as estimated by FY24 in FY2024 PB submissions

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element
Aviation Bonus	2.4	4.8	7.2	9.6	12	Military Personnel Navy	01	NA	NA
Total	2.4	4.8	7.2	9.6	12	Military Personnel Navy	01	NA	NA

**NOTE: Estimated resource impact by multiplying max increase from \$50k to \$75k (\$25K) per bonus taker as estimated by FY 2024 column in FY2024 PB submission phased in with 20% new takers at the maximum rate each year.

Changes to Existing Law: This proposal would amend section 334 of title 37, United States Code, as follows:

§ 334. Special aviation incentive pay and bonus authorities for officers

(a) AVIATION INCENTIVE PAY.—

(1) INCENTIVE PAY AUTHORIZED.—The Secretary concerned may pay aviation incentive pay under this section to an officer in a regular or reserve component of a uniformed service who—

(A) is entitled to basic pay under section 204 of this title or compensation under section 206 of this title;

(B) maintains, or is in training leading to, an aeronautical rating or designation that qualifies the officer to engage in operational flying duty or proficiency flying duty;

(C) engages in, or is in training leading to, frequent and regular performance of operational flying duty or proficiency flying duty;

(D) engages in or remains in aviation service for a specified period; and

(E) meets such other criteria as the Secretary concerned determines appropriate.

(2) OFFICERS NOT CURRENTLY ENGAGED IN FLYING DUTY.—The Secretary concerned may pay aviation incentive pay under this section to an officer who is otherwise qualified for such pay but who is not currently engaged in the performance of

operational flying duty or proficiency flying duty if the Secretary determines, under regulations prescribed under section 374 of this title, that payment of aviation incentive pay to that officer is in the best interests of the service.

(b) AVIATION BONUS.—The Secretary concerned may pay an aviation bonus under this section to an officer in a regular or reserve component of a uniformed service who—

(1) is entitled to aviation incentive pay under subsection (a);

~~(2) has completed any active duty service commitment incurred for undergraduate aviator training or is within one year of completing such commitment;~~

(3) executes a written agreement to remain on active duty in a regular component or to serve in an active status in a reserve component in aviation service for at least one additional year beyond any active duty service commitment incurred for undergraduate aviator training; and

(4) meets such other criteria as the Secretary concerned determines appropriate.

(c) MAXIMUM AMOUNT AND METHOD OF PAYMENT.—

(1) MAXIMUM AMOUNT.—The Secretary concerned shall determine the amount of a bonus or incentive pay to be paid under this section, except that—

(A) aviation incentive pay under subsection (a) shall be paid at a monthly rate not to exceed \$1,500 per month; and

(B) an aviation bonus under subsection (b) may not exceed ~~\$50,000~~ \$75,000 for each 12-month period of obligated service agreed to under subsection (d).

(2) ANNUAL BUSINESS CASE FOR PAYMENT OF AVIATION BONUS AMOUNTS.—

(A) IN GENERAL.—The Secretary concerned shall determine the amount of the aviation bonus payable under paragraph (1)(B) under agreements entered into under subsection (d) during a fiscal year solely through a business case analysis of the amount required to be paid under such agreements in order to address anticipated manning shortfalls for such fiscal year by aircraft type category.

(B) BUDGET JUSTIFICATION DOCUMENTS.—The budget justification documents in support of the budget of the President for a fiscal year (as submitted to Congress pursuant to section 1105 of title 31) shall set forth for each uniformed service the following:

(i) The amount requested for the payment of aviation bonuses under subsection (b) using amounts authorized to be appropriated for the fiscal year concerned by aircraft type category.

(ii) The business case analysis supporting the amount so requested by aircraft type category.

(iii) For each aircraft type category, whether or not the amount requested will permit the payment during the fiscal year concerned of the maximum amount of the aviation bonus authorized by paragraph (1)(B).

(iv) If any amount requested is to address manning shortfalls, a description of any plans of the Secretary concerned to address such shortfalls by nonmonetary means.

(3) LUMP SUM OR INSTALLMENTS.—A bonus under this section may be paid in a lump sum or in periodic installments, as determined by the Secretary concerned.

(4) FIXING BONUS AMOUNT.—Upon acceptance by the Secretary concerned of the written agreement required by subsection (d), the total amount of the bonus to be paid under the agreement shall be fixed.

* * * * *

1 **SEC. ____ . MODIFICATIONS OF REPORTING REQUIREMENTS.**

2 (a) CONSOLIDATED BUDGET QUARTERLY REPORT ON USE OF FUNDS.—Section 381 of title
3 10, United States Code, is amended—

4 (1) by striking “(a) CONSOLIDATED BUDGET.—The budget” and inserting “The
5 budget”; and

6 (2) by striking subsection (b).

7 (b) MONTHLY COUNTERTERRORISM OPERATIONS BRIEFING.—Section 485 of title 10,
8 United States Code, is amended—

9 (1) in the heading, by striking “**Monthly**” and inserting “**Quarterly**”; and

10 (2) in subsection (a), by striking “monthly” and inserting “quarterly”.

11 (c) NATIONAL SECURITY STRATEGY FOR THE NATIONAL TECHNOLOGY AND INDUSTRIAL
12 BASE.—Section 4811(a) of title 10, United States Code, is amended by striking “The Secretary
13 shall submit such strategy to Congress not later than 180 days after the date of submission of the
14 national security strategy report required under section 108 of the National Security Act of 1947
15 (50 U.S.C. 3043).” and inserting “The Secretary shall submit such strategy to Congress as an
16 integrated part of the report submitted under section 4814 of this title.”.

17 (d) NATIONAL TECHNOLOGY AND INDUSTRIAL BASE REPORT AND QUARTERLY

18 BRIEFING.—

19 (1) IN GENERAL.—Section 4814 of title 10, United States Code, is amended—

20 (A) by striking “(a) ANNUAL REPORT.—”;

21 (B) by striking “March 1 of each year” and inserting “March 1 of each
22 odd-numbered year”; and

23 (C) by striking subsection (b).

1 (2) CLERICAL AMENDMENTS.—

2 (A) The heading of such section is amended to read as follows:

3 **“§4814. National technology and industrial base: biennial report”**.

4 (B) The item relating to section 4814 in the table of sections at the
5 beginning of chapter 382 of such title is amended to read as follows:

“4814. National technology and industrial base: biennial report.”.

6 (3) CONFORMING AMENDMENT.—Section 858(b)(2) of the James M. Inhofe
7 National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263) is
8 amended by striking subparagraph (A).

9 (e) ANNUAL MILITARY CYBERSPACE OPERATIONS REPORT.— Section 1644 of the
10 National Defense Authorization Act for Fiscal Year 2020 (10 U.S.C. 394 note; Public Law 116–
11 92) is amended—

12 (1) in subsection (a) in the matter preceding paragraph (1) in the first sentence—

13 (A) by inserting “effects” after “all named military cyberspace”; and

14 (B) by striking “, operations, cyber effects enabling operations, and cyber
15 operations conducted as defensive operations” and inserting “conducted for either
16 offensive or defensive purposes”; and

17 (2) in subsection (c), by inserting “or cyber effects operations for which Congress
18 has otherwise been provided notice” before the period.

19 (f) INDEPENDENT STUDIES REGARDING POTENTIAL COST SAVINGS WITH RESPECT TO THE
20 NUCLEAR SECURITY ENTERPRISE AND FORCE STRUCTURE.—Section 1753 of the National
21 Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92, 133 Stat. 1852) is amended
22 by striking subsection (a).

1 (g) EXTENSION AND MODIFICATION OF AUTHORITY TO PROVIDE ASSISTANCE TO THE
2 VETTED SYRIAN OPPOSITION. — Section 1231(d) of the John S. McCain National Defense
3 Authorization Act for Fiscal Year 2019 (Public Law 115–232) is amended—

4 (1) in the heading, by striking “QUARTERLY” and inserting “SEMIANNUAL”; and

5 (2) in paragraph (1)—

6 (A) in the matter preceding subparagraph (A) in the second sentence, by
7 striking “quarterly” and inserting “semiannual”; and

8 (B) in subparagraph (A), by striking “90-day” and inserting “180-day”.

9 (h) EXTENSION OF AUTHORITY TO PROVIDE ASSISTANCE TO COUNTER THE ISLAMIC STATE
10 OF IRAQ AND SYRIA. — Section 1233(e) of the John S. McCain National Defense Authorization
11 Act for Fiscal Year 2019 (Public Law 115–232) is amended—

12 (1) in the heading, by striking “QUARTERLY” and inserting “SEMIANNUAL”; and

13 (2) in paragraph (1) in the second sentence of the matter preceding subparagraph

14 (A), by striking “quarterly” and inserting “semiannual”.

15 (i) THEFT, LOSS, OR RELEASE OF BIOLOGICAL SELECT AGENTS OR TOXINS INVOLVING
16 DEPARTMENT OF DEFENSE.—Section 1067(a) of the National Defense Authorization Act for
17 Fiscal Year 2017 (Public Law 114–328; 50 U.S.C. 1528(a)) is amended to read as follows:

18 “(a) NOTIFICATION.—(1) Subject to paragraph (2), not later than 90 days after a covered
19 report of any theft, loss, or release of a biological select agent or toxin involving the Department
20 of Defense is filed with the Centers for Disease Control and Prevention or the Animal and Plant
21 Health Inspection Service, the Secretary of Defense, acting through the Assistant Secretary of
22 Defense for Nuclear, Chemical, and Biological Defense Programs, shall provide to the
23 congressional defense committees notice of such theft, loss, or release.

1 “(2) The Secretary shall provide to the congressional defense committees notice of a
2 release under paragraph (1) only if the Secretary, acting through the Assistant Secretary,
3 determines that the release is outside the barriers of secondary containment into the ambient air
4 or environment or is causing occupational exposure that presents a threat to public safety.

5 “(3) In this subsection, the term ‘covered report’ means a report filed under any of the
6 following:

7 “(A) Section 331.19 of title 7, Code of Federal Regulations.

8 “(B) Section 121.19 of title 9, Code of Federal Regulations.

9 “(C) Section 73.19 of title 42, Code of Federal Regulations.”.

10 (j) DEPARTMENT OF DEFENSE SECURITY COOPERATION WORKFORCE DEVELOPMENT.—
11 Section 1250(b) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law
12 114-328; 130 Stat. 2529) is amended—

13 (1) in paragraph (1), by striking “each year” and inserting “every other year”; and

14 (2) in paragraph (2) in the matter preceding subparagraph (A), by striking “for the
15 fiscal year” and inserting “for the fiscal years” .

16 (k) DEPARTMENT OF DEFENSE AUTHORITY TO PROVIDE ASSISTANCE TO SECURE THE
17 SOUTHERN LAND BORDER OF THE UNITED STATES.—Section 1059 of the National Defense
18 Authorization Act for Fiscal Year 2016 (10 U.S.C. 284 note; Public Law 114-92) is amended by
19 striking subsection (f).

20 (l) AUTHORITY TO SUPPORT OPERATIONS AND ACTIVITIES OF THE OFFICE OF SECURITY
21 COOPERATION IN IRAQ. — Section 1215 of the National Defense Authorization Act for Fiscal
22 Year 2012 (10 U.S.C. 113 note; Public Law 112-81) is amended—

23 (1) in subsection (g)(2), by adding at the end the following new subparagraphs:

1 “(G) A description of further steps to reorganize the Office in a manner
2 similar to that of other security cooperation offices in the region.

3 “(H) A description of progress made toward the continuation of bilateral
4 engagement with the Government of Iraq, with the objective of establishing a
5 joint mechanism for security assistance planning.

6 “(I) An update to the five-year security assistance roadmap for developing
7 sustainable military capacity and capabilities and enabling defense institution
8 building and reform.

9 “(J) A description of progress made toward, and a timeline for, the
10 transition of the preponderance of funding for the activities of the Office from
11 current sources to the Foreign Military Financing Administrative Fund and the
12 Foreign Military Sales Trust Fund Administrative Surcharge Account in future
13 years.”; and

14 (2) by striking subsection (h).

[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 modify or eliminate the following statutory reporting requirements:

Consolidated Budget Quarterly Report on Use of Funds: This proposal would repeal the quarterly reporting requirement in subsection (b) of section 381 of title 10, United States Code. Section 381(b) requires the Department to submit a quarterly report on the obligation and expenditure of funds for security cooperation (SC) programs and activities. This report is based on the SC budget categories used in the Under Secretary of Defense (Comptroller)-managed SC Consolidated Budget Display required by 10 U.S.C. 381(a). These budget categories group SC activities into eight broad categories (including Capacity Building, Military-to-Military Engagements, Training with Foreign Forces, etc.) based largely on how SC authorities are categorized in chapter 16 of title 10. This requirement adds little value outside of the context of the annual budget display. Annual appropriations acts have included a requirement to report on the status of funds in a way that provides more meaningful detail for the committees since it

provides obligation and expenditure data by program. The Department is seeking to eliminate the duplicative, less meaningful report..

Monthly Counterterrorism Operations Briefings: This proposal would amend section 485 of title 10, United States Code, to change the frequency of the reporting requirement from monthly to quarterly. Due to the need to collect quarterly data, complete a DoD-wide review and validation of the data for each report, the manpower effort to accomplish monthly briefing requires a constant year-round effort. Changing the frequency to quarterly alleviates a significant manpower burden without degrading the quality of the information provided to Congress.

National Security Strategy for the National Technology and Industrial Base: This proposal would amend section 4811(a) of title 10, United States Code, by nesting the National Security Strategy for the National Technology and Industrial Base (NTIB; required under section 4811 of title 10, United States Code) as an integrated part of the Industrial Capabilities Report submitted pursuant to section 4814 of such title. Doing so would consolidate overlapping requirements, reduce administrative burden on the Department, and provide Congress with a comprehensive Department of Defense (DoD) strategy towards the Defense Industrial Base.

National Technology and Industrial Base Annual Report: This proposal would modify the existing requirement under section 4814 of title 10, United States Code, so that the Industrial Capabilities Report (ICR) would be published biennially (i.e., every other year) on odd numbered years instead of annually. This decision is informed by lessons learned to-date from implementation of the ICR on a yearly basis. Reducing the reporting frequency would better reflect the pace of change in the content in the report. One year does not produce sufficient change in the content to merit an entirely new report. In return, reporting authorities would receive a more thorough report that satisfactorily demonstrates progress over a two-year period.

National Technology and Industrial Base Quarterly Briefings: This proposal would repeal the requirement in section 4814(b) of title 10, United States Code, as added by section 842 of the NDAA for FY 2021 (Public Law 116–283), for quarterly briefings on the NTIB to the congressional defense committees. There is very little change in the NTIB on a quarterly basis and since this requirement was implemented these briefings have not yielded useful information for the congressional defense committees. Repealing this requirement is consistent with DoD’s desire to provide better, higher quality, and more thorough information on DoD’s strategy towards the industrial base.

Annual Military Cyberspace Operations Report: This proposal would amend the reporting requirement established in section 1644 of the NDAA for FY 2020. The Department of Defense keeps Congress informed of DoD “sensitive military cyber operations” pursuant to section 395 of title 10, United States Code. The proposed amendment to section 1644 would exclude from the annual report required by that section those sensitive military cyber operations already reported in writing to Congress pursuant to section 395. This amendment would resolve ambiguity regarding whether the requirements of section 1644 are duplicative of the requirements in section 395, and would result in more efficient use of limited personnel resources.

Independent Studies Regarding Potential Cost Savings with Respect to the Nuclear

Security Enterprise and Force Structure: This proposal would eliminate a requirement for the Secretary of Defense to enter into contracts with two federally funded research and development centers (FFRDCs) to conduct independent reviews of alternative defense postures that achieve U.S. national security objectives. These reviews include examining alternative nuclear deterrence postures with increased and decreased force posture levels, changes to conventional force structure and posture, alterations to the mix of military and civilian workforces, and options for reducing services contracts. This unfunded requirement encumbers the day-to-day mission of the Office of the Secretary of Defense (OSD), including its fundamental responsibilities to support senior civilian leaders' guidance and oversight of the U.S. military. Moreover, these activities are duplicated by the work of the Congressional Commission on the Strategic Posture of the United States, as established by section 1687 of the NDAA for FY 2022.

Extension and Modification of Authority to Provide Assistance to the Vetted Syrian

Opposition: This proposal would change the frequency of the reporting requirement in subsection (d) of section 1231 of the NDAA for FY 2019 from quarterly to semiannually. Collecting data, reviewing and validating the data, and conducting interagency coordination for this report on a quarterly basis requires significant manpower to accomplish. Historically the data has not changed meaningfully quarter to quarter thus far and therefore this requirement as currently written provides minimal updates to Congress each quarter. Changing the frequency of the report to a semiannual basis alleviates a significant manpower burden while not degrading the quality and timeliness of the information provided to Congress.

Extension of Authority to Provide Assistance to Counter the Islamic State of Iraq and

Syria: This proposal would change the frequency of the reporting requirement in subsection (e) of section 1233 of the NDAA for FY 2019 from quarterly to semiannually. Collecting data, reviewing and validating the data, and conducting interagency coordination for this report on a quarterly basis requires significant manpower to accomplish. Historically the data has not changed meaningfully quarter to quarter and therefore this requirement as currently written provides minimal updates to Congress each quarter. Changing the frequency of the report to a semiannual basis alleviates a significant manpower burden while not degrading the quality and timeliness of the information provided to Congress.

Theft, Loss, or Release of Biological Select Agents or Toxins Involving the Department of

Defense: This proposal would change the reporting requirement from 15 days to 90 days for any biological select agent or toxin (BSAT) theft, loss, or release that is external to secondary containment or is causing occupational exposure that presents a threat to public safety. The additional 75 days allows the Department to receive a copy of the report filed by the facility and provide the requested summary under section 1607(a) of the National Defense Authorization Act for Fiscal Year 2017 (50 U.S.C. 1528(a)) to the congressional defense committees.

DoD will report BSAT releases to the congressional defense committees only if the releases pose a hazard to the external environment and public safety. In a majority of instances in which there is a BSAT release outside the primary barriers of biocontainment, as defined in the Federal Select Agent Regulations, the BSAT release is contained within the engineering controls of the

laboratory's secondary barriers of biocontainment. Therefore, the only BSAT releases that require congressional attention are those that pose a hazard to the environment and public safety. The language also clarifies the requirement for the laboratories regarding which BSAT releases are reportable and prevents the congressional defense committees from receiving reports that do not require congressional attention.

The addition of references to sections 73.19 of title 42, Code of Federal Regulations (C.F.R.), and 121.19 of title 9, C.F.R., along with the existing reference to section 331.19 of title 7, C.F.R., encompass the Federal Select Agent Regulations, which cover those pathogens (bacteria, viruses, and toxins) that are regulated by the Federal Government. The Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs is the appropriate DoD official to provide information to the congressional defense committees in accordance with section 138(b)(4) of title 10, United States Code.

Department of Defense Security Cooperation Workforce Development: This proposal would change the frequency of the existing annual reporting requirement for section 1250 of the NDAA for FY 2017 to every other year. This temporary report requirement was scheduled to expire on 2021, but Congress recently extended this report requirement until March 1, 2026. The existing section 1250 annual report addresses the use of requested funds to support the Department's security cooperation workforce including elements to address skill and competency gaps, retention challenges, and the need for recruitment incentives. Changing the frequency of the report to every other year reduces the manpower burden to prepare this report.

Department of Defense Authority to Provide Assistance to Secure the Southern Land Border of the United States: Subsection (f) of section 1059 of the NDAA for FY 2016 requires the Secretary of Defense, in coordination with the Secretary of Homeland Security, to submit a report on Department of Defense (DoD) assistance provided, pursuant to section 1059(a), to United States Customs and Border Protection for purposes of increasing ongoing efforts to secure the southern land border of the United States, at the end of each three-month period during which assistance is provided pursuant to section 1059(a). However, this information is already included in an annual report submitted pursuant to section 1014(d) of the NDAA for FY 2017 (10 U.S.C. 271 note). Section 1014(d) requires the Secretary of Defense to submit a report on any assistance provided by DoD to the border security mission of the Department of Homeland Security at the international borders of the United States during the fiscal year preceding the fiscal year during which the report is submitted. This redundant reporting requirement imposes an undue administrative burden on DoD and increases costs to DoD. Given its narrow focus, the report required by section 1059(f) understates the full support DoD provides to the Department of Homeland Security border security mission. If section 1059(f) is repealed, the information required by Congress would continue to be reported in a more comprehensive report to Congress pursuant to section 1014(d).

Authority to Support Operations and Activities of the Office of Security Cooperation in Iraq: This proposal would repeal subsection (h) of section 1215 of the NDAA for FY 2012 and would incorporate the reporting requirements of subsection (h) into the separate report required by subsection (g). Consolidating reporting requirements will reduce the total number of interagency coordination processes on this data from three times a year to two times a year

alleviating a significant manpower burden while not degrading the quality and timeliness of the information provided to Congress.

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 make the following changes to existing law:

Title 10, United States Code

§ 381. Consolidated budget

~~(a) CONSOLIDATED BUDGET.—~~The budget of the President for each fiscal year, as submitted to Congress by the President pursuant to section 1105 of title 31, shall set forth by budget function and as a separate item the amounts requested for the Department of Defense for such fiscal year for all security cooperation programs and activities of the Department of Defense, including the military departments, to be conducted in such fiscal year, including the specific country or region and the applicable authority, to the extent practicable.

~~(b) QUARTERLY REPORT ON USE OF FUNDS.—~~Not later than 60 days after the end of each calendar quarter, the Secretary shall submit to the appropriate committees of Congress a report on the obligation and expenditure of funds for security cooperation programs and activities of the Department of Defense during such calendar quarter.

§ 485. Monthly Quarterly counterterrorism operations briefings

(a) BRIEFINGS REQUIRED.—The Secretary of Defense shall provide to the congressional defense committees ~~monthly~~ quarterly briefings outlining Department of Defense counterterrorism operations and related activities, including the use of military force under the notion of collective self-defense of foreign partners.

- (b) ELEMENTS.—Each briefing under subsection (a) shall include each of the following:
- (1) A global update on activity within each geographic combatant command and how such activity supports the respective theater campaign plan.
 - (2) An overview of authorities and legal issues, including limitations.
 - (3) An overview of interagency activities and initiatives.
 - (4) Any other matters the Secretary considers appropriate.

§4811. National security strategy for national technology and industrial base

(a) National Security Strategy for National Technology and Industrial Base.—The Secretary of Defense shall develop a national security strategy for the national technology and industrial base. The Secretary shall submit such strategy to Congress ~~not later than 180 days after the date of submission of the national security strategy report required under section 108 of the National Security Act of 1947 (50 U.S.C. 3043)~~ as an integrated part of the report submitted

under section 4814 of this title. Such strategy shall be based on a prioritized assessment of risks and challenges to the defense supply chain and shall ensure that the national technology and industrial base is capable of achieving the following national security objectives:

(1) Supplying, equipping, and supporting the force structure of the armed forces that is necessary to achieve-

(A) the objectives set forth in the national security strategy report submitted to Congress by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 3043);

(B) the policy guidance of the Secretary of Defense provided pursuant to section 113(g) of this title; and

(C) the future-years defense program submitted to Congress by the Secretary of Defense pursuant to section 221 of this title.

(2) Sustaining production, maintenance, repair, logistics, and other activities in support of military operations of various durations and intensity.

(3) Maintaining advanced research and development activities to provide the armed forces with systems capable of ensuring technological superiority over potential adversaries.

(4) Reconstituting within a reasonable period the capability to develop, produce, and support supplies and equipment, including technologically advanced systems, in sufficient quantities to prepare fully for a war, national emergency, or mobilization of the armed forces before the commencement of that war, national emergency, or mobilization.

(5) Providing for the development, manufacture, and supply of items and technologies critical to the production and sustainment of advanced military weapon systems within the national technology and industrial base.

(6) Providing for the generation of services capabilities that are not core functions of the armed forces and that are critical to military operations within the national technology and industrial base.

(7) Providing for the development, production, and integration of information technology within the national technology and industrial base.

(8) Maintaining critical design skills to ensure that the armed forces are provided with systems capable of ensuring technological superiority over potential adversaries.

(9) Ensuring reliable sources of materials that are critical to national security, such as specialty metals, essential minerals, armor plate, and rare earth elements.

(10) Reducing, to the maximum extent practicable, the presence of counterfeit parts in the supply chain and the risk associated with such parts.

(11) Providing for the provision of drugs, biological products, vaccines, and critical medical supplies required to enable combat readiness and protect the health of the armed forces.

(b) Civil-Military Integration Policy.-The Secretary of Defense shall ensure that the United States attains the national technology and industrial base objectives set forth in subsection (a) through acquisition policy reforms that have the following objectives:

(1) Relying, to the maximum extent practicable, upon the commercial national technology and industrial base that is required to meet the national security needs of the United States.

(2) Reducing the reliance of the Department of Defense on technology and industrial base sectors that are economically dependent on Department of Defense business.

(3) Reducing Federal Government barriers to the use of commercial products, processes, and standards.

(c) Department of Defense Technology and Industrial Base Policy Guidance.-

(1) Departmental Guidance.-The Secretary of Defense shall prescribe departmental guidance for the attainment of each of the national security objectives set forth in subsection (a).

(2) Purpose of Guidance.-The guidance prescribed pursuant to paragraph (1) shall provide for technological and industrial capability considerations to be integrated into the strategy, management, budget allocation, acquisition, and logistics support decision processes.

§4814. National technology and industrial base: ~~annual~~ biennial report and ~~quarterly~~ briefings

(a) ~~Annual Report.~~—The Secretary of Defense shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives by March 1 of ~~each year~~ each odd-numbered year a report which shall include the following information:

(1) A description of the department guidance prepared pursuant to section 4811(c) of this title.

(2) A description of the assessments prepared pursuant to section 4816 of this title and other analyses used in developing the budget submission of the Department of Defense for the next fiscal year.

(3) Based on the strategy required by section 4811 of this title and on the assessment prepared pursuant to Executive order or section 4816 of this title-

(A) A map of the industrial base

(B) A prioritized list of gaps or vulnerabilities in the national technology and industrial base (including vulnerabilities related to the current and projected impacts of extreme weather and to cyber-attacks or disruptions), including –

i. A description of mitigation strategies necessary to address such gaps or vulnerabilities;

ii. The identification of the Secretary concerned or the head of the Defense Agency responsible for addressing such gaps or vulnerabilities; and

iii. A proposed timeline for action to address such gaps or vulnerabilities; and

(C) Any other steps necessary to foster and safeguard the national technology and industrial base.

(4) Identification of each program designed to sustain specific essential technological and industrial capabilities and processes of the national technology and industrial base.

(5) A detailed description of any use by the Secretary of Defense or a Secretary concerned, as applicable, during the prior 12 months of a waiver or exception to the sourcing requirements or prohibitions established by chapter 83 of title 41 or chapter 385 of this title, including –

(A) The type of waiver or exception used; and

(B) The reasoning for the use of each such waiver or exception.

~~(b) Quarterly Briefings. (1) The Secretary of Defense shall ensure that the congressional defense committees receive quarterly briefings on the industrial base supporting the Department of Defense, describing challenges, gaps, and vulnerabilities in the defense industrial base and commercial sector relevant to execution of defense missions, and describing initiatives to address such challenges.~~

~~(2) Each briefing under paragraph (1) shall include an update on the progress of addressing such gaps or vulnerabilities by the Secretary, the Secretary of the military department concerned, or the appropriate head of a Defense Agency, including an update on—~~

- ~~(A) actions taken to address such gaps or vulnerabilities;~~
- ~~(B) policy changes necessary to address such gaps or vulnerabilities; and~~
- ~~(C) the proposed timeline for action and resources required to address such gaps or vulnerabilities.~~

**JAMES M. INHOFE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL
YEAR 2023
(PUBLIC LAW 117-263)**

**SEC. 858. ANALYSES OF CERTAIN ACTIVITIES FOR ACTION TO ADDRESS
SOURCING AND INDUSTRIAL CAPACITY.**

(a) ANALYSIS REQUIRED.—

(1) **IN GENERAL.**—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment and other appropriate officials, shall review the items under subsection (c) to determine and develop appropriate actions, consistent with the policies, programs, and activities required under subpart I of part V of subtitle A of title 10, United States Code, chapter 83 of title 41, United States Code, and the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.), including—

- (A) restricting procurement, with appropriate waivers for cost, emergency requirements, and non-availability of suppliers, including restricting procurement to—
 - (i) suppliers in the United States;
 - (ii) suppliers in the national technology and industrial base (as defined in section 4801 of title 10, United States Code);
 - (iii) suppliers in other allied nations; or
 - (iv) other suppliers;
- (B) increasing investment through use of research and development or procurement activities and acquisition authorities to—
 - (i) expand production capacity;
 - (ii) diversify sources of supply; or
 - (iii) promote alternative approaches for addressing military requirements;
- (C) prohibiting procurement from selected sources or nations;
- (D) taking a combination of actions described under subparagraphs (A), (B), and (C); or
- (E) taking no action.

(2) **CONSIDERATIONS.**—The analyses conducted pursuant to paragraph (1) shall consider national security, economic, and treaty implications, as well as impacts on current and potential suppliers of goods and services.

(b) REPORTING ON ANALYSES, RECOMMENDATIONS, AND ACTIONS.—

(1) **BRIEFING REQUIRED.**—Not later than January 15, 2024, the Secretary of Defense shall submit to the congressional defense committees, in writing—

(A) a summary of the findings of the analyses undertaken for each item pursuant to subsection (a);

(B) relevant recommendations resulting from the analyses; and

(C) descriptions of specific activities undertaken as a result of the analyses, including schedule and resources allocated for any planned actions.

(2) REPORTING.—The Secretary of Defense shall include the analyses conducted under subsection (a), and any relevant recommendations and descriptions of activities resulting from such analyses, as appropriate, in each of the following during the 2024 calendar year:

~~(A) The annual report or quarterly briefings to Congress required under section 4814 of title 10, United States Code.~~

(B) The annual report on unfunded priorities of the national technology and industrial base required under section 4815 of such title.

(C) Department of Defense technology and industrial base policy guidance prescribed under section 4811(c) of such title.

(D) Activities to modernize acquisition processes to ensure the integrity of the industrial base pursuant to section 4819 of such title.

(E) Defense memoranda of understanding and related agreements considered in accordance with section 4851 of such title.

(F) Industrial base or acquisition policy changes.

(G) Legislative proposals for changes to relevant statutes which the Department shall consider, develop, and submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not less frequently than once per fiscal year.

(H) Other actions as the Secretary of Defense determines appropriate.

(c) LIST OF GOODS AND SERVICES FOR ANALYSES, RECOMMENDATIONS, AND ACTIONS.—The items described in this subsection are the following:

(1) Solar components for satellites.

(2) Satellite ground station service contracts.

(3) Naval vessel shafts and propulsion system components (including reduction gears and propellers).

(4) Infrastructure or equipment for a passenger boarding bridge at a military airport designated by the Secretary of Transportation under section 47118(a) of title 49, United States Code.

(5) Flags of the United States.

(6) Natural rubber from herbaceous plants for military applications.

(7) Alternative proteins as sustainable and secure food sources.

(8) Carbon fiber.

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

SEC. 1644. ANNUAL MILITARY CYBERSPACE OPERATIONS REPORT.

(a) IN GENERAL.—Not later than March 1 of each year, the Secretary of Defense shall provide to the congressional defense committees a written report summarizing all named military cyberspace effects operations conducted in the previous calendar year, including cyber effects conducted for either offensive or defensive purposes, ~~operations, cyber effects enabling operations, and cyber operations conducted as defensive operations~~. Each such summary should be organized by adversarial country and should include the following for each named operation:

- (1) An identification of the objective and purpose.
- (2) Descriptions of the impacted countries, organizations, or forces, and nature of the impact.
- (3) A description of methodologies used for the cyber effects operation or cyber effects enabling operation.
- (4) An identification of the Cyber Mission Force teams, or other Department of Defense entity or units, that conducted such operation, and supporting teams, entities, or units.
- (5) An identification of the infrastructures on which such operations occurred.
- (6) A description of relevant legal, operational, and funding authorities.
- (7) Additional costs beyond baseline operations and maintenance and personnel costs directly associated with the conduct of the cyber effects operation or cyber effects enabling operation.
- (8) Any other matters the Secretary determines relevant.

(b) CLASSIFICATION.—The Secretary of Defense shall provide each report required under subsection (a) at a classification level the Secretary determines appropriate.

(c) LIMITATION.—This section does not apply to cyber-enabled military information support operations or military deception operations or cyber effects operations for which Congress has otherwise been provided notice.

SEC. 1753. INDEPENDENT STUDIES REGARDING POTENTIAL COST SAVINGS WITH RESPECT TO THE NUCLEAR SECURITY ENTERPRISE AND FORCE STRUCTURE.

~~(a) REVIEW OF NUCLEAR DETERRENCE POSTURES.—~~

~~(1) IN GENERAL.—The Secretary of Defense shall seek to enter into agreements with two federally funded research and development centers for the conduct of independent reviews of alternative defense postures that achieve United States national security objectives and could produce cost savings. Each such review shall include—~~

~~(A) alternative nuclear deterrence postures to achieve national security objectives, including two alternatives with reduced and increased force posture levels;~~

~~(B) the options for and cost impacts resulting from changes to force structure, active and reserve component balance, domestic and overseas basing, and other impacts resulting from potential challenges to foundational planning assumptions to achieve national security objectives;~~

~~(C) the potential cost savings from alterations to the current balance between the military and civilian workforces; and~~

~~(D) options for reducing service contracts in the Department of Defense.~~

~~(2) COST DATA.— A federally funded research and development center that conducts a review pursuant to paragraph (1) shall standardize cost data through the use of Department of Defense cost estimation methodologies and may make reference to appropriate national security policy documents.~~

~~(3) ACCESS TO CLASSIFIED INFORMATION.— The Secretary of Defense shall provide to such a center classified information on threat capability developments, plans, and intentions of China, Russia, North Korea, Iran, and violent extremist organizations.~~

(b) REPORT AND BRIEFINGS.—

(1) BRIEFING ON COST SAVINGS.—Not later than February 1, 2020, the Comptroller General of the United States shall provide to the congressional defense committees a briefing on the recommendations of the Comptroller General with respect to cost savings in the Department of Defense.

(2) BRIEFING ON EFFICIENCY INITIATIVES.—Not later than February 1, 2020, the Comptroller General of the United States shall provide to the congressional defense committees a briefing on the recommendations of the Comptroller General with respect to the efficiency initiatives undertaken by the Office of the Chief Management Officer of the Department of Defense.

(3) REPORT.—Subsequent to providing the briefing under paragraph (2), the Comptroller General shall submit to the congressional defense committees a report on the matters covered by the briefing.

**JOHN S. MCCAIN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL
YEAR 2019
(PUBLIC LAW 115-232)**

**SEC. 1231. EXTENSION AND MODIFICATION OF AUTHORITY TO PROVIDE
ASSISTANCE TO THE VETTED SYRIAN OPPOSITION.**

(a) EXTENSION.—Section 1209(a) 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 1221(a) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 130 Stat. 2485), is further amended by striking “December 31, 2018” and inserting “December 31, 2019”.

* * * * *

(d) ~~QUARTERLY~~ SEMIANNUAL PROGRESS REPORT.—

(1) IN GENERAL.—The Secretary of Defense, in coordination with the Secretary of State, shall submit to the appropriate congressional committees and leadership of the House of Representatives and the Senate a progress report under section 1209 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015. Such progress report shall, based on the most recent ~~quarterly~~ semiannual information, include an assessment of the following:

(A) Whether, during the ~~90-day~~ 180-day period, demonstrable progress was made—

(i) to retake control of territory in Syria from the Islamic State of Iraq and Syria (ISIS); or

(ii) to stabilize areas in Syria formerly held by the Islamic State of Iraq and Syria.

(B) Whether, during such period, the vetted Syrian opposition tasked with conducting local security operations that United States forces are training and equipping under the authority in section 1209 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, as amended by subsection (a), were demographically representative of the local communities and serve local governance bodies that are similarly representative of the local communities.

(C) Whether, during such period, the Department of Defense took actions to mitigate any pause in offensive operations against the Islamic State of Iraq and Syria through alternative approaches to the training, equipping, and assistance of the vetted Syrian opposition.

(D) Whether, during such period, support provided under the authority referred to in subparagraph (B) was consistent with United States standards regarding respect for human rights, rule of law, and support for stable and equitable governance.

(E) Whether, during such period, members of the vetted Syrian opposition receiving support under the authority referred to in subparagraph (B) demonstrated respect for human rights and rule of law, violations of human rights and rule of law by such members were appropriately investigated, and the individuals responsible for such violations were appropriately held accountable.

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

(3) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—

In this subsection, the term “appropriate congressional committees” means—

(A) the congressional defense committees; and

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

SEC. 1233. EXTENSION 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. 3558), as most recently amended by section 1222 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 131 Stat. 1651), is further amended by striking “December 31, 2019” and inserting “December 31, 2020”.

* * * * *

(e) QUARTERLY SEMIANNUAL PROGRESS REPORT.—

(1) IN GENERAL.—The Secretary of Defense, in coordination with the Secretary of State, shall submit to the appropriate congressional committees and leadership of the House of Representatives and the Senate a progress report under section 1236 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, which shall be provided in unclassified form with a classified annex if necessary. Such progress report shall, based on the most recent ~~quarterly~~ semiannual information, include an assessment of the following:

(A) The extent to which any forces associated with Iran’s Revolutionary Guard Corps (IRGC) have been incorporated into the Iraqi Security Forces.

(B) Any instances in which forces associated with Iran’s Revolutionary Guard Corps have acquired United States-provided equipment and training.

(C) The extent to which United States-provided equipment is controlled by unauthorized units, determined by vetting required in subsection (e) of section 1236 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, or is not accounted for by the Government of Iraq, including a list of major end items provided to the Government of Iraq that are controlled by unauthorized forces or unaccounted for.

(D) Actions taken by the Government of Iraq to repossess United States-provided equipment from unauthorized forces.

(E) The means by which the United States Armed Forces shares operational information with the Iraqi Security Forces and a description of any known instances in which any forces associated with Iran’s Revolutionary Guard Corps have gained unauthorized access to such operational information.

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

(A) the congressional defense committees; and

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

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

SEC. 1067. [50 U.S.C. 1528] CONGRESSIONAL NOTIFICATION OF BIOLOGICAL SELECT AGENT AND TOXIN THEFT, LOSS, OR RELEASE INVOLVING THE DEPARTMENT OF DEFENSE.

(a) NOTIFICATION.—~~Not~~ (1) Subject to paragraph (2), not later than 15 90 days after notice a covered report of any theft, loss, or release of a biological select agent or toxin involving the Department of Defense is ~~provided to~~ filed with the Centers for Disease Control and Prevention or the Animal and Plant Health Inspection Service, ~~as specified by section 331.19 of part 7 of the Code of Federal Regulations,~~ the Secretary of Defense, acting through the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs, shall provide to the congressional defense committees notice of such theft, loss, or release.

(2) The Secretary shall provide to the congressional defense committees notice of a release under paragraph (1) only if the Secretary, acting through the Assistant Secretary,

determines that the release is outside the barriers of secondary containment into the ambient air or environment or is causing occupational exposure that presents a threat to public safety.

(3) In this subsection, the term “covered report” means a report filed under any of the following:

(A) Section 331.19 of title 7, Code of Federal Regulations.

(B) Section 121.19 of title 9, Code of Federal Regulations.

(C) Section 73.19 of title 42, Code of Federal Regulations.

(b) ELEMENTS.—Notice of a theft, loss, or release of a biological select agent or toxin under subsection (a) shall include each of the following:

- (1) The name of the agent or toxin and any identifying information, including the strain or other relevant characterization information.
- (2) An estimate of the quantity of the agent or toxin stolen, lost, or released.
- (3) The location or facility from which the theft, loss, or release occurred.
- (4) In the case of a release, any hazards posed by the release and the number of individuals potentially exposed to the agent or toxin.
- (5) Actions taken to respond to the theft, loss, or release.

* * * * *

SEC. 1250. DEPARTMENT OF DEFENSE SECURITY COOPERATION WORKFORCE DEVELOPMENT.

(a) IN GENERAL.—Chapter 16 of title 10, United States Code, as added by section 1241(a)(3) of this Act, is amended by inserting after section 383, as added by section 1241(m) of this Act, the following new section:

* * * * *

(b) REPORTS ON WORKFORCE DEVELOPMENT.—

(1) IN GENERAL.—Not later than March 1, 2018, and ~~each year~~ every other year thereafter through 2026, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the Department of Defense Security Cooperation Workforce Development Program required by section 384 of title 10, United States Code, as added by subsection (a), for the fiscal ~~year~~ years beginning in the year in which such report is submitted.

(2) ELEMENTS.—Each report under this subsection shall include, for the fiscal year covered by such report, the following:

(A) The funds requested or allocated for the Department of Defense Security Cooperation Workforce Development Program and for the security cooperation workforce.

(B) A description of how the funds identified pursuant to subparagraph (A) will be implemented for the following:

- (i) To address any gaps in the skills and competencies of the current or anticipated security cooperation workforce
- (ii) To provide incentives to retain qualified, experienced personnel in the security cooperation workforce.
- (iii) To provide incentives to attract and recruit new, high-quality personnel to the security cooperation workforce.
- (C) Any other matters the Secretary considers appropriate.

(3) DEFINITIONS.—In this subsection:

(A) The term “appropriate committees of Congress” has the meaning given that term in section 301(1) of title 10, United States Code, as added by section 1241(a)(3) of this Act.

(B) The term “security cooperation workforce” has the meaning given that term in section 384(h) of title 10, United States Code, as added by subsection (a).

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016
(PUBLIC LAW 114-92)**

SEC. 1059. DEPARTMENT OF DEFENSE AUTHORITY TO PROVIDE ASSISTANCE TO SECURE THE SOUTHERN LAND BORDER OF THE UNITED STATES.

(a) AUTHORITY.—

(1) PROVISION OF ASSISTANCE.—

(A) IN GENERAL.—The Secretary of Defense may provide assistance to United States Customs and Border Protection for purposes of increasing ongoing efforts to secure the southern land border of the United States in accordance with the requirements of this section.

(B) REQUIREMENTS.—If the Secretary provides assistance under subparagraph (A), the Secretary shall ensure that the provision of the assistance will not negatively affect military training, operations, readiness, or other military requirements.

(2) NOTIFICATION REQUIREMENT.—Not later than 7 days after the date on which the Secretary approves a request for assistance from the Department of Homeland Security under paragraph (1), the Secretary shall electronically transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services and the Committee on Homeland Security of the House of Representatives notice of such approval.

* * * * *

(f) REPORTS.—

~~(1) REPORT REQUIRED.—At the end of each three-month period during which assistance is provided under subsection (a), the Secretary of Defense, in coordination with the Secretary of Homeland Security, shall submit to the Committee on Armed Services and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Armed Services and the Committee on Homeland Security~~

of the House of Representatives a report that includes, for the period covered by the report, each of the following:

~~(A) A description of the assistance provided.~~

~~(B) A description of the Armed Forces, including the reserve components, deployed as part of such assistance, including an identification of—~~

~~(i) the members of the Armed Forces, including members of the reserve components, deployed, including specific information about unit designation, size of unit, and whether any personnel in the unit deployed under section 12302 of title 10, United States Code;~~

~~(ii) the projected length of the deployment and any special pay and incentives for which deployed personnel may qualify during the deployment;~~

~~(iii) any specific pre-deployment training provided for such members of the Armed Forces, including members of the reserve components;~~

~~(iv) the specific missions and tasks, by location, that are assigned to the members of the Armed Forces, including members of the reserve components, who are so deployed; and~~

~~(v) the locations where units so deployed are conducting their assigned mission, together with a map showing such locations.~~

~~(C) A description of any effects of such deployment on military training, operations, readiness, or other military requirements.~~

~~(D) The sources and amounts of funds obligated or expended—~~

~~(i) during the period covered by the report; and~~

~~(ii) during the total period for which such support has been provided.~~

~~(2) FORM OF REPORT.—Each report submitted under this subsection shall be submitted in unclassified form, but may include a classified annex.~~

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012 (PUBLIC LAW 112-81)

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

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

* * * * *

(g) **REPORTS.**—

(1) **IN GENERAL.**—Not later than September 30, 2020, and every 180 days thereafter until the authority in this section expires, the Secretary of Defense shall, in consultation with the Secretary of State, submit to the appropriate committees of Congress a report on the activities of the Office of Security Cooperation in Iraq.

(2) ELEMENTS.—Each report under this subsection shall include the following:

(A) A description of capability gaps in the security forces of Iraq that also addresses capability gaps relating to intelligence matters, protection of Iraq airspace, and logistics and maintenance, and a description of the extent, if any, to which the Government of Iraq has requested assistance in addressing such capability gaps.

(B) A description of the activities of the Office of Security Cooperation in Iraq and the extent, if any, to which United States security assistance and security cooperation activities are intended to address the capability gaps described pursuant to subparagraph (A).

(C) A description of how the activities of the Office of Security Cooperation in Iraq are coordinated with, and complement and enhance, the assistance provided pursuant to section 1236 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015.

(D) A description of end use monitoring programs, and any other programs or procedures, used to improve accountability for equipment provided to the Government of Iraq.

(E) A description of the measures of effectiveness used to evaluate the activities of the Office of the Security Cooperation in Iraq, and an analysis of any determinations to expand, alter, or terminate specific activities of the Office based on such evaluations.

(F) An evaluation of the effectiveness of United States efforts to promote respect for human rights, military professionalism, and respect for legitimate civilian authority in Iraq.

(G) A description of further steps to reorganize the Office in a manner similar to that of other security cooperation offices in the region.

(H) A description of progress made toward the continuation of bilateral engagement with the Government of Iraq, with the objective of establishing a joint mechanism for security assistance planning.

(I) An update to the five-year security assistance roadmap for developing sustainable military capacity and capabilities and enabling defense institution building and reform.

(J) A description of progress made toward, and a timeline for, the transition of the preponderance of funding for the activities of the Office from current sources to the Foreign Military Financing Administrative Fund and the Foreign Military Sales Trust Fund Administrative Surcharge Account in future years.

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

(A) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

~~(h) LIMITATION ON AVAILABILITY OF FUNDS.—Of the amount authorized to be appropriated by this Act for fiscal year 2022 to carry out this section, not more than \$10,000,000~~

may be obligated or expended for the Office of Security Cooperation in Iraq until the date on which the Secretary of Defense provides to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a report that—

(1) details further steps to reorganize the Office in a manner similar to that of other security cooperation offices in the region and indicates whether such reorganization will be achieved by 2023;

(2) describes progress made toward the continuation of bilateral engagement with the Government of Iraq, with the objective of establishing a joint mechanism for security assistance planning;

(3) includes a five-year security assistance roadmap for developing sustainable military capacity and capabilities and enabling defense institution building and reform; and

(4) describes progress made toward, and a timeline for, the transition of the preponderance of funding for the activities of the Office from current sources to the Foreign Military Financing Administrative Fund and the Foreign Military Sales Trust Fund Administrative Surcharge Account in future years.

1 **SEC. ____ . REPEAL OF LIMITATION ON USE OF HUMANS AS EXPERIMENTAL**
2 **SUBJECTS.**

3 Effective October 1, 2024, section 980 of title 10, United States Code, 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 seeks to eliminate section 980 of title 10, United States Code.

The predecessor to 10 U.S.C. 980 first appeared in 1972¹, to provide protections (informed consent requirement) to Service Members participating in Department of Defense (DoD) health studies.

In the decades since 10 U.S.C. 980 became law, multiple Federal departments and agencies established and implemented a comprehensive regulatory framework for the protection of human subjects (the “Common Rule,” adopted by DoD at 32 CFR 219). DoD Instruction (DoDI) 3216.02 implements the Common Rule for the DoD, including Subparts to the Common Rule that protect vulnerable classes of research subjects. The DoDI also addresses military-specific ethical issues (e.g., consideration of research risks to fitness for duty, prohibition of Command coercion). In addition, the DoD complies with Food and Drug Administration (FDA) regulations that govern the conduct of certain research. The ethical issues addressed by 10 U.S.C. 980 (informed consent of the subject or the subject’s legal representative, waiver of consent, and the relevance of research intent to benefit) are fully covered by this robust Federal framework of protections to which the DoD adheres. Thus, 10 U.S.C. 980 is outdated and unnecessary.

However, 10 U.S.C. 980 is not merely unnecessary. The differences between 10 U.S.C. 980 and the Common Rule create confusion among DoD-funded research partners and different ethical requirements for research under 10 U.S.C. 980 that are not warranted.

- 10 U.S.C. 980 creates a different standard from the Common Rule for obtaining consent of a subject’s legal representative (requiring an intent to benefit the subject).
- Certain minimal risk research that is eligible for waiver of informed consent under the Common Rule is not permissible under 10 U.S.C. 980.

It is important to emphasize that 10 U.S.C. 980 applies not only to research conducted by the DoD, but also to research funded by the DoD that is conducted by universities or other research partners. The fact that a given research project is funded by the DoD does not justify or support ethical requirements that differ from those of the Common Rule. Under 10 U.S.C. 980 as currently written, a university could ethically conduct a research project using any non-DoD source of funds, but the same research project may become impermissible if the university

¹ 10 U.S.C. 980 was enacted by the National Defense Authorization Act, 1985 (Public Law 98–525) and was based on similar versions of the provision contained in annual defense appropriations Acts dating from 1972.

sought to use DoD funds. Under 10 U.S.C. 980, a research project approvable and considered ethical under the Common Rule if conducted by a university may become impermissible if conducted by the DoD. This is the illogical result of the differences between 10 U.S.C. 980 and the Common Rule. As noted above, military-specific ethical issues are not addressed by 10 U.S.C. 980; they are addressed by DoDI 3216.02.

In addition to the creation of unjustified differing ethical standards, 10 U.S.C. 980 mandates a higher level of approval for emergency research without informed consent than that required by the FDA or by the Department of Health and Human Services (HHS). Under 10 U.S.C. 980, such research must not only comply with FDA or HHS regulations (which require IRB approval), but must also be approved by the Secretary of Defense (or as delegated by Secretary). This creates significant delays with no commensurate benefit.

- 21 CFR 50.24, a part of the FDA’s regulations, provides for a narrow “exception from informed consent” (EFIC) for emergency research involving an FDA-regulated product. Emergency research for which an EFIC may be appropriate entails, among other things, certain life-threatening situations in which obtaining informed consent is not feasible in advance of administering the intervention, and participation in the research holds out the prospect of direct benefit to the subjects. An IRB may approve an emergency research trial without requiring that informed consent of all research subjects be obtained if the IRB finds and documents that all the requirements for the exception detailed in 21 CFR 50.24 have been met.
- Emergency research trials for which an EFIC may be appropriate under 21 CFR 50.24, when conducted by Military Treatment Facilities (MTFs) or supported by DoD research programs such as the Congressionally Directed Medical Programs (CDMRP) funding a university or other non-DoD research partner, however, are limited by the requirement in 10 U.S.C. 980 mandating that Secretary of Defense approval (or as delegated) is necessary to waive informed consent requirements. This high-level approval requirement is inefficient and creates bureaucratic delays that do not contribute to the protection of subjects or improve the quality of research.

As the average staffing process for Secretarial waivers requires at least 6 months, the 10 U.S.C. 980 requirements can severely hinder the Department’s progress in conducting medical research that could provide a great benefit to U.S. warfighters.

10 U.S.C. 980 should be eliminated because it overlaps and conflicts with the human subject research ethics standards and procedures applicable to the other Common Rule departments and agencies. Moreover, this statute’s existence creates an unnecessary administrative morass to critical medical research. The current Federal and DoD framework of laws and policies fully and effectively addresses the realities and risks in the protection of human subjects in DoD research.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget. The elimination of 10 U.S.C.

980 will streamline the acquisition of research, reducing costs associated with multiple reviews and delayed research activities.

Changes to Existing Law: This proposal would amend section 980 of title 10, United States Code, as follows:

~~SEC. 980. LIMITATION ON USE OF HUMANS AS EXPERIMENTAL SUBJECTS.~~

~~(a) Funds appropriated to the Department of Defense may not be used for research involving a human being as an experimental subject unless—~~

~~(1) the informed consent of the subject is obtained in advance; or~~

~~(2) in the case of research intended to be beneficial to the subject, the informed consent of the subject or a legal representative of the subject is obtained in advance.~~

~~(b) The Secretary of Defense may waive the prohibition in this section with respect to a specific research project to advance the development of a medical product necessary to the armed forces if the research project may directly benefit the subject and is carried out in accordance with all other applicable laws.~~

1 **SEC. ____ . SPECIAL CONSTRUCTION AUTHORITY TO USE OPERATION AND**
2 **MAINTENANCE FUNDS TO MEET CERTAIN UNITED STATES**
3 **MILITARY-RELATED CONSTRUCTION NEEDS IN FRIENDLY**
4 **FOREIGN COUNTRIES.**

5 (a) IN GENERAL.—Section 2804 of title 10, United States Code, is amended—

6 (1) in the heading, by inserting “**and military-related construction in friendly**
7 **foreign countries**” after “**construction**”;

8 (2) by redesignating subsection (b) as subsection (c); and

9 (3) by inserting after subsection (a) the following new subsection:

10 “(b)(1) Using funds available for operations and maintenance, the Secretary of Defense
11 may, with the concurrence of the Secretary of State, carry out a construction project in a friendly
12 foreign country, and perform planning and design to support such a project, if the project meets
13 the following conditions:

14 “(A) The commander of the geographic combatant command in which the
15 construction project will be carried out identified the construction project as necessary to
16 support vital United States military requirements related to strategic laydown
17 opportunities at an air, sea, or rail port of debarkation, or other logistics support location.

18 “(B) The construction project will not be carried out at a military installation.

19 “(C) Section 284 of this title and section 2808 of the Military Construction
20 Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat.
21 1723) are not available to carry out the construction project.

22 “(D) The funds made available under the authority of this section for the
23 construction project—

1 “(i) will be sufficient to produce a complete and usable facility or
2 improvement or complete the repair of an existing facility or improvement; and

3 “(ii) will not require additional funds from other Department of Defense
4 accounts.

5 “(E) The level of construction will be the minimum necessary to meet the vital
6 military requirements identified under subparagraph (A).

7 “(F) Deferral of the construction project for inclusion in the next National
8 Defense Authorization Act would be inconsistent with the vital military requirements
9 identified under subparagraph (A) or other national interests of the United States.

10 “(2)(A) The maximum amount that the Secretary may obligate in any fiscal year under
11 this subsection is \$200,000,000.

12 “(B) The maximum amount that the Secretary may obligate for a single construction
13 project under this subsection is \$15,000,000.

14 “(C) Notwithstanding subparagraph (A), the Secretary of Defense may authorize the
15 obligation under this section of not more than an additional \$10,000,000 if the Secretary
16 determines that additional funds are needed for costs associated with contract closeouts.”.

17 (b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of
18 subchapter I of chapter 169 of title 10, United States Code, is amended by striking the item
19 relating to section 2804 and inserting the following new item:

 “2804. Contingency construction and military-related construction in friendly foreign countries.”.

**[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 the Secretary of Defense a tailored construction authority, quick and discreet, intended for use in locations where adversaries maintain significant influence.

Current military construction authorities assume a bipolar strategic landscape, that the U.S. is either at war or at peace. “Wartime” construction authorities (e.g., 10 U.S.C. 2804, 2808) are unavailable in most cases as they require a named contingency, declaration of national emergency, or declaration of war. Traditional “peacetime” military construction authorities (e.g., 10 U.S.C. 2803 and 2805 and projects authorized in the annual national defense authorization act) are public and deliberate by design, making them unavailable for prompt response to operational requirements, too public to support deterrence, and highly vulnerable to malign adversary interference during project execution.

Military construction, regardless of authority, is rarely suitable in areas with high levels of adversary influence. Military construction is traditionally defined as construction with respect to a military installation, whereas the construction needed to support warfighting preparedness is often at locations that do not constitute military installations (e.g., ports of entry and logistics hubs of a foreign nation). Additionally, the public nature of traditional military construction, particularly projects authorized in an annual National Defense Authorization Act, undermines the deterrent component of such requirements and exposes projects to malign interference, particularly in the Western Pacific from PRC networks, and in Eastern Europe from Russian networks.

The Department would implement policy and processes to ensure projects are vital and satisfy intended purpose of proposed authority. The typical size of a project under this authority would be moderate, up to \$15M, based on review of projects appropriate for such an authority which have been submitted for SecDef approval within traditional MilCon processes. Use of O&M funding enables more rapid response, is inherently less public than military construction, and avoids fierce internal DoD competition for limited military construction appropriations.

Decades-long precedent exists for using O&M funds for construction. 10 U.S.C. 284 and section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723), as amended stand as examples. The fiscal structures required to account for and control such projects are mature.

The proposed authority is most appropriately located inside 10 U.S.C. Chapter 169 – Military Construction and Military Family Housing, because the envisioned construction is in support of U.S. military objectives. Finally, the proposal is most appropriate as a standing, statutory authority rather than an annual reauthorization. Our principal competitors (PRC, Russia) are likely permanent fixtures on the world stage and field robust networks to interfere with US military activities of all sorts, include construction. Adversary competition below the level of armed conflict, as noted in NDS, NMS, and elsewhere, is a long-term, erosive strategy easily justifying a long-term response.

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)
The Army did not budget to use this authority in the FY 2024 President’s Budget request..									
SCCA	50	50	50	50	50	Operation & Maintenance, Navy	Various	Various	
SCCA	50	50	50	50	50	Operation & Maintenance, Air Force	Various	Various	
There are no Defense Wide resources budgeted for this authority in the FY 2024 President’s Budget request.									
Total	100	100	100	100	100				

Changes to Existing Law: This proposal would make the following changes to section 2804 of title 10, United States Code:

§ 2804. Contingency construction and military-related construction in friendly foreign countries

(a) Within the amount appropriated for such purpose, the Secretary of Defense may carry out a military construction project not otherwise authorized by law, or may authorize the Secretary of a military department to carry out such a project, if the Secretary of Defense determines that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or national interest.

(b)(1) Using funds available for operations and maintenance, the Secretary of Defense may, with the concurrence of the Secretary of State, carry out a construction project in a friendly foreign country, and perform planning and design to support such a project, if the project meets the following conditions:

(A) The commander of the geographic combatant command in which the construction project will be carried out identified the construction project as necessary to support vital United States military requirements related to strategic laydown opportunities at an air, sea, or rail port of debarkation, or other logistics support location.

(B) The construction project will not be carried out at a military installation.

(C) Section 284 of this title and section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723) are not available to carry out the construction project.

(D) The funds made available under the authority of this section for the construction project—

(i) will be sufficient to produce a complete and usable facility or improvement or complete the repair of an existing facility or improvement; and

(ii) will not require additional funds from other Department of Defense accounts.

(E) The level of construction will be the minimum necessary to meet the vital military requirements identified under subparagraph (A).

(F) Deferral of the construction project for inclusion in the next National Defense Authorization Act would be inconsistent with the vital military requirements identified under subparagraph (A) or other national interests of the United States.

(2)(A) The maximum amount that the Secretary may obligate in any fiscal year under this subsection is \$200,000,000.

(B) The maximum amount that the Secretary may obligate for a single construction project under this subsection is \$15,000,000.

(C) Notwithstanding subparagraph (A), the Secretary of Defense may authorize the obligation under this section of not more than an additional \$10,000,000 if the Secretary determines that additional funds are needed for costs associated with contract closeouts.

(bc) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report to the appropriate committees of Congress on that decision. Each such report shall include the justification for the project, the current estimate of the cost of the project, and the justification for carrying out the project under this section. The project may then be carried out only after the end of the seven-day period beginning on the date the notification is received by such committees in an electronic medium pursuant to section 480 of this title.

1 **SEC. ____ . TALENT MANAGEMENT AND PERSONNEL RETENTION.**

2 (a) REALIGNMENT OF NAVY SPOT-PROMOTION QUOTAS.—Section 605 of title 10, United
3 States Code, is amended—

4 (1) in the heading, by striking “**lieutenant commander, lieutenant**” and inserting
5 “**lieutenant commander**”;

6 (2) in subsection (a)—

7 (A) by striking “lieutenant (junior grade),”; and

8 (B) by striking “Marine Corps, or lieutenant, lieutenant commander” and
9 inserting “Marine Corps, or lieutenant commander”;

10 (3) in subsection (b)(2)(A), by striking “lieutenant,”;

11 (4) in subsection (f)—

12 (A) in paragraph (1), by striking “lieutenant,”; and

13 (B) in paragraph (2), by striking “lieutenant,”; and

14 (5) in subsection (g)(4)—

15 (A) by striking subparagraph (A);

16 (B) by redesignating subparagraphs (B), (C), and (D) as subparagraphs

17 (A), (B), and (C), respectively; and

18 (C) in subparagraph (A), as redesignated by subparagraph (B) of this
19 paragraph, by striking “325” and inserting “425”.

20 (b) MODIFICATION OF LIMITATION ON PROMOTION SELECTION BOARD RATES.—Section
21 616 of title 10, United States Code, is amended—

22 (1) in subsection (d)—

1 (A) by striking “(d) The” and inserting “(d)(1) Except as provided in
2 paragraph (2), the”; and

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

4 “(2) If a promotion zone established under section 623 of this title includes less than 50
5 officers and is established with respect to promotions to a grade below the grade of brigadier
6 general or rear admiral (lower half), the Secretary concerned may authorize selection boards
7 convened under section 611(a) to recommend for promotion a number equal to not more than
8 100 percent of the number of officers included in such promotion zone.”; and

9 (2) in subsection (e), by striking “unless he” and inserting “unless the officer”.

10 (c) TIME IN GRADE REQUIREMENTS.— Section 1305 of title 10, United States Code, is
11 amended—

12 (1) in subsection (a)(3), by inserting “or a Marine Corps Marine Gunner warrant
13 officer in such grade,” after “chief warrant officer, W-5,”;

14 (2) in subsection (b), by striking “when he” and inserting “when the warrant
15 officer”; and

16 (3) in subsection (c)—

17 (A) by striking “as he” and inserting “as the Secretary concerned”; and

18 (B) by striking “after he” and inserting “after the warrant officer”.

19 (d) ALTERNATIVE PROMOTION AUTHORITY FOR RESERVE OFFICERS IN DESIGNATED
20 COMPETITIVE CATEGORIES.—

21 (1) IN GENERAL.—Part III of subtitle E of title 10, United States Code, is amended
22 by adding at the end the following new chapter:

1 **“CHAPTER 1413—ALTERNATIVE PROMOTION AUTHORITY FOR**
2 **OFFICERS IN DESIGNATED COMPETITIVE CATEGORIES**

“Sec.

“15101. Officers in designated competitive categories.

“15102. Selection for promotion.

“15103. Eligibility for consideration for promotion.

“15104. Opportunities for consideration for promotion.

“15105. Promotions.

“15106. Failure of selection for promotion.

“15107. Retirement: retirement for years of service; selective early retirement.

“15108. Continuation on the Reserve Active-Status List.

“15109. Other administration authorities.

“15110. Regulations.

3 **“§ 15101. Officers in designated competitive categories**

4 “(a) **AUTHORITY TO DESIGNATE COMPETITIVE CATEGORIES OF OFFICERS.**—Each
5 Secretary of a military department may designate one or more competitive categories for
6 promotion of officers under section 14005 of this title that are under the jurisdiction of such
7 Secretary as a competitive category of officers whose promotion, retirement, and continuation on
8 the reserve active-status list shall be subject to the provisions of this chapter.

9 “(b) **LIMITATION ON EXERCISE OF AUTHORITY.**—The Secretary of a military department
10 may not designate a competitive category of officers for purposes of this chapter until 60 days
11 after the date on which the Secretary submits to the Committees on Armed Services of the Senate
12 and the House of Representatives a report on the designation of the competitive category. The
13 report on the designation of a competitive category shall set forth the following:

14 “(1) A detailed description of officer requirements for officers within the
15 competitive category.

16 “(2) An explanation of the number of opportunities for consideration for
17 promotion to each particular grade, and an estimate of promotion timing, within the
18 competitive category.

1 “(3) An estimate of the size of the promotion zone for each grade within the
2 competitive category.

3 “(4) A description of any other matters the Secretary considered in determining to
4 designate the competitive category for purposes of this chapter.

5 **“§ 15102. Selection for promotion**

6 “(a) IN GENERAL.—Except as provided in this section, the selection for promotion of
7 officers in any competitive category of officers designated for purposes of this chapter shall be
8 governed by the provisions under chapter 1403 of this title.

9 “(b) NO RECOMMENDATION FOR PROMOTION OF OFFICERS BELOW PROMOTION ZONE.—
10 Section 14301(d) of this title shall not apply to the selection for promotion of officers described
11 in subsection (a).

12 “(c) RECOMMENDATION FOR OFFICERS TO BE EXCLUDED FROM FUTURE CONSIDERATION
13 FOR PROMOTION.—In making recommendations pursuant to chapter 1403 of this title for
14 purposes of the administration of this chapter, a selection board convened under section 14101(a)
15 of this title may recommend that an officer considered by the board be excluded from future
16 consideration for promotion under this chapter.

17 **“§ 15103. Eligibility for consideration for promotion**

18 “(a) IN GENERAL.—Except as provided by this section, eligibility for promotion of
19 officers in any competitive category of officers designated for purposes of this chapter shall be
20 governed by the provisions of sections 14301, 14303, and 14304 of this title.

21 “(b) INAPPLICABILITY OF CERTAIN TIME-IN-GRADE REQUIREMENTS.—Sections 14303 and
22 14304 of this title shall not apply to the promotion of officers described in subsection (a).

1 “(c) INAPPLICABILITY TO OFFICERS ABOVE AND BELOW PROMOTION ZONE.—The
2 following provisions of this title shall not apply to the promotion of officers described in
3 subsection (a):

4 “(1) The reference in section 14301(b) to an officer above the promotion zone.

5 “(2) Section 14301(d).

6 “(d) INELIGIBILITY OF CERTAIN OFFICERS.—The following officers are not eligible for
7 promotion under this chapter:

8 “(1) An officer described in section 14301(c) of this title.

9 “(2) An officer not included within the promotion zone.

10 “(3) An officer who has failed of promotion to a higher grade the maximum
11 number of times specified for opportunities for promotion for such grade within the
12 competitive category concerned pursuant to section 15104 of this title.

13 “(4) An officer recommended by a selection board to be removed from
14 consideration for promotion in accordance with section 15102(c) of this title.

15 **“§ 15104. Opportunities for consideration for promotion**

16 “(a) SPECIFICATION OF NUMBER OF OPPORTUNITIES FOR CONSIDERATION FOR
17 PROMOTION.—In designating a competitive category of officers pursuant to section 15101 of this
18 title, the Secretary of a military department shall specify the number of opportunities for
19 consideration for promotion to be afforded officers of the armed force concerned within the
20 category for promotion to each grade above the grade of first lieutenant or lieutenant (junior
21 grade), as applicable.

22 “(b) LIMITED AUTHORITY OF SECRETARY OF MILITARY DEPARTMENT TO MODIFY NUMBER
23 OF OPPORTUNITIES.—The Secretary of a military department may modify the number of

1 opportunities for consideration for promotion to be afforded officers of an armed force within a
2 competitive category for promotion to a particular grade, as previously specified by the Secretary
3 pursuant subsection (a) of this subsection, not more frequently than once every five years.

4 “(c) DISCRETIONARY AUTHORITY OF SECRETARY OF DEFENSE TO MODIFY NUMBER OF
5 OPPORTUNITIES.—The Secretary of Defense may modify the number of opportunities for
6 consideration for promotion to be afforded officers of an armed force within a competitive
7 category for promotion to a particular grade, as previously specified or modified pursuant to any
8 provision of this section, at the discretion of the Secretary.

9 “(d) LIMITATION ON NUMBER OF OPPORTUNITIES SPECIFIED.—The number of
10 opportunities for consideration for promotion to be afforded officers of an armed force within a
11 competitive category for promotion to a particular grade, as specified or modified pursuant to
12 any provision of this section, may not exceed five opportunities.

13 “(e) EFFECT OF CERTAIN REDUCTION IN NUMBER OF OPPORTUNITIES SPECIFIED.—If, by
14 reason of a reduction in the number of opportunities for consideration for promotion under this
15 section, an officer would no longer have one or more opportunities for consideration for
16 promotion that were available to the officer before the reduction, the officer shall be afforded one
17 additional opportunity for consideration for promotion after the reduction.

18 **“§ 15105. Promotions**

19 “Sections 14307 through 14317 of this title shall apply in promotions of officers in
20 competitive categories of officers designated for purposes of this chapter.

21 **“§ 15106. Failure of selection for promotion**

1 “(a) IN GENERAL.—Except as provided in this section, sections 14501 through 14513 of
2 this title shall apply to promotions of officers in competitive categories of officers designated for
3 purposes of this chapter.

4 “(b) INAPPLICABILITY OF FAILURE OF SELECTION FOR PROMOTION TO OFFICERS ABOVE
5 PROMOTION ZONE.—The reference in section 14501 of this title to an officer above the
6 promotion zone shall not apply in the promotion of officers described in subsection (a).

7 “(c) SPECIAL SELECTION BOARD MATTERS.—The reference in section 14502(a)(1) of this
8 title to a person above the promotion zone shall not apply in the promotion of officers described
9 in subsection (a).

10 “(d) EFFECT OF FAILURE OF SELECTION.—In the administration of this chapter pursuant to
11 subsection (a)—

12 “(1) an officer described in subsection (a) shall not be deemed to have failed twice
13 of selection for promotion for purposes of section 14502(b) of this title until the officer
14 has failed selection of promotion to the next higher grade the maximum number of times
15 specified for opportunities for promotion to such grade within the competitive category
16 concerned pursuant to section 15104 of this title; and

17 “(2) any reference in sections 14504 through 14506 of this title to an officer who
18 has failed of selection for promotion to the next higher grade for the second time shall be
19 deemed to refer instead to an officer described in subsection (a) who has failed of
20 selection for promotion to the next higher grade for the maximum number of times
21 specified for opportunities for promotion to such grade within the competitive category
22 concerned pursuant to such section 15104.

23 **“§ 15107. Retirement: retirement for years of service; selective early retirement**

1 “(a) RETIREMENT FOR YEARS OF SERVICE.—Sections 14507 through 14515 of this title
2 shall apply to the retirement of officers in competitive categories of officers designated for
3 purposes of this chapter.

4 “(b) SELECTIVE EARLY RETIREMENT.—Section 14101(b) of this title shall apply to the
5 retirement of officers described in subsection (a).

6 **“§ 15108. Continuation on the Reserve Active-Status List**

7 “Sections 14701 through 14703 of this title shall apply in continuation or retention on a
8 reserve active-status list of officers designated for purposes of this chapter.

9 **“§ 15109. Other administrative authorities**

10 “(a) IN GENERAL.—The following provisions of this title shall apply to officers in
11 competitive categories of officers designated for purposes of this chapter:

12 “(1) Section 14518, relating to continuation of officers to complete disciplinary
13 action.

14 “(2) Section 14519, relating to deferment of retirement or separation for medical
15 reasons.

16 “(3) Section 14704, relating to the selective early removal from the reserve
17 active-status list.

18 “(4) Section 14705, relating to the selective early retirement of reserve general
19 and flag officers of the Navy and Marine Corps.

20 **“§ 15110. Regulations**

21 ““The Secretary of Defense shall prescribe regulations regarding the administration of this
22 chapter. The elements of such regulations shall include mechanisms to clarify the manner in

1 which provisions of other chapters of this part of the title shall be used in the administration of
2 this chapter in accordance with the provisions of this chapter.”.

3 (2) TABLE OF CHAPTERS AMENDMENT.—The table of chapters at the beginning of
4 part III of subtitle E of title 10, United States Code, is amended by adding at the end the
5 following new item:

“1413. Alternative Promotion Authority For Officers In Designated Competitive
Categories.....15101”.

**[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 sections 605, 616, and 1305 of title 10, United States Code, as well as add new chapter 1413section. All amendments would permit enhanced talent management. Specifically:

The proposal in subsection (a) would amend section 605 of title 10, United States Code, to better align Navy spot-promotion authorizations with projected requirements, by striking authorization for spot-promotion of 100 lieutenants, and allotting those 100 spot-promotions to the grade of lieutenant commander, for a total of 425.

Under section 605, officers may be temporarily (or spot-) promoted to the next higher pay grade if serving in a position for which there is a critical shortage as determined by the Secretary of the Military Department concerned, and which is designated to be filled by an officer at a specific grade who possesses the requisite skills. There is a two-year time-in-grade requirement to be eligible for spot-promotion. The majority of spot-promoted officers are selected to the next higher pay grade through the normal promotion process while still occupying the spot-promote billet.

Section 605 limits the number of Navy billets that may be designated by the Secretary of the Navy for spot-promotion to 100 for lieutenant and 325 for lieutenant commander. The Navy has determined that there is not currently, and likely never would be, a need for spot promotion to lieutenant. The majority of Navy lieutenant-coded billets do not require a critical skill carried by a limited inventory of officers within the pay grade. The Navy does, however, anticipate a requirement for additional lieutenant commander spot-promote billets to support planned force structure growth. The latest Force of Record ship building plan provides for submarine force growth from 91 submarine crews in FY22, to 102 submarine crews in FY58. Additionally, aircraft carrier (CVN) manning requirements increase when CVN 80 and CVN 81 are manned prior to de-manning CVN 69 in FY 2030. In the conventional fleet, Chief Engineers on Flight I, Flight II, and older Flight IIa Arleigh Burke Class DDGs are spot-promote billets. As the DDG fleet ages, the Surface Community anticipates applying spot-promote authority to additional

older Flight IIA DDGs (hulls 79-96). Accordingly, overall demand for lieutenant commander spot-promotion billets is expected to steadily increase over the next two decades.

The proposal in subsection (b) would amend section 616 of title 10, United States Code, which requires the Services to limit the number of officers recommended for promotion by a selection board to 95 percent, by allowing an exception for promotion zones of less than 50 officers.

The Navy desires the ability to use a promotion selection rate of over 95 percent in very limited instances, in competitive categories that are small and have significant education, technical, and specialty training requirements. For example, the Navy would have applied this authority during fiscal year (FY) 2022 and 2023 promotion planning for communities such as Information Professional, Cryptologic Warfare, Engineering Duty Officer, Judge Advocate General's Corps, Public Affairs Officer, Aerospace Engineering Duty Officer and Aerospace Maintenance Duty Officer. The Navy agrees that selection boards should be competitive. However, in these small competitive categories, many of the officers have competitively joined their communities from other competitive categories after meeting stringent accession criteria. The flexibility to have greater than 95 percent promotion selection rate is sometimes necessary in these small competitive categories to ensure the Navy can fill all billet requirements. The Navy's lineal promotion process and significant number of competitive categories provide the ability to promote the right number of highly qualified officers with the right skill sets to support our growing and dynamic force.

This legislative proposal permits an exception to the 95 percent limit for communities with promotion zones less than 50 officers in order to enhance officer management planning efforts. The 95 percent limitation will still remain in place for communities with promotion zones of 50 or more officers.

The Secretaries of the Military Departments will have discretionary authority to implement this authority based on the needs of their Services and will not be required to promote above 95 percent. For the Navy, lower thresholds below 50 officers were considered but would have had limited applicability for our specialized and technical communities in need.

This proposal is conservative in that an increase of up to five percent in promotion opportunity for a zone of fewer than 50 officers would result in no more than three additional selections to the next higher grade per community zone.

The authority to promote up to 100 percent of the promotion zone can prevent small communities from being forced to pass over and separate otherwise fully qualified officers required at the next paygrade. The discretionary use of this authority may also prove beneficial in retaining talent as the Department of Defense continues to compete with the civilian sector for cyber, information, and other specialized skillsets.

The proposal in subsection (c) would allow for CWO5 0306 Marine Corps Infantry Weapons Officers to serve an additional 3 years for a total of 33 years and 60 days of active service. Currently, section 1305 of title 10, United States Code, limits Marine Corps CWO5s to 30 years and 60 days of active service. This change would be consistent with the current Navy policy for CW05s. This proposal would allow the Marine Corps to better conduct talent management with these most senior warrant officers. Based on current policy and average promotion rates, the Marine Corps does not maximize the educational investment and operational experience of these warrant officers.

The proposal in subsection (d) would amend part III of subtitle E of title 10, United States Code, to provide an alternative for reserve officer promotions that allows the Secretaries of the Military Departments to designate competitive categories for which alternative statutory provisions would apply, giving officers within those designated categories up to five considerations within a promotion zone before being deemed to have failed twice of selection and being subject to separation or continuation. Before making this designation for any competitive category, the Secretary concerned would be required to provide specifics regarding the competitive category to the congressional armed services committees.

The NDAA for FY19 established an alternative promotion authority for active duty officers in designated competitive categories, but it did not include those officers on the reserve active-status list (RASL). This proposal extends the authority to reserve officers on the RASL, who compete for promotion against other officers in their competitive category like active duty officers do. Accordingly, it is reasonable for the active and reserve components to have the same authority for promotion flexibility.

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: The proposal would also add a new chapter to part III of subtitle E of title 10, United States Code, the full text of which is shown in the legislative language above. This proposal would also make amend sections 605, 616, and 1305 of title 10, United States Code, as follows:

§ 605. Promotion to certain grades for officers with critical skills: colonel, lieutenant colonel, major, captain; captain, commander, lieutenant commander, ~~lieutenant~~

(a) IN GENERAL.—An officer in the grade of first lieutenant, captain, major, or lieutenant colonel in the Army, Air Force, or Marine Corps, or ~~lieutenant (junior grade)~~, lieutenant, lieutenant commander, or commander in the Navy, who is described in subsection (b) may be temporarily promoted to the grade of captain, major, lieutenant colonel, or colonel in the Army, Air Force, or Marine Corps, or ~~lieutenant~~, lieutenant commander, commander, or captain in the Navy, as applicable, under regulations prescribed by the Secretary of the military department concerned. Appointments under this section shall be made by the President, by and with the advice and consent of the Senate.

(b) COVERED OFFICERS.—An officer described in this subsection is any officer in a grade specified in subsection (a) who—

(1) has a skill in which the armed force concerned has a critical shortage of personnel (as determined by the Secretary of the military department concerned); and

(2) is serving in a position (as determined by the Secretary of the military department concerned) that—

(A) is designated to be held by a captain, major, lieutenant colonel, or colonel in the Army, Air Force, or Marine Corps, or ~~lieutenant~~, lieutenant commander, commander, or captain in the Navy, as applicable; and

(B) requires that an officer serving in such position have the skill possessed by such officer.

(c) PRESERVATION OF POSITION AND STATUS OF OFFICERS APPOINTED.—An appointment under this section does not change the position on the active-duty list or the permanent, probationary, or acting status of the officer so appointed, prejudice the officer in regard to other promotions or appointments, or abridge the rights or benefits of the officer.

(d) BOARD RECOMMENDATION REQUIRED.—A temporary promotion under this section may be made only upon the recommendation of a board of officers convened by the Secretary of the military department concerned for the purpose of recommending officers for such promotions.

(e) ACCEPTANCE AND EFFECTIVE DATE OF APPOINTMENT.—Each appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date such appointment is made, and a member so appointed is entitled to the pay and allowances of the grade of the temporary promotion under this section from the date the appointment is made.

(f) TERMINATION OF APPOINTMENT.—Unless sooner terminated, an appointment under this section terminates—

(1) on the date the officer who received the appointment is promoted to the permanent grade of captain, major, lieutenant colonel, or colonel in the Army, Air Force, or Marine Corps, or ~~lieutenant~~, lieutenant commander, commander, or captain in the Navy; or

(2) on the date the officer is detached from a position described in subsection (b)(2), unless the officer is on a promotion list to the permanent grade of captain, major, lieutenant colonel, or colonel in the Army, Air Force, or Marine Corps, or ~~lieutenant~~, lieutenant commander, commander, or captain in the Navy, in which case the appointment terminates on the date the officer is promoted to that grade.

(g) LIMITATION ON NUMBER OF ELIGIBLE POSITIONS.—An appointment under this section may only be made for service in a position designated by the Secretary of the military department concerned for the purposes of this section. The number of positions so designated may not exceed the following:

(1) In the case of the Army—

(A) as captain, 120;

- (B) as major, 350;
- (C) as lieutenant colonel, 200; and
- (D) as colonel, 100.
- (2) In the case of the Air Force—
 - (A) as captain, 100;
 - (B) as major, 325;
 - (C) as lieutenant colonel, 175; and
 - (D) as colonel, 80.
- (3) In the case of the Marine Corps—
 - (A) as captain, 50;
 - (B) as major, 175;
 - (C) as lieutenant colonel, 100; and
 - (D) as colonel, 50.
- (4) In the case of the Navy—
 - ~~(A)~~ as lieutenant, 100;
 - ~~(B)~~ (A) as lieutenant commander, ~~325~~ 425;
 - ~~(C)~~ (B) as commander, 175; and
 - ~~(D)~~ (C) as captain, 80.

* * * * *

§ 616. Recommendations for promotion by selection boards

(a) A selection board convened under section 611(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for officers with particular skills (as noted in the guidelines or information furnished the board under section 615(b) of this title), considers best qualified for promotion within each competitive category considered by the board.

(b) The Secretary of the military department concerned shall establish the number of officers such a selection board may recommend for promotion from among officers being considered from below the promotion zone in any competitive category. Such number may not exceed the number equal to 10 percent of the maximum number of officers that the board is authorized to recommend for promotion in such competitive category, except that the Secretary of Defense may authorize a greater number, not to exceed 15 percent of the total number of officers that the board is authorized to recommend for promotion, if the Secretary of Defense determines that the needs of the service so require. If the number determined under this subsection is less than one, the board may recommend one such officer. The number of officers recommended for promotion from below the promotion zone does not increase the maximum number of officers which the board is authorized under section 615 of this title to recommend for promotion.

(c) A selection board convened under section 611(a) of this title may not recommend an officer for promotion unless—

board;

(1) the officer receives the recommendation of a majority of the members of the

(2) a majority of the members of the board finds that the officer is fully qualified for promotion; and

(3) a majority of the members of the board, after consideration by all members of the board of any adverse information about the officer that is provided to the board under section 615 of this title, finds that the officer is among the officers best qualified for promotion to meet the needs of the armed force concerned consistent with the requirement of exemplary conduct set forth in section 7233, 8167, or 9233 of this title, as applicable.

(d)(1) Except as provided in paragraph (2), the The number of officers recommended for promotion by a selection board convened under section 611(a) of this title may not exceed the number equal to 95 percent of the number of officers included in the promotion zone established under section 623 of this title for consideration by the board.

(2) If a promotion zone established under section 623 of this title includes less than 50 officers and is established with respect to promotions to a grade below the grade of brigadier general or rear admiral (lower half), the Secretary concerned may authorize selection boards convened under section 611(a) to recommend for promotion a number equal to not more than 100 percent of the number of officers included in such promotion zone.

(e) Except as otherwise provided by law, an officer on the active-duty list may not be promoted to a higher grade under this chapter unless ~~he~~ the officer is considered and recommended for promotion to that grade by a selection board convened under this chapter.

(f) The recommendations of a selection board may be disclosed only in accordance with regulations prescribed by the Secretary of Defense. Those recommendations may not be disclosed to a person not a member of the board (or a member of the administrative staff designated by the Secretary concerned to assist the board) until the written report of the recommendations of the board, required by section 617 of this title, is signed by each member of the board.

(g) The Secretary convening a selection board under section 611(a) of this title, and an officer or other official exercising authority over any member of a selection board, may not—

(1) censure, reprimand, or admonish the selection board or any member of the board with respect to the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board; or

(2) attempt to coerce or, by any unauthorized means, influence any action of a selection board or any member of a selection board in the formulation of the board's recommendations.

(h)(1) In selecting the officers to be recommended for promotion, a selection board may, when authorized by the Secretary of the military department concerned, recommend officers of particular merit, from among those officers selected for promotion, to be placed higher on the promotion list established by the Secretary under section 624(a)(1) of this title.

(2) An officer may be recommended to be placed higher on a promotion list under paragraph (1) only if the 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 alternative requirement shall be furnished to the board as part of the guidelines furnished to the board under section 615 of this title.

(3) For the officers recommended to be placed higher on a promotion list under paragraph (1), the board shall recommend the order in which those officers should be placed on the list.

* * * * *

§ 1305. Thirty years or more: regular warrant officers

(a)(1) Subject to paragraphs (2) and (3), a regular warrant officer who has at least 30 years of active service that could be credited to the officer under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114) shall be retired 60 days after the date on which the officer completes that service, except as provided by section 8301 of title 5.

(2) In the case of a regular Army warrant officer, the calculation of years of active service under paragraph (1) shall include only years of active service as a warrant officer.

(3) In the case of a regular Navy warrant officer in the grade of chief warrant officer, W-5, or a Marine Corps Marine Gunner warrant officer in such grade, the officer shall be retired 60 days after the date on which the officer completes 33 years of total active service.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when ~~he~~ the warrant officer would otherwise be required to retire under this section.

(c) Under such regulations as ~~he~~ the Secretary concerned may prescribe, the Secretary concerned may defer the retirement under subsection (a) of any warrant officer upon the recommendation of a board of officers and with the consent of the warrant officer, but not later than 60 days after ~~he~~ the warrant officer becomes 62 years of age.

1 **SEC. ____ . USE OF FOREIGN MILITARY SALES ADMINISTRATIVE FUNDS TO PAY**
2 **FOR MILITARY SALARIES AND UNFUNDED CIVILIAN**
3 **RETIREMENT COSTS.**

4 Notwithstanding paragraph (3) of section 43(b) of the Arms Export Control Act (22
5 U.S.C. 2792(b)(3)), with respect to sales under such Act for which a loan, grant, or guaranty is
6 not provided by the United States, the President may authorize charges for administrative
7 services calculated under section 21(e)(1)(A) of such Act (22 U.S.C. 2761(e)(1)(A)) to include
8 expenses that are salaries of the Armed Forces of the United States or that represent unfunded
9 estimated costs of civilian retirement and other benefits.

Section-by-Section Analysis

Section 43(b)(3) of the Arms Export Control Act (AECA) (22 U.S.C. 2792) prohibits charging foreign countries for the administrative expenses of the salaries of the Armed Forces of the United States and the estimated costs of unfunded civilian retirement (UCR) and other benefits incurred while carrying out the Foreign Military Sales (FMS) program. This proposal authorizes the President to nullify that prohibition, which was enacted at a time when the FMS administrative account was operating near its lower control level. Currently, the FMS administrative account is operating near its upper control level and is able to absorb the estimated costs (\$89 million annually for military salaries and \$54 million annually for UCR).

Over the years, the Defense Security Cooperation Agency (DSCA) improved its management and oversight of the FMS administrative account. On an annual basis, DSCA reviews the account to assess its health and to identify areas that may impact balances in the future. DSCA included the potential enactment of this specific legislative proposal in the last three annual assessments and the results showed that the fund can absorb these costs without the risk of insolvency.

These routine annual reviews of the FMS administrative account balance may prompt a deeper dive review to determine if any corrective actions may be necessary. As an added risk mitigation, DSCA also conducts a deep-dive review on the FMS administrative surcharge rate every five years to determine if additional action or change is necessary to ensure the trust fund remains healthy.

DSCA uses a robust statistical model, reviewed and validated by experts at the Naval Post Graduate School, to project the FMS administrative account balance for the end of the current fiscal year through the following ten fiscal years. The model leverages a variety of data

inputs and allows DSCA to run multiple scenarios to assess the potential impact on the FMS administrative account balance before and after implementing changes.

Within the model, DSCA established lower and upper safety levels, which ensures FMS administrative balances remain at a level necessary to effectively administer the FMS program at no gain or loss to the U.S. Government. The lower safety level is the amount necessary to fund the next 18 months of expenses. DSCA's goal is to ensure amounts stay as close to the center of the upper and lower safety levels as possible. Should the FMS administrative account balance reach the lower safety level, DSCA will have sufficient time to implement changes to recover balances.

If enacted, this proposal will allow the Department of Defense (DoD) to be reimbursed for military salaries of U.S. service members assisting in the execution of the FMS program with FMS administrative funds collected from sales funded by foreign partners, as well as to deposit funds in the U.S. Treasury for UCR. FMS administrative funds collected from sales funded with U.S. appropriated funds will not be used to pay these costs.

This proposal implements a Government Accountability Office (GAO) recommendation which was provided to Congress in 2018 (GAO-18-401). In its study, GAO used military salaries and UCR as examples of expenses Congress should consider redefining as an allowable FMS administrative expense. Additionally, this proposal works to address the DoD Inspector General's finding that DoD is subsidizing security assistance (SA) programs because it fails to recover fully SA related expenses paid with appropriated dollars.

Foreign partners receive benefits from the service members and civilians who perform FMS administrative work on their behalf. Therefore, the FMS administrative account is the appropriate funding source for the costs of military salaries and UCR for the workforce that supports the development and execution of the FMS cases funded by foreign partners.

If enacted, this proposal will enable the U.S. Government to operate the FMS program with less of a burden on U.S. taxpayers, which is the way the AECA was originally intended to operate. Annually, it will save the DoD approximately \$89 million in military salaries and the U.S. taxpayer \$54 million in UCR costs.

Resource Information: The resources impacted are reflected in the table below and represent a savings if enacted. Those savings are not factored into the current Fiscal Year (FY) 2024 President's Budget request, but will be applied to emergent requirements in the year of execution and accounted for in future budgets. It is important to note the table reflects the estimated savings in the military personnel appropriations, however, not the savings for UCR since this is not an existing cost to DoD.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/S AG	Program Element (for all RDT&E programs)
FMS Admin (MilPay)	\$88.9	\$91.2	\$93.6	\$96.0	\$98.5	FMS Trust Fund 8242	N/A	N/A	N/A
FMS Admin (UCR)	\$53.7	\$55.1	\$56.5	\$58.0	\$59.5	FMS Trust Fund 8242	N/A	N/A	N/A
Military Personnel Supporting FMS Admin	-\$88.9	-\$91.2	-\$93.6	-\$96.0	-\$98.5	Military Personnel			
Total	\$53.7	\$55.1	\$56.5	\$58.0	\$59.5	---	---	---	---

Changes to Existing Law: None.

1 **SEC. ____. WAIVER AUTHORITY EXPANSION FOR THE EXTENSION OF SERVICE**
2 **OBLIGATION FOR MARINE CORPS CYBERSPACE OPERATIONS**
3 **OFFICERS.**

4 (a) **REQUIRED SERVICE.**—Section 651(c) of title 10, United States Code, is amended—

5 (1) in paragraph (1), by inserting “or in the case of an unrestricted officer
6 designated within a cyberspace occupational specialty” before the period; and

7 (2) in paragraph (2)—

8 (A) in subparagraph (A), by striking “; or” and inserting a semicolon;

9 (B) in subparagraph (B), by striking the period and inserting “; or”; and

10 (C) by adding at the end the following new subparagraph:

11 “(C) in the case of an unrestricted officer who has been designated with a
12 cyberspace occupational specialty, the period of obligated service specified in such
13 contract or agreement.”.

14 (b) **MINIMUM SERVICE REQUIREMENT FOR CERTAIN CYBERSPACE OCCUPATIONAL**
15 **SPECIALTIES.**—

16 (1) **IN GENERAL.**—Chapter 37 of title 10, United States Code, is amended by
17 inserting after section 653 the new following section:

18 **“§ 654. Minimum service requirement for certain cyberspace occupational specialties**

19 **“(a) CYBERSPACE OPERATIONS OFFICER.**—The minimum service obligation for any
20 member who successfully completes training in the armed forces in direct accession to the
21 cyberspace operations officer occupational specialty of the Marine Corps shall be 8 years.

22 **“(b) SERVICE OBLIGATION DEFINED.** —In this section, the term ‘service obligation’
23 means the period of active duty or, in the case of a member of a reserve component who

1 completed cyberspace operations training in an active duty for training status as a member of a
2 reserve component, the period of service in an active status in the Selected Reserve, required to
3 be served after completion of cyberspace operations training.”.

4 (2) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of
5 such chapter 37 is amended by inserting after the item relating to section 653 the
6 following new item:

“654. Minimum service requirement for certain cyberspace occupational specialties.”.

[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 enable a 96-month (8-year) service obligation to begin at the completion of the military occupational specialty (MOS) school for direct accession, unrestricted Marine officers upon designation as Cyberspace Operations Officers (1702).

The Marine Corps Deputy Commandant for Information directed the change to break an unproductive cycle in the community wherein the Marine Corps cannot obligate first tour 1702s to execute Permanent Change of Station (PCS) orders to move away from MARFORCYBER Headquarters because there isn’t enough time on their initial service contracts and as such, many are electing to extend in place at Fort Meade and separate from Active Service promptly at the 6-year mark without ever being operationally deployable. This is in contradiction to how the Marine Corps expressly designed the specialty and has the added impacts (1) Cyberspace Operations Officers billeted in the Fleet Forces and eligible for rotation back to Fort Meade are unable to do so because the extending 1702s are holding what would be open billets and (2) newly minted 1702s, particularly laterally transferred Marine officers, are being sent to the Fleet Forces as a first tour 1702 because of non-availability in MARFORCYBER billets and if the Service elects to overstaff MARFORCYBER it would create significant operational manning gaps in the Fleet Forces. As such, these mid-grade officers but junior 1702s are arriving to the Fleet Forces dangerously undertrained and inexperienced for the roles in which they will serve.

The end state for this legislative change is for the Marine Corps to be able to obligate service for newly designated, direct accession Cyberspace Operations Officers (1702s) for two, 48-month tours —the first of which is at the MARFORCYBER Headquarters at Fort Meade, Maryland, and the second in the operational (“Fleet”) forces. The tours are 48 months in duration because the ramp up to 100% contribution for each individual billet — both at MARFORCYBER and distributed among the Fleet Forces — is such that it takes longer for the Marine Corps to see a return on investment for such highly technical positions. Also, the extended orders allow for additional time for NATO/NSA in-processing at Fort Meade, a

separate adjudication for DoD clearance holders which can further delay Marines' abilities to get to work upon check-in to the unit.

At Fort Meade, first tour 1702s are effectively still practicing how to become technically proficient, like fixed wing pilots after winging who are not operationally deployable without many additional flight hours. As such, this legislative change would mirror what is in place for Marine Corps fixed wing pilots. The change would enable execution of the Cyber Services Agreement changes directed by DCI and that have been drafted with endorsement from the Secretary of the Navy, Chief Information Officer (CIO).

This proposal was studied by the Marine Corps Recruiting Command and the change was determined to have no impact on whether the Marine Corps will be able to attract talent to this occupational field. Additionally, the Marine Corps Manpower & Reserve Affairs (M&RA); Manpower, Plans, Programs & Budget Branch (MPP) studied if a 96-month (8-year) post-commissioning obligation, which would not conflict with current law as written, would meet the Marine Corps' desired end state and it was determined that it would not: the 96-month post-commissioning obligation is in practice effectively the same as a 6-year post-designation requirement as is currently reflected by the Cyber Services Agreement for those officers. Of note, DCI intends this change to impact only direct accession officers — those that will train as 1702s upon initial commissioning — and not their laterally transferred peers.

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

Changes to Existing Law: This proposal adds a new section 654 to title 10, United States Code, the full text of which is shown in the legislative language above. This proposal would also amend section 651 of title 10, United States Code, as follows:

§ 651. Members: required service

(a) Each person who becomes a member of an armed force, other than a person deferred under the next to the last sentence of section 6(d)(1) of the Military Selective Service Act (50 U.S.C. 3806(d)(1)), shall serve in the armed forces for a total initial period of not less than six years nor more than eight years, as provided in regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Homeland Security for the Coast Guard when it is not operating as service in the Navy, unless such person is sooner discharged under such regulations because of personal hardship. Any part of such service that is not active duty or that is active duty for training shall be performed in a reserve component.

(b) Each person covered by subsection (a) who is not a Reserve, and who is qualified, shall, upon his release from active duty, be transferred to a reserve component to complete the service required by subsection (a).

(c)(1) For the armed forces under the jurisdiction of the Secretary of Defense, the Secretary may waive the initial period of required service otherwise established pursuant to subsection (a) in the case of the initial appointment of a commissioned officer in a critically short

health professional specialty specified by the Secretary for purposes of this subsection or in the case of an unrestricted officer designated within a cyberspace occupational specialty.

(2) The minimum period of obligated service for an officer under a waiver under this subsection shall be the greater of—

(A) two years; ~~or~~

(B) in the case of an officer who has accepted an accession bonus or executed a contract or agreement for the multiyear receipt of special pay for service in the armed forces, the period of obligated service specified in such contract or agreement; or

(C) in the case of an unrestricted officer who has been designated with a cyberspace occupational specialty, the period of obligated service specified in such contract or agreement.