

1 **SEC. \_\_\_\_ . ACCELERATED ACCESS TO FUNDING UNDER MISSION**  
2 **MANAGEMENT PILOT PROGRAM**

3 (a) ACCESS TO FUNDING FOR MISSION MANAGERS.— A mission manager appointed under  
4 section 871 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–  
5 81; 10 U.S.C. 191 note) shall be provided access to funding for the purpose of improving  
6 outcomes in carrying out the pilot program with respect to the mission for which such mission  
7 manager has responsibility.

8 (b) IDENTIFICATION OF FUNDING.— Funding for solutions for each mission selected under  
9 section 871 shall be identified in detail in defense budget materials for budgets submitted to  
10 Congress pursuant to section 1105 of title 31, United States Code, with selected missions and  
11 solutions described in materials for each budgetary item (in this section referred to as “Lines”)  
12 that is to provide funding for a selected mission and solution.

13 (c) USE OF FUNDS.—Amounts available in the Lines for a selected mission may be  
14 provided by transfer or allotment to a military department, Defense Agency, or Field Activity for  
15 the purpose of initiating or modifying a project to develop or acquire a solution to a selected  
16 mission need, including emergent operational needs.

17 (d) REPROGRAMMING AND SPECIAL TRANSFER AUTHORITY.—

18 (1) At the request of a mission manager with a requirement for funds under  
19 subsection (c), the Secretary of Defense may approve a reprogramming action that—

20 (A) realigns up to \$2,000,000 between Lines within an appropriation of  
21 the Department of Defense that meet criteria set forth in subsection (c) for a  
22 selected mission; or

1 (B) transfers up to \$2,000,000 from Lines that meet criteria set forth in  
2 subsection (c) for a selected mission to a Line in another appropriation of the  
3 Department of Defense for research, development, test, and evaluation;  
4 procurement; or operations and maintenance after submitting a notification under  
5 subsection (f) to the congressional defense committees.

6 (2) Funds transferred under this subsection shall be merged with, and made  
7 available for, the same purposes and the same time period as the appropriation to which  
8 transferred.

9 (3) The transfer authority provided in this subsection is in addition to any other  
10 transfer authority available to the Department of Defense.

11 (4) The aggregate amount that may be realigned or transferred under the authority  
12 provided in this subsection is \$100,000,000 in each fiscal year.

13 (e) SELECTION OF PARTICIPATING MISSIONS.—

14 (1) Pursuant to the authorities under such section 871, the Deputy Secretary of  
15 Defense may designate one or more mission managers to oversee the selected missions,  
16 allocate resources from the Lines, and provide management around mission outcomes.

17 (2) A mission manager may use appropriations under the Lines and related  
18 transfers only for activities related to the mission for which such mission manager was  
19 appointed under such section 871.

20 (f) CONGRESSIONAL NOTIFICATIONS.—(1) Within 30 days after the Secretary of Defense  
21 approves a transfer of funding from the Lines as described in subsection (d), the mission  
22 manager shall provide written notification of such transfer to the congressional defense  
23 committees.

1 (2) Each notification shall specify—

2 (A) the amount transferred;

3 (B) the purpose of the transfer; and

4 (C) the total projected cost and funding based on the effort required each  
5 year to sustain the capability to which the funds were transferred.

6 (g) AMENDMENT TO BRIEFING REQUIREMENT.—Such section 871 is amended in  
7 subsection (f)(1)(A) by inserting at the end the following: “The briefing shall also include an  
8 update on transfers carried out during the six months preceding the briefing and, for each mission  
9 manager, identification of the manager’s mission scope, the amounts available in the Lines (as  
10 that term is used in section 8\_\_\_ of the National Defense Authorization Act of Fiscal Year 2024)  
11 for which the manager is responsible, and total appropriations that correspond to those  
12 amounts.”.

**[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**

Section 871 of the Fiscal Year (FY) 2022 National Defense Authorization Act (NDAA) (Public Law 117–81; 10 U.S.C. 191 note) authorized a Mission Management pilot program under the Strategic Capabilities Office, to include activities related to development and delivery of solutions. However, this authorization was not accompanied by dedicated FY 2022 or 2023 funding. This legislative proposal would reinforce the broader scope of section 871 around the definition of a Mission Manager, the Deputy Secretary of Defense’s authority to designate them, and the legislative request for identification of relevant authorities.

This legislative proposal would allow for more purposeful, transparent oversight of joint and cross-domain military capability vital for effective kill chains, while accelerating that capability’s delivery into fielding. The Joint Warfighting Concept has increased emphasis on cooperative military capabilities, where multiple Service weapon systems are integrated to achieve enhanced military effectiveness in specific operational scenarios. The kill chain is the connection of these integrated weapons to be effective against a specific threat system. The legislative proposal is designed to permit both rapid execution and careful accounting of the

specific flows of funding necessary to modify and integrate these multiple Service weapons into an integrated joint capability and kill chains.

Under current budgeting and fund execution practices, such modifications and integration of capabilities happen through informal coordination, without multiple parties responsible for reporting on status, but without a formal reporting mechanism for agile adjustment of funding and program modifications needed to meet mission needs. The iterative nature of complex cross-weapons integration depends heavily on software modifications and software capability, and includes activities that cross multiple appropriations titles as capability is developed, tested, and operationalized across the equities of two or more acquisition programs.

This legislative proposal would allow for the Deputy Secretary of Defense to designate Mission Managers with oversight responsibility over specific critical missions and kill chains, and provide these Mission Managers with mechanisms for distributing funding to the appropriate military department, defense agency, or field activity to deliver an integrated capability. This proposal would also provide special transfer authorities to align or realign funds to requirements and activities that Mission Managers identify as necessary to support closing the specific kill chain. Under section 871, these Mission Managers are also responsible for reporting on the use of funds and status of their assigned mission. This reporting mechanism will document the lines relevant to the specific mission or kill chain, the status of the effort, transfer activity, and the linkage between related military activities.

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

**Changes to Existing Law:** This proposal would amend section 871(f) of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81; 10 U.S.C. 191 note) as follows:

**SEC. 871. MISSION MANAGEMENT PILOT PROGRAM.**

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(f) BRIEFINGS.-

(1) SEMIANNUAL BRIEFING.-

(A) IN GENERAL.-Not later than July 1, 2022, and every six months thereafter until the date that is five years after the date of the enactment of this Act, the mission manager shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on the progress of the pilot program with respect to each mission selected under subsection (b), the anticipated mission outcomes, and the funds used to carry out the pilot program with respect to such mission. The briefing shall also include an update on transfers carried out during the six months preceding the briefing and, for each mission manager, identification of the manager’s mission scope, the amounts available in the Lines (as that term is used in section 8 of the National Defense Authorization Act of Fiscal Year 2024) for which the manager is responsible, and total appropriations that correspond to those amounts.

(B) INITIAL BRIEFING.-The Deputy Secretary of Defense shall include in the first briefing submitted under subparagraph (A) a briefing on the implementation of the pilot program, including-

- (i) the actions taken to implement the pilot program;
- (ii) an assessment of the pilot program;
- (iii) requests for Congress to provide authorities required to successfully carry out the pilot program; and
- (iv) a description of the data plan required under subsection (d).

(2) ANNUAL BRIEFING.-Not later than one year after the date on which the pilot program is established, and annually thereafter until the date that is five years after the date of the enactment of this Act, the Deputy Secretary of Defense shall submit to the congressional defense committees a briefing on the pilot program, including-

- (A) the data collected and analysis performed under subsection (d);
- (B) lessons learned;
- (C) the priorities for future activities of the pilot program; and
- (D) such other information as the Deputy Secretary determines appropriate.

(3) RECOMMENDATION.-Not later than two years after the date of the enactment of this Act, the Deputy Secretary of Defense shall submit to Congress a briefing on the recommendations of the Deputy Secretary with respect to the pilot program and shall concurrently submit to Congress-

- (A) a written assessment of the pilot program;
- (B) a written recommendation on continuing or expanding the mission integration pilot program;
- (C) requests for Congress to provide authorities required to successfully carry out the pilot program; and
- (D) the data collected and analysis performed under subsection (d).

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1 **SEC. \_\_\_\_ . CONSISTENCY IN ACCOUNTING FOR MEDICAL REIMBURSEMENTS**  
2 **RECEIVED BY DEPARTMENT OF DEFENSE MILITARY MEDICAL**  
3 **TREATMENT FACILITIES FROM OTHER FEDERAL AGENCIES.**

4 (a) IN GENERAL.—Section 1085 of title 10, United States Code, is amended—

5 (1) in the section heading, by striking “**reimbursement**” and inserting “**charges**  
6 **for care**”;

7 (2) by striking “If a member” and inserting “(a) COLLECTION OF FEES.—(1) If a  
8 member”;

9 (3) in subsection (a), as so designated—

10 (A) by striking “inpatient medical or dental care in a facility” and inserting  
11 “covered care at or through a facility”; and

12 (B) by striking “the appropriation for maintaining” and all that follows  
13 through the period at the end and inserting: “the head of the executive department  
14 with jurisdiction over the facility furnishing the care shall charge and collect fees  
15 at rates established in accordance with subsection (d), to reflect the cost of  
16 providing the care.”; and

17 (4) by adding at the end the following new subsections:

18 “(b) CREDITING OF AMOUNTS.—Amounts collected by an executive department under  
19 subsection (a) shall be credited to the appropriation account currently available for obligation  
20 and used to support the maintenance and operation of the facility at or through which the  
21 executive department provided the covered care. Amounts so credited shall not be taken into  
22 consideration in establishing the operating budget of the facility.

1           “(c) WAIVER OF CERTAIN CHARGES.—(1) If the Secretary of Defense is unable to collect  
2 from the Secretary of Veterans Affairs fees reflecting the cost of covered care received by an  
3 individual described in subsection (a) at or through a facility under the jurisdiction of the  
4 Secretary of Defense as a result of the Secretary of Veterans Affairs not authorizing such  
5 covered care (including with respect to the scope of services so provided), the Secretary of  
6 Defense may, in lieu of charging the individual (including pursuant to section 717(c) of the  
7 National Defense Authorization Act for Fiscal Year 2017), waive the fees that would otherwise  
8 be charged.

9           “(2) The authority of the Secretary of Defense under paragraph (1)—

10                   “(A) may be applied by the Secretary retroactively;

11                   “(B) may be delegated by the Secretary only to the Deputy Secretary of Defense  
12 and the Under Secretary of Defense (Comptroller); and

13                   “(C) may be applied by the Secretary only with respect to an individual described  
14 in subsection (a) who is entitled to hospital care or medical services furnished under the  
15 laws administered by the Secretary of Veterans Affairs.

16           “(d) ESTABLISHMENT OF RATES.—The Secretary of an executive department may charge  
17 and collect fees for covered care at rates established by such Secretary to reflect the cost of  
18 providing or making available the care, as determined by such Secretary.

19           “(e) RELATIONSHIP TO OTHER AUTHORITIES.—The authority of executive departments  
20 under this section is in addition to any other authority for the mutually beneficial coordination,  
21 use, or exchange of use of the healthcare resources provided by law.

22           “(f) COVERED CARE DEFINED.—In this section, the term ‘covered care’ means inpatient  
23 or outpatient medical or dental care.”.

1 (b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect October  
2 1, 2023.

3 (c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of title  
4 10, United States Code, is amended by striking the item relating to section 1085 and inserting the  
5 following:

“1085. Medical and dental care from another executive department: charges for care.”.

### Section-by-Section Analysis

This proposal would (1) provide the Department of Defense (DoD) with consistency in accounting for medical reimbursements collected from the public and from other Federal agencies, in order to maximize appropriations while enhancing self-sustaining interagency collaboration; and (2) provide the Secretary of Defense the authority to waive medical charges billed to veterans and/or their dependents when DoD’s military medical treatment facilities (MTFs) provide care without authorization from the Department of Veteran Affairs (VA), or exceed the scope of care authorized which results in the VA denying reimbursement to DoD. Specifically:

(1) DoD MTFs render healthcare services to both DoD beneficiaries and beneficiaries of other Federal agencies. Due to the inherent nature of healthcare and medical billing, MTFs are not able to bill and collect for all services provided before the fiscal year (FY) ends, and annually receive over \$40 million in reimbursements from other Federal agencies after the FY closes. The Defense Health Program operation and maintenance (O&M) appropriation is a 1-year appropriation, so MTFs are unable to use reimbursements deposited to expired FYs. Reimbursements are intended to replenish the resources consumed in the provision of services to other Federal agencies; however, when they are deposited to expired FYs, MTFs have no recourse but to consume their own O&M. This is despite the fact that the provision of services to other Federal agencies is intended to be on a self-sustaining basis. In contrast, reimbursements received from third-party insurance companies on behalf of DoD beneficiaries are governed by section 1095 of title 10, United States Code. Reimbursements received are credited to the current operating account of the MTF that rendered the healthcare services.

This proposal seeks to enable MTFs to deposit the reimbursements received from other Federal agencies into the year in which they are received. This would achieve consistency in accounting for medical reimbursements from the public and from other Federal agencies in order to maximize appropriations and compel self-sustaining interagency collaboration; and



(2) This proposal would give the Secretary of Defense authority to waive bills for care provided to VA patients, when the VA denies payment for care at DoD MTFs. Denied payments may stem from MTFs inadvertently exceeding the scope of care pre-authorized by the VA (from providing care without first obtaining VA authorization or from MTFs inadvertently exceeding the number of pre-authorized visits). When VA denies payment, DoD MTFs are required to bill the unsuspecting VA patient who incurs the bill through no fault of their own, and which can cause financial hardship to veterans. This has led to myriad DoD Inspector General complaints, negative media, and congressional inquiries. DoD does not want to cause financial hardship to veterans for care the DoD inadvertently provided to them without the VA’s authorization. Rather, given that treating VA patients bolsters the DoD healthcare provider’s medical skills and readiness, DoD desires the authority to waive bills since the benefit of rendering the care also accrues to the Department’s readiness posture.

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

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)
Defense Health Program	0	(\$42.5)	(\$42.5)	(\$42.5)	(\$42.5)	Operation and Maintenance, Defense Health Program	01	10	N/A
Total	0	(\$42.5)	(\$42.5)	(\$42.5)	(\$42.5)	--	--	--	--

**Changes to Existing Law:** This proposal would amend section 1085 of title 10, United States Code, as follows:

**§ 1085. Medical and dental care from another executive department: reimbursement charges for care**

(a) COLLECTION OF FEES.—If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility covered care at or through a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed head of the executive department with jurisdiction over the facility furnishing the care shall charge and collect fees at rates established by the President in accordance with subsection (d), to reflect the average-cost of providing the care.

(b) CREDITING OF AMOUNTS.—Amounts collected by an executive department under subsection (a) shall be credited to the appropriation account currently available for obligation and used to support the maintenance and operation of the facility at or through which the executive department provided the covered care. Amounts so credited shall not be taken into consideration in establishing the operating budget of the facility.

(c) WAIVER OF CERTAIN CHARGES.—(1) If the Secretary of Defense is unable to collect from the Secretary of Veterans Affairs fees reflecting the cost of covered care received by an individual described in subsection (a) at or through a facility under the jurisdiction of the Secretary of Defense as a result of the Secretary of Veterans Affairs not authorizing such covered care (including with respect to the scope of services so provided), the Secretary of Defense may, in lieu of charging the individual (including pursuant to section 717(c) of the National Defense Authorization Act for Fiscal Year 2017), waive the fees that would otherwise be charged.

(2) The authority of the Secretary of Defense under paragraph (1)—

(A) may be applied by the Secretary retroactively;

(B) may be delegated by the Secretary only to the Deputy Secretary of Defense and the Under Secretary of Defense (Comptroller); and

(C) may be applied by the Secretary only with respect to an individual described in subsection (a) who is entitled to hospital care or medical services furnished under the laws administered by the Secretary of Veterans Affairs.

(d) ESTABLISHMENT OF RATES.—The Secretary of an executive department may charge and collect fees for covered care at rates established by such Secretary to reflect the cost of providing or making available the care, as determined by such Secretary.

(e) RELATIONSHIP TO OTHER AUTHORITIES.—The authority of executive departments under this section is in addition to any other authority for the mutually beneficial coordination, use, or exchange of use of the healthcare resources provided by law.

(f) COVERED CARE DEFINED.—In this section, the term “covered care” means inpatient or outpatient medical or dental care.

1 **SEC. \_\_\_\_ . AMENDMENTS TO DEFENSE RESEARCH AND DEVELOPMENT RAPID**  
2 **INNOVATION PROGRAM**

3 Section 4061 of title 10, United States Code, is amended—

4 (1) in subsection (a)—

5 (A) in paragraph (1)—

6 (i) by inserting “to enable and assist small businesses (as defined  
7 under section 3 of the Small Business Act (15 U.S.C. 632))” after “merit-  
8 based program”;

9 (ii) by striking “fielding of technologies” and inserting  
10 “commercialization and production of various technologies, including  
11 critical technologies”; and

12 (iii) by inserting “capabilities developed through competitively  
13 awarded prototype agreements,” after “defense laboratories,”; and

14 (B) in paragraph (2), by inserting “support production and full-scale  
15 integration,” after “evaluation outcomes,”;

16 (2) in subsection (b)—

17 (A) in paragraph (1), by inserting “primarily major defense acquisition  
18 programs, but also other” after “candidate proposals in support of”;

19 (B) in paragraph (2), by striking “by each military department” and  
20 inserting “by each component small business office of each military department”;

21 and

1 (C) in paragraph (3), by inserting before the period at the end the  
2 following: “, unless the Secretary, or the Secretary’s designee, approves a larger  
3 amount of funding for the project”; and

4 (D) in paragraph (4)—

5 (i) by striking “two years” and inserting “three years”; and

6 (ii) by striking “for an additional year” and inserting “up to an  
7 additional two years”;

8 (3) in subsection (d)—

9 (A) in paragraph (1), by inserting “or for procurement” after “evaluation”;

10 (B) in paragraph (2), by striking “\$3,000,000” and inserting “\$6,000,000”;

11 and

12 (4) in subsection (e)(1), by inserting “or procurement” after “evaluation”.

### Section-by-Section Analysis

This legislative proposal would amend section 4061 of title 10, United States Code (Defense Research and Development Rapid Innovation Program), to accelerate the commercialization and production of technologies that are stuck in between the “prototype” and “production” phase of development – commonly called the “valley of death.” Small businesses, specifically those developing critical technologies through prototype agreements, continue to fall into the valley of death between prototype and production. DoD requires a program to support technology insertion and moving prototypes from small businesses to full scale integration into defense programs. This LP would help bridge that divide and enable innovative small businesses into the Defense Industrial Base.

DoD's small business strategy calls establishing programs within USD(A&S) that can work in conjunction with the Military Departments to support these activities. Additionally, a program such as this would also satisfy requirements of section 15(k) of the Small Business Act (15 U.S.C. 644(k)), which requires small business offices in agencies to support small businesses, specifically within the SBIR/STTR programs, and obtain contracts with Federal agencies.

**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. Previously appropriated FY 2023 funds are available for reprogramming into the program’s RDTE program element.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element (for all Production programs)
Rapid Innovation Fund (RIF)	25					Research, Development, Test & Evaluation, Defensewide			0604775D8Z
Total	25								

**Changes to Existing Law:** This proposal would amend section 4061 of title 10, United States Code, as follows:

### §4061. Defense Research and Development Rapid Innovation Program

(a) Program Established.—(1) The Secretary of Defense shall establish a competitive, merit-based program to enable and assist small business concerns (as defined under section 3 of the Small Business Act (15 U.S.C. 632)) to accelerate the ~~fielding of technologies~~ commercialization and production of various technologies, including critical technologies developed pursuant to phase II Small Business Innovation Research Program projects, phase II Small Business Technology Transfer Program projects, technologies developed by the defense laboratories, capabilities developed through competitively awarded prototype agreements, and other innovative technologies (including dual use technologies).

(2) The purpose of this program is to stimulate innovative technologies and reduce acquisition or lifecycle costs, address technical risks, improve the timeliness and thoroughness of test and evaluation outcomes, support production and full-scale integration, and rapidly insert such products directly in support of primarily major defense acquisition programs, but also other defense acquisition programs that meet critical national security needs.

(b) GUIDELINES. —The Secretary shall issue guidelines for the operation of the program. At a minimum such guidance shall provide for the following:

(1) The issuance of one or more broad agency announcements or the use of any other competitive or merit-based processes by the Department of Defense for candidate proposals in support of primarily major defense acquisition programs, but also other defense acquisition programs as described in subsection (a).

(2) The review of candidate proposals by the Department of Defense and by each component small business office of each military department and the merit-based selection of the most promising cost-effective proposals for funding through contracts, cooperative agreements, and other transactions for the purposes of carrying out the program.

(3) The total amount of funding provided to any project under the program from funding provided under subsection (d) shall not exceed \$6,000,000, unless the Secretary, or the Secretary’s designee, approves a larger amount of funding for the project.

(4) No project shall receive more than a total of ~~two~~three years of funding under the program from funding provided under subsection (d), unless the Secretary, or the Secretary's designee, approves funding for up to an additional two years.

(5) Mechanisms to facilitate transition of follow-on or current projects carried out under the program into defense acquisition programs, through the use of the authorities of section 4004 of this title or such other authorities as may be appropriate to conduct further testing, low rate production, or full rate production of technologies developed under the program.

(6) Projects are selected using merit-based selection procedures and the selection of projects is not subject to undue influence by Congress or other Federal agencies.

(7) A preference under the program for funding small business concerns.

(c) TREATMENT PURSUANT TO CERTAIN CONGRESSIONAL RULES. — Nothing in this section shall be interpreted to require or enable any official of the Department of Defense to provide funding under this section to any earmark as defined pursuant to House Rule XXI, clause 9, or any congressionally directed spending item as defined pursuant to Senate Rule XLIV, paragraph 5.

(d) FUNDING. — (1) Subject to the availability of appropriations for such purpose and to the limitation under paragraph (2), the amounts authorized to be appropriated for research, development, test, and evaluation or for procurement for a fiscal year may be used for such fiscal year for the program established under subsection (a).

(2) During any fiscal year, the total amount of awards in an amount greater than ~~\$3,000,000~~ \$6,000,000 made under the program established under subsection (a) may not exceed 25 percent of the amount made available to carry out such program during such fiscal year.

(e) TRANSFER AUTHORITY. — (1) The Secretary may transfer funds available for the program to the research, development, test, and evaluation or procurement accounts of a military department, defense agency, or the unified combatant command for special operations forces pursuant to a proposal, or any part of a proposal, that the Secretary determines would directly support the purposes of the program.

(2) The transfer authority provided in this subsection is in addition to any other transfer authority available to the Department of Defense.

1 **SEC. \_\_\_. AUTHORITY TO EXTEND MILITARY TECHNICIANS UNTIL AGE 62.**

2 (a) MILITARY TECHNICIAN.—Section 10216(f) of title 10, United States Code, is amended  
3 by striking “60” and inserting “62.”

4 (b) RETENTION ON RESERVE ACTIVE-STATUS LIST.—Section 14702(b) of such title is  
5 amended by striking “60” and inserting “62”.

**[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 will allow members of a reserve component that are employed as Federal technicians to remain employed full time until age 62. Section 14509 of title 10, United States Code, was recently changed to authorize members to remain as Drill Status Guardsmen (DSG) until age 62; however, section 14702 was never amended to adjust to this change. As such, although Federal technicians may remain as DSGs after they retire their full time position at age 60, current law does not allow for them to continue that full time employment if the unit has a need for them. Amending this law will allow experienced members to remain employed, full time, in line with their units’ needs. The change to section 10216 would similarly allow Federal technicians to maintain employment until age 62.

**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 sections 10216 and 14702 of title 10, United States Code, as follows:

**§10216. Military technicians (dual status)**

(a) In General.—(1) For purposes of this section and any other provision of law, a military technician (dual status) is a Federal civilian employee who-

(A) is employed under section 3101 of title 5 or section 709(b) of title 32;

(B) is required as a condition of that employment to maintain membership in the Selected Reserve; and

(C) is assigned to a civilian position as a technician in the organizing, administering, instructing, or training of the Selected Reserve or in the maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces.

(2) Military technicians (dual status) shall be authorized and accounted for as a separate category of civilian employees.

(3) A military technician (dual status) who is employed under section 3101 of title 5 may perform the following additional duties to the extent that the performance of those duties does not interfere with the performance of the primary duties described in paragraph (1):

- (A) Supporting operations or missions assigned in whole or in part to the technician's unit.
- (B) Supporting operations or missions performed or to be performed by-
  - (i) a unit composed of elements from more than one component of the technician's armed force; or
  - (ii) a joint forces unit that includes-
    - (I) one or more units of the technician's component; or
    - (II) a member of the technician's component whose reserve component assignment is in a position in an element of the joint forces unit.
- (C) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of-
  - (i) active-duty members of the armed forces;
  - (ii) members of foreign military forces (under the same authorities and restrictions applicable to active-duty members providing such instruction or training);
  - (iii) Department of Defense contractor personnel; or
  - (iv) Department of Defense civilian employees.

(b) Priority for Management of Military Technicians (Dual Status).-(1) As a basis for making the annual request to Congress pursuant to section 115(d) of this title for authorization of end strengths for military technicians (dual status) of the Army and Air Force reserve components, the Secretary of Defense shall give priority to supporting authorizations for military technicians (dual status) in the following high-priority units and organizations:

(A) Units of the Selected Reserve that are scheduled to deploy no later than 90 days after mobilization.

(B) Units of the Selected Reserve that are or will deploy to relieve active duty peacetime operations tempo.

(C) Those organizations with the primary mission of providing direct support surface and aviation maintenance for the reserve components of the Army and Air Force, to the extent that the military technicians (dual status) in such units would mobilize and deploy in a skill that is compatible with their civilian position skill.

(2) For each fiscal year, the Secretary of Defense shall, for the high-priority units and organizations referred to in paragraph (1), seek to achieve a programmed manning level for military technicians (dual status) that is not less than 90 percent of the programmed manpower structure for those units and organizations for military technicians (dual status) for that fiscal year.

(3) Military technician (dual status) authorizations and personnel shall be exempt from any requirement (imposed by law or otherwise) for reductions in Department of Defense civilian personnel and shall only be reduced as part of military force structure reductions.

(c) Information Required To Be Submitted With Annual End Strength Authorization Request.-

(1) The Secretary of Defense shall include as part of the budget justification documents submitted to Congress with the budget of the Department of Defense for any fiscal year the



following information with respect to the end strengths for military technicians (dual status) requested in that budget pursuant to section 115(d) of this title, shown separately for each of the Army and Air Force reserve components:

(A) The number of military technicians (dual status) in the high priority units and organizations specified in subsection (b)(1).

(B) The number of technicians other than military technicians (dual status) in the high priority units and organizations specified in subsection (b)(1).

(C) The number of military technicians (dual status) in other than high priority units and organizations specified in subsection (b)(1).

(D) The number of technicians other than military technicians (dual status) in other than high priority units and organizations specified in subsection (b)(1).

(2)(A) If the budget submitted to Congress for any fiscal year requests authorization for that fiscal year under section 115(d) of this title of a military technician (dual status) end strength for a reserve component of the Army or Air Force in a number that constitutes a reduction from the end strength minimum established by law for that reserve component for the fiscal year during which the budget is submitted, the Secretary of Defense shall submit to the congressional defense committees with that budget a justification providing the basis for that requested reduction in technician end strength.

(B) Any justification submitted under subparagraph (A) shall clearly delineate the specific force structure reductions forming the basis for such requested technician reduction (and the numbers related to those reductions).

(d) Unit Membership Requirement.-(1) Unless specifically exempted by law, each individual who is hired as a military technician (dual status) after December 1, 1995, shall be required as a condition of that employment to maintain membership in-

(A) the unit of the Selected Reserve by which the individual is employed as a military technician; or

(B) a unit of the Selected Reserve that the individual is employed as a military technician to support.

(2) Paragraph (1) does not apply to a military technician (dual status) who is employed by the Army Reserve in an area other than Army Reserve troop program units.

(3) Paragraph (1) does not apply to a military technician (dual status) who is employed by the Air Force Reserve in an area other than the Air Force Reserve unit program, except that not more than 50 of such technicians may be assigned outside of the unit program at the same time.

(e) Dual Status Requirement.-(1) Funds appropriated for the Department of Defense may not (except as provided in paragraph (2)) be used for compensation as a military technician of any individual hired as a military technician (dual status) after February 10, 1996, who is no longer a member of the Selected Reserve.

(2) Except as otherwise provided by law, the Secretary concerned may pay compensation described in paragraph (1) to an individual described in that paragraph who is no longer a member of the Selected Reserve for a period up to 12 months following the individual's loss of membership in the Selected Reserve if the Secretary determines that such loss of membership was not due to the failure of that individual to meet military standards.

(f) Authority for Deferral of Mandatory Separation.-The Secretary of the Army and the Secretary of the Air Force may each implement personnel policies so as to allow, at the discretion of the Secretary concerned, a military technician (dual status) who continues to meet the requirements of this section for dual status to continue to serve beyond a mandatory removal date, and any applicable maximum years of service limitation, until the military technician (dual status) reaches age ~~60~~ 62 and attains eligibility for an unreduced annuity (as defined in section 10218(c) of this title).

(g) Retention of Military Technicians Who Lose Dual Status Due to Combat-Related Disability.-

(1) Notwithstanding subsection (d) of this section or subsections (a)(3) and (b) of section 10218 of this title, if a military technician (dual status) loses such dual status as the result of a combat-related disability (as defined in section 1413a of this title), the person may be retained as a non-dual status technician so long as-

(A) the combat-related disability does not prevent the person from performing the non-dual status functions or position; and

(B) the person, while a non-dual status technician, is not disqualified from performing the non-dual status functions or position because of performance, medical, or other reasons.

(2) A person so retained shall be removed not later than 30 days after becoming eligible for an unreduced annuity and becoming 60 years of age.

(3) Persons retained under the authority of this subsection do not count against the limitations of section 10217(c) of this title.

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**§14702. Retention on reserve active-status list of certain officers in the grade of major, lieutenant colonel, colonel, or brigadier general**

(a) Retention.-Notwithstanding the provisions of section 14506, 14507, or 14508 of this title, the Secretary of the military department concerned may, with the officer's consent, retain on the reserve active-status list an officer in the grade of major, lieutenant colonel, colonel, or brigadier general who is-

(1) an officer of the Army National Guard of the United States and assigned to a headquarters or headquarters detachment of a State; or

(2) a reserve officer of the Army or Air Force who, as a condition of continued employment as a National Guard or Reserve technician is required by the Secretary concerned to maintain membership in a Selected Reserve unit or organization.

(b) Separation for Age.-An officer may be retained under this section only so long as the officer continues to meet the conditions of paragraph (1) or (2) of subsection (a). An officer described in paragraph (1) of such subsection may not be retained under this section after the last day of the month in which the officer becomes 62 years of age. An officer described in paragraph (2) of such subsection may not be retained under this section after the last day of the month in which the officer becomes ~~60~~ 62 years of age.

1 **SEC. \_\_. AUTHORITY TO TRANSFER TRANSPORTATION SERVICES**  
2 **ACQUISITION AND CROSS-SERVICING AGREEMENT DEBTS TO**  
3 **EUROPEAN DEBIT-CREDIT PROGRAMS THROUGH MUTUAL**  
4 **AGREEMENT**

5 (a) IN GENERAL.—Section 2345(a) of title 10, United States Code, is amended—

6 (1) by striking “(a)” and inserting “(a)(1)”; and

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

8 “(2) For purposes of this subsection, if agreed to by the supplying entity and the receiving  
9 entity, direct payment may be effected by the transfer from the receiving entity to the supplying  
10 entity of credits of an equivalent value, accrued by the receiving entity under arrangements to  
11 which the United States is a party pursuant to section 2350m or section 2350o of this title.”.

12 (b) SURFACE EXCHANGE OF SERVICES PROGRAM.—Section 2350m of such title is  
13 amended—

14 (1) by redesignating subsections (e) and (f) as subsections (f) and (g),  
15 respectively; and

16 (2) by inserting after subsection (d) the following new subsection:

17 “(e) TRANSFERRED CREDITS.—Any credits transferred to the SEOS program under  
18 section 2345 of this title shall be credited to the receiving party for future use for the exchange or  
19 transfer of surface transportation in accordance with rates current at the time of the exchange or  
20 transfer.”.

21 (c) AIR TRANSPORT AND AIR-TO-AIR REFUELING AND OTHER EXCHANGES OF SERVICES  
22 PROGRAM.—Section 2350o of such title is amended by adding at the end the following new  
23 subsections:

1           “(d) CREDITING OF RECEIPTS.—Any amount received by the Department of Defense as  
2 part of the ATARES program shall be credited, at the option of the Secretary of Defense, to—  
3           “(1) the appropriation, fund, or account used in incurring the obligation for which  
4           such amount is received; or  
5           “(2) an appropriate appropriation, fund, or account currently available for the  
6           purposes for which the expenditures were made.  
7           “(e) TRANSFERRED CREDITS.—Any credits transferred to the ATARES program under  
8 section 2345 of this title shall be credited to the receiving party for future use for the exchange or  
9 transfer of air refueling and air transportation services in accordance with rates current at the  
10 time of the exchange or transfer.”.

**[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 10 U.S. Code (U.S.C.) § 2345, to provide the Secretary of Defense the discretionary authority to accept or use credits earned under arrangements to which the United States is a party pursuant to 10 U.S.C. §§ 2350m and 2350o, to liquidate debts incurred pursuant to a transaction under a cross-servicing agreement.

Current law requires that credits and liabilities of the United States accrued as a result of acquisitions and transfers of logistic support, supplies, and services under a cross-servicing agreement be liquidated not less often than once every 12 months by direct payment to the entity supplying logistic support, supplies, and services, by the entity receiving such support, supplies, or services. Direct payment in this context refers to reimbursement in cash.

Current law also authorizes the Secretary of Defense, with the concurrence of the Secretary of State, to participate in the Surface Exchange of Services (SEOS) and Air Transport and Air-to Air Refueling and other Exchanges of Services (ATARES) programs of the Movement Coordination Centre-Europe (MCCE) pursuant to §§ 2350m and 2350o of title 10, U.S.C., respectively. Under these programs, participants “earn” and “spend” credits by exchanging transportation and air refueling services. Credits under the SEOS and ATARES programs have a readily ascertainable cash value and enable the owner of a credit to receive transportation and air refueling services of that value from other program participants.

The United States currently has acquisition and cross-servicing agreements (ACSAs) with every SEOS and ATARES participant country. On occasion, due to limitations in their domestic law, countries liable to the United States for debts accrued under a cross-servicing transaction have difficulty liquidating some ACSA debts as cash payments as required in 10 U.S.C. § 2345, but are able to offer the SEOS or ATARES credits as a means of liquidating the cross-servicing debt. Conversely, situations exist in which it is advantageous for the United States to use SEOS and ATARES credits as means of liquidating a liability owed under an ACSA transaction.

This proposal would authorize the United States, at its discretion, to accept or use SEOS or ATARES credits as an acceptable means of direct payment under 10 U.S.C. § 2345(a).

ATARES, as the more mature international framework, will be used to describe how this proposal would work. Before liquidation of the ACSA debt, the United States and the partner nation would enter into an agreement for the exchange of credits in lieu of cash. The established amount owed by the ACSA transaction would then be converted into ATARES credits, which are currently defined in the “currency” of Equivalent Flying Hours (EFH) based on the airlift asset in question. The total value of the debt would be divided by the current EFH value, as agreed upon with the partner nation. The ATARES Program Manager, in coordination with the Financial Manager for the Air Force Air Mobility Command, would then forward the agreement to the United States representative for ATARES at the MCCE who would process the transaction in the ATARES New Accounting and Invoicing System. The new credits would be tracked and processed as the United States uses the ATARES system, which would increase the flexibility of the credit and debit system and provide the United States additional global airlift capacity.

This proposal also adds language to 10 U.S.C. § 2350o regarding “Crediting of Receipts” in order to mirror the newer SEOS statute, 10 U.S.C. § 2350m, to resolve any potential issues with the differing language of the two statutes.

**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 amends sections 2345, 2350m, and 2350o of title 10, United States Code, as follows:

### **§ 2345. Liquidation of accrued credits and liabilities**

(a)(1) Credits and liabilities of the United States accrued as a result of acquisitions and transfers of logistic support, supplies, and services under the authority of this subchapter shall be liquidated not less often than once every 12 months by direct payment to the entity supplying such support, supplies, or services by the entity receiving such support, supplies, or services.

(2) For purposes of this subsection, if agreed to by the supplying entity and the receiving entity, direct payment may be effected by the transfer from the receiving entity to the supplying entity of credits of an equivalent value, accrued by the receiving entity under arrangements to which the United States is a party pursuant to section 2350m or section 2350o of this title.

(b) Payment-in-kind or exchange entitlements accrued as a result of acquisitions and transfers of logistic support, supplies, and services under authority of this subchapter shall be satisfied within 12 months after the date of delivery of the logistic support, supplies, or services.

(c)(1) Any credits of the United States accrued as a result of the provision of logistic support, supplies, and services under the authority of this subchapter that remain unliquidated more than 18 months after the date of delivery of the logistic support, supplies, or services may, at the option of the Secretary of Defense, with the concurrence of the Secretary of State, be liquidated by offsetting the credits against any amounts owed by the Department of Defense, pursuant to a transaction or transactions concluded under the authority of this subchapter, to the government or international organization to which the logistic support, supplies, or services were provided by the United States.

(2) The amount of any credits offset pursuant to paragraph (1) shall be credited as specified in section 2346 of this title as if it were a receipt of the United States.

\* \* \* \* \*

**§2350m. Participation in European program on multilateral exchange of surface transportation services**

(a) PARTICIPATION AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, may authorize the participation of the Department of Defense in the Surface Exchange of Services program (in this section referred to as the "SEOS program") of the Movement Coordination Centre Europe.

(2) SCOPE OF PARTICIPATION.—Participation of the Department of Defense in the SEOS program under paragraph (1) may include—

(A) the reciprocal exchange or transfer of surface transportation on a reimbursable basis or by replacement-in-kind; and

(B) the exchange of surface transportation services of an equal value.

(b) WRITTEN ARRANGEMENT OR AGREEMENT.—

(1) IN GENERAL.—Participation of the Department of Defense in the SEOS program shall be in accordance with a written arrangement or agreement entered into by the Secretary of Defense, with the concurrence of the Secretary of State, and the Movement Coordination Centre Europe.

(2) NOTIFICATION.—The Secretary of Defense shall provide to the congressional defense committees notification of any arrangement or agreement entered into under paragraph (1).

(3) FUNDING ARRANGEMENTS.—If Department of Defense facilities, equipment, or funds are used to support the SEOS program, the written arrangement or agreement under paragraph (1) shall specify the details of any equitable cost-sharing or other funding arrangement.

(4) OTHER ELEMENTS.—Any written arrangement or agreement entered into under paragraph (1) shall require that any accrued credits or liability resulting from an unequal

exchange or transfer of surface transportation services shall be liquidated through the SEOS program not less than once every five years.

(c) IMPLEMENTATION.—In carrying out any arrangement or agreement entered into under subsection (b), the Secretary of Defense may—

(1) pay the equitable share of the Department of Defense for the operating expenses of the Movement Coordination Centre Europe and the SEOS program from funds available to the Department of Defense for operation and maintenance; and

(2) assign members of the armed forces or Department of Defense civilian personnel, within billets authorized for the United States European Command, to duty at the Movement Coordination Centre Europe as necessary to fulfill Department of Defense obligations under that arrangement or agreement.

(d) CREDITING OF RECEIPTS.—Any amount received by the Department of Defense as part of the SEOS program shall be credited, at the option of the Secretary of Defense, to—

(1) the appropriation, fund, or account used in incurring the obligation for which such amount is received; or

(2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.

(e) TRANSFERRED CREDITS.—Any credits transferred to the SEOS program under section 2345 of this title shall be credited to the receiving party for future use for the exchange or transfer of surface transportation in accordance with rates current at the time of the exchange or transfer.

(fe) ANNUAL REPORT.—

(1) IN GENERAL.—Not later than 30 days after the end of each fiscal year in which the authority under this section is in effect, the Secretary of Defense shall submit to the congressional defense committees a report on Department of Defense participation in the SEOS program during such fiscal year.

(2) ELEMENTS.—Each report required by paragraph (1) shall include the following:

(A) A description of the equitable share of the costs and activities of the SEOS program paid by the Department of Defense.

(B) A description of any amount received by the Department of Defense as part of such program, including the country from which the amount was received.

(gf) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed to authorize the use of foreign sealift in violation of section 2631.

\* \* \* \* \*

**§2350o. Participation in programs relating to coordination or exchange of air refueling and air transportation services**

(a) PARTICIPATION AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, may authorize the participation of the Department of Defense in programs relating to the coordination or exchange of air refueling and air transportation services, including in the arrangement known as the Air Transport and Air-to-Air Refueling and other Exchanges of Services program (in this section referred to as the "ATARES program").

(2) SCOPE OF PARTICIPATION.—Participation of the Department of Defense in programs referred to in paragraph (1) may include—

(A) the reciprocal exchange or transfer of air refueling and air transportation services on a reimbursable basis or by replacement-in-kind; and

(B) the exchange of air refueling and air transportation services of an equal value.

(3) LIMITATIONS WITH RESPECT TO PARTICIPATION IN ATARES PROGRAM.—

(A) IN GENERAL.—The Department of Defense balance of executed flight hours in participation in the ATARES program under paragraph (1), whether as credits or debits, may not exceed a total of 500 hours.

(B) AIR REFUELING.—The Department of Defense balance of executed flight hours for air refueling in participation in the ATARES program under paragraph (1) may not exceed 200 hours.

(b) WRITTEN ARRANGEMENT OR AGREEMENT.—Participation of the Department of Defense in a program referred to in subsection (a)(1) shall be in accordance with a written arrangement or agreement entered into by the Secretary of Defense, with the concurrence of the Secretary of State.

(c) IMPLEMENTATION.—In carrying out any arrangement or agreement entered into under subsection (b), the Secretary of Defense may—

(1) pay the equitable share of the Department of Defense for the recurring and nonrecurring costs of the applicable program referred to in subsection (a)(1) from funds available to the Department for operation and maintenance; and

(2) assign members of the armed forces or Department of Defense civilian personnel to fulfill Department obligations under that arrangement or agreement.

(d) CREDITING OF RECEIPTS.—Any amount received by the Department of Defense as part of the ATARES program shall be credited, at the option of the Secretary of Defense, to—

(1) the appropriation, fund, or account used in incurring the obligation for which such amount is received; or

(2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.

(e) TRANSFERRED CREDITS.—Any credits transferred to the ATARES program under section 2345 of this title shall be credited to the receiving party for future use for the exchange or transfer of air refueling and air transportation services in accordance with rates current at the time of the exchange or transfer.



1 **SEC. \_\_\_\_ . AUTOMATIC COLLECTION OF SURVIVOR BENEFIT PLAN PREMIUMS**  
2 **FROM VA DISABILITY COMPENSATION UNDER CERTAIN**  
3 **CIRCUMSTANCES.**

4 (a) AMENDMENTS TO TITLE 10.—

5 (1) DEDUCTIONS.—Section 1452(d) of title 10, United States Code, is amended—

6 (A) by amending paragraph (1) to read as follows:

7 “(1) AUTHORIZED DEDUCTIONS. —If a person who has elected to participate in the  
8 Plan has been awarded retired pay and is not entitled to that pay for any period, the  
9 amount that would otherwise have been deducted from his pay for that period under this  
10 section shall be deducted pursuant to subparagraph (A) or (B) of paragraph (2).”;

11 (B) in paragraph (2)—

12 (i) by inserting the following after “(2)”: “DEDUCTIONS  
13 DESCRIBED.—

14 “(A)”; and

15 (ii) by adding at the end the following new subparagraph:

16 “(B) DEDUCTION FROM COMPENSATION.—In the case of a person who has  
17 elected to participate in the Plan who is entitled to compensation under title 38,  
18 and deductions required under this section exceed the person’s retired pay or  
19 combat-related special compensation, if applicable, then the Secretary of Veterans  
20 Affairs, pursuant to section 5301 of title 38, shall deduct from the person’s  
21 compensation the amount that would otherwise have been deducted from the  
22 person's retired pay or combat-related special compensation for that period.”;

23 (C) by redesignating paragraph (3) as paragraph (5);

24 (D) by inserting after paragraph (2) the following new paragraphs (3) and  
25 (4):

26 “(3) COLLECTION OF PAYMENTS.—If a person who has elected to participate in the  
27 Plan has been awarded retired pay and is not entitled to that pay for that period and if the  
28 full deductions required by this section are not made under paragraph 2, the person shall  
29 remit payment to the Secretary concerned in the amount that would otherwise have been  
30 deducted from retired pay or combat-related special compensation for that period. If  
31 payment is not remitted, the Secretary shall collect payment pursuant to title 31 section  
32 3711.

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

36 (E) in paragraph (5), as redesignated by subparagraph (C) of this  
37 subsection, by striking “Paragraphs (1) and (2) do not apply” and inserting “This  
38 section does not apply”.

39 (2) CONFORMING AMENDMENTS.— Section 1452(g)(4) of title 10, United States  
40 Code, is amended—

41 (1) in the heading, by striking “FROM RETIRED PAY OR CRSC” and inserting  
42 “FROM RETIRED PAY, CRSC, OR COMPENSATION”; and

43 (2) by striking “from the retired pay or combat-related special compensation” and  
44 inserting “from the retired pay, combat-related special compensation, or compensation  
45 under title 38”.

46 (b) AMENDMENTS TO TITLE 38.—Section 5301 of title 38, United States Code, is amended  
47 by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting  
48 after subsection (c) the following new subsection (d):

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

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

55 “(2) the deducted funds shall be credited to the Department of Defense Military  
56 Retirement Fund under chapter 74 of title 10.”.

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

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

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

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

SBP protects survivors against the risks of a retiree’s early death and inflation. If enrolled in the plan upon retirement, a service member will have his or her retired pay reduced by 6.5% if the member elected full coverage and has an eligible beneficiary. (Members may also elect a lesser coverage amount, which would result in lower premiums.) In return for this

reduction in retired pay, a survivor annuity is payable at 55% of the elected coverage amount. Premium deductions are governed by 10 U.S.C. 1452.

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

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

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

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

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

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

presently have to postpone their receipt of their annuities until the member’s SBP premium debt is fully recouped.

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

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

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

**Resource Information:** 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 reductions of administrative and material costs to DFAS are estimated to be \$1.4 million over the Future Years Defense Plan by eliminating manual processing of paper checks to pay SBP premiums, auditing accounts’ imbalances, and maintaining the lockboxes.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element
Survivor Benefit Plan	--	--	(\$0.45)	(\$0.46)	(\$0.47)	DFAS Working Capital Fund	04	N/A	N/A
Total	--	--	(\$0.45)	(\$0.46)	(\$0.47)	--	--	--	--

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

**§1452. Reduction in retired pay**

(a) Spouse and Former Spouse Annuities.-

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

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

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

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

(iii) New entrants after enactment of flat-rate reduction.-In the case of a person who first becomes a member of a uniformed service on or after March 1, 1990, and who is entitled to retired pay under a provision of law other than chapter 61 or chapter 1223 of this title, the reduction shall be in an amount equal to 6½ percent of the base amount.

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

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

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

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

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

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

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

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

(4) Periodic adjustments.-

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

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

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

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

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

(b) Child-Only Annuities.-

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

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

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

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

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

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

(c) Reduction for Insurable Interest Coverage.-

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

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

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

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

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

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

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

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

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

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

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



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

(2) Deductions described.—

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

(B) Deduction from compensation.-In the case of a person who has elected to participate in the Plan who is entitled to compensation under title 38, and deductions required under this section exceed the person's retired pay or combat-related special compensation, if applicable, then the Secretary of Veterans Affairs, pursuant to section 5301 of title 38, shall deduct from the person's compensation the amount that would otherwise have been deducted from the person's retired pay or combat-related special compensation for that period.

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

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

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

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

(f) Refunds of Deductions Not Allowed.-

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

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

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

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

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

(1) Discontinuation.-

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

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

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

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

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

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

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

(4) Refund of deductions from retired pay, ~~or CRSC~~, or compensation.-Upon the death of a person described in paragraph (1) who discontinued participation in the Plan in accordance with this subsection, any amount deducted from the retired pay, ~~or combat-~~

related special compensation, or compensation under title 38 of that person under this section shall be refunded to the person's surviving spouse.

(5) Resumption of participation in plan.-

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

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

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

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

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

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

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

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

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

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

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

Whenever the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is

recomputed under section 1410 of this title upon the person's becoming 62 years of age, the amount of the reduction in such retired pay under this section shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of such reduction that would be in effect on that date if increases in such retired pay under section 1401a(b) of this title, and increases in reductions in such retired pay under subsection (h), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

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

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

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

### **§5301. Nonassignability and exempt status of benefits**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) files a waiver of such pay in accordance with section 5305 of this title in the amount of such pension or compensation before the end of the one-year period beginning on the date such person is notified by the Secretary of such person's eligibility for such pension or compensation, the retired or retirement pay of such person shall be exempt from taxation, as provided in subsection (a) of this section, in an amount equal to the amount of pension or compensation which would have been paid to such person but for the receipt by such person of such pay.

1 **SEC. \_\_\_\_ . AVAILABILITY OF FUNDS, INTERNATIONAL AGREEMENTS, AND**  
2 **EQUIPMENT DISPOSITION WITH RESPECT TO BUILDING**  
3 **CAPACITY OF FOREIGN SECURITY FORCES.**

4 Section 333 of title 10, United States Code, is amended—

5 (1) in subsection (g), by striking paragraph (2) and inserting the following new  
6 paragraph:

7 “(2) AVAILABILITY OF FUNDS FOR PROGRAMS ACROSS FISCAL YEARS.—Amounts  
8 available in a fiscal year to carry out the authority in subsection (a) may be used for  
9 programs under that authority that begin in such fiscal year and end not later than the end  
10 of the fourth fiscal year thereafter.”;

11 (2) by adding at the end the following new subsections:

12 “(h) SOLE-SOURCE DIRECTION.—(1) The Secretary of Defense may enter into an  
13 international agreement or arrangement with a foreign country to allow a foreign country to  
14 provide sole source direction for assistance in support of a program carried out pursuant to  
15 subsection (a).

16 “(2) The Secretary of Defense may only allow a foreign country to provide sole source  
17 direction for assistance under this subsection with the concurrence of the Secretary of State.

18 “(i) EQUIPMENT DISPOSITION.—The Secretary of Defense may treat as stocks of the  
19 Department of Defense—

20 “(1) equipment procured to carry out a program pursuant to subsection (a) that has  
21 not yet been transferred to a foreign country and is no longer needed to support such  
22 program or another program carried out pursuant to such subsection; and

1                   “(2) equipment that has been transferred to a foreign country to carry out a  
2                   program pursuant to subsection (a) and is returned by the foreign country to the United  
3                   States.”.

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

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

This proposal would amend section 333 of title 10, United States Code, to update cross-fiscal year authority, remove the concept of “full operational capability”, and add language concerning sole-source direction from foreign countries and equipment disposition.

#### Cross-fiscal year authority (CFYA)

This proposal would extend the length of the bona fide need exception for programs under section 333 from two to four years and remove the provision that provides a conditions-based bona fide need exception to achieve “full operational capability” (FOC). By extending the period of the cross-fiscal year authority for an additional two years, the increased CYFA duration provides increased leeway for the Department of Defense (DoD) to complete a notified section 333 program even if DoD encounters unanticipated delay in equipment deliveries.

FOC is of extremely limited practical use to the Department because DoD is rarely able to satisfy the prerequisite condition of delivering equipment by the end of the second fiscal year of a program. Due to the lengthy execution timeline of a section 333 program, including the time needed to requisition, procure, and manufacture the equipment, equipment delivery typically occurs in the third fiscal year. Even when equipment could be shipped before the end of the second fiscal year of a program, transportation delays would still frustrate the ability to use FOC, which requires that *delivery* take place before the end of the second fiscal years. Due to these practical challenges, the Department’s planned execution timeline for section 333 programs typically will not use FOC. Out of more than 200 section 333 programs notified in fiscal year (FY) 2022, only two programs planned to use FOC as part of their program design. All other programs were planned utilizing CFYA.

This proposal increases the duration of CFYA to allow adequate time for providing training and other complimentary support to partner nations without the requirement to deliver equipment by the end of the second fiscal year of a program. This supports the congressional intent of ensuring that the partner nation is able to achieve full operational capability for each section 333 program without the often-insurmountable barrier of delivering equipment by the end of the second year.

#### Sole-Source Direction



The proposed addition of this subsection will authorize DoD improve the effectiveness of proposed assistance to a foreign partner under section 333. By authorizing DoD the ability to facilitate partner nation sole source direction related to proposed section 333 equipment transfers, there will be increased input from partner nations into the equipment transfers. This will enhance (i) DoD's ability to provide equipment under section 333 that is tailored to partner nations' needs and (ii) partner nations' ability to sustain equipment received via proposed DoD grant assistance.

The addition of this subsection would enable section 333 equipping efforts to be executed in comparable manner to the execution of foreign military financing (FMF)-funded foreign military sales cases. In the context of FMF grant assistance, partner nations are authorized to provide sole source direction for the U.S. government-procured articles and defense services. A partner nation may opt to provide such direction to ensure that the defense articles procured via FMF are able to be easily integrated into a partner nations' supply, maintenance, and logistics chains. This prevents U.S.-funded defense articles from going unused or rapidly deteriorating after the accompanying U.S.-funded equipment spares package is depleted. Providing DoD the authority to accept partner nation sole source direction in a section 333 context is warranted for the same reasons that the practice is authorized in an FMF context.

The General Accounting Office (GAO) noted the importance of the assisted partner's ability to sustain equipment provided via U.S. grant assistance. A 2016 GAO report on section 333's predecessor authority – section 2282 of title 10, United States Code, which also required foreign partner sustainment of DoD transferred equipment - highlighted the potential tension between U.S. government acquisition strategies and partner nation needs. The GAO report noted a case in which the U.S. Army did not have an existing contract to obtain diesel vehicles from the manufacturer specified in the project proposal and congressional notification and therefore used an existing contract to obtain vehicles from a different manufacturer. The assessment observed that, while delivery of available vehicles provides some value, in this case it created maintenance problems for the partner nation because there was no dealership in the country to provide repairs and spare parts for the vehicles. The GAO report found that in such situations it may be best to delay fulfillment until a contract is available to procure vehicles from the specified manufacturer.” However, the GAO report's recommended solution of delaying the support would have resulted in the inability to use expiring funds and a need to use a future appropriation to assist the partner nation. The problem illustrated by this example could also have been avoided if DoD had been allowed to accept sole source direction from the partner nation, as less acquisition lead time would have been needed and DoD could have been awarded a sole source contract before funds expired. This could have prevented DoD from having to choose between avoiding funds expiration or purchasing equipment that was best suited to partner nation needs. If DoD had been allowed to accept sole source direction, DoD likely could have utilized expiring funds without sacrificing the effectiveness of the U.S. government funded grant assistance effort.

As currently drafted, section 333 requires the U.S. government to accurately assess and define the partner nation's equipment requirements. The proposed legislative change would allow DoD to request that the partner nation define its equipment requirements for itself via the sole-source process, which could help to ensure that the equipment fully responds to its needs

and can be sustained. This could minimize situations in which a partner nation attempts to utilize equipment provided via U.S. grant assistance equipment even when that equipment is not fully responsive to its needs or is difficult to sustain.

If this proposal is enacted, it would not result in all section 333 procurements being pursuant to sole source direction. First, DoD can opt to only accept sole source direction from certain partners for which DoD has confidence in the partner's ability to provide direction that will result in effective sustainment. Further, even if DoD is willing to accept sole source direction from the applicable partner, the nature of the proposed defense article may be such that competing the requirement is the most advantageous acquisition strategy. In the context of FMF assistance, not all FMF procurements are pursuant to sole source direction.

Section 333 assistance cannot be executed if it is otherwise prohibited by any other provision of law. If section 333 is amended to authorize sole source direction, consistent with FMF funded procurements, section 333 procurements would still be required to emphasize the purchase of U.S. content. Pursuant to section 42(c) of the Arms Export Control Act, any partner sole source direction to procure foreign content would require an off-shore procurement waiver.

Absent this legislative relief, DoD will continue current practices, which do not allow for the United States Government to accept partner nation sole source direction when procuring defense articles via section 333 programs.

#### Equipment Disposition

This proposal also would allow equipment procured to provide section 333 assistance to a foreign partner to be treated as DoD stock following congressional notification.

Unforeseen circumstances, including changed foreign partner needs, military coups, sanctions, or other political restrictions, may unexpectedly prohibit assistance or render proposed assistance ill advised. When unforeseen circumstances that frustrate section 333 program execution arise, the Department is generally able to re-direct any section 333 equipment that is procured to support another notified section 333 program. In rare occasions, the Department may not be able to identify any use for section 333 procured equipment for any section 333 program because the items are unique to the foreign partner for which delivery is no longer feasible or no longer supportable. Under such circumstances, it would not be in the U.S. government's best interests to continue to incur storage expenses for procured section 333 equipment that no partner can use until such items are beyond their useable shelf life. Long term storage of section 333 equipment for which there are no identifiable uses is not a cost effective use of funds appropriated to support the section 333 program.

The addition of this provision would allow the Department to use its judgement to avoid needless long term storage costs and treat unneeded section 333 procured equipment as Department stocks so that the unneeded equipment can be immediately disposed of and potentially re-utilized by the Department or some other federal agency in accordance with Federal government disposal procedures. It could also be repurposed and provided from Defense stocks to another foreign government pursuant to existing security cooperation authorities. Such

transfers would be subject to approval of or coordination with the Secretary of State to the extent that the authority on which DoD is relying to re-transfer the equipment includes a DoS concurrence or coordination requirement, respectively.

Currently, DoD is precluded by 22 U.S.C. 2761(m) from accepting the return of any significant military equipment, any equipment that requires repair, or any equipment for which DoD does not have a requirement. This provision would allow the Department to take back section 333 procured equipment that a foreign country wants to return to the United States. In some circumstances, the Department’s ability to accept returned property may be advisable as a means to prevent sensitive equipment from being lost to criminal or hostile forces due to degrading security conditions in the assisted foreign country. The addition of this provision is only requested because it would be advantageous if the Department was authorized to act when confronted with sudden and unexpected circumstances.

**Resource Information:** The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2024 President’s Budget request.

RESOURCE REQUIREMENTS (\$ MILLIONS)									
	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
International Security Cooperation Programs Account	\$1,293	\$1,347	\$1,314	\$1,345	\$1,373	Operation and Maintenance, Defense Wide	04	4GTD	1002200T DSCA DoD Managed Programs
Total	\$1,293	\$1,347	\$1,314	\$1,345	\$1,373	N/A	N/A	N/A	N/A

**Changes to Existing Law:** This proposal would make the following changes to section 333 of title 10, United States Code:

**§ 333. Foreign security forces: authority to build capacity**

(a) AUTHORITY.—The Secretary of Defense is authorized to conduct or support a program or programs to provide training and equipment to the national security forces of one or more foreign countries for the purpose of building the capacity of such forces to conduct one or more of the following:

- (1) Counterterrorism operations.
- (2) Counter-weapons of mass destruction operations.
- (3) Counter-illicit drug trafficking operations.
- (4) Counter-transnational organized crime operations.
- (5) Maritime and border security operations.
- (6) Military intelligence operations.

- (7) Air domain awareness operations.
- (8) Operations or activities that contribute to an existing international coalition operation that is determined by the Secretary to be in the national interest of the United States.
- (9) Cyberspace security and defensive cyberspace operations.

\* \* \* \* \*

(g) FUNDING.—

(1) SOLE SOURCE OF FUNDS.—Amounts for programs carried out pursuant to subsection (a) in a fiscal year, and for other purposes in connection with such programs as authorized by this section, may be derived only from amounts authorized to be appropriated for such fiscal year for the Department of Defense for operation and maintenance, Defense-wide, and available for the Defense Security Cooperation Agency for such programs and purposes.

(2) AVAILABILITY OF FUNDS FOR PROGRAMS ACROSS FISCAL YEARS.—Amounts available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in such fiscal year and end not later than the end of the fourth fiscal year thereafter.

~~(2) AVAILABILITY OF FUNDS FOR PROGRAMS ACROSS FISCAL YEARS.—~~

~~(A) IN GENERAL.—Amounts available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in such fiscal year and end not later than the end of the second fiscal year thereafter.~~

~~(B) ACHIEVEMENT OF FULL OPERATIONAL CAPACITY.—If, in accordance with subparagraph (A), equipment or training is delivered under a program under the authority in subsection (a) in the fiscal year after the fiscal year in which the program begins, amounts for defense articles, training, defense services, supplies (including consumables), and small-scale construction associated with such equipment or training and necessary to ensure that the recipient unit achieves full operational capability for such equipment or training may be used in the fiscal year in which the foreign country takes receipt of such equipment and in the next two fiscal years.~~

(h) SOLE-SOURCE DIRECTION.—(1) The Secretary of Defense may enter into an international agreement or arrangement with a foreign country to allow a foreign country to provide sole source direction for assistance in support of a program carried out pursuant to subsection (a).

(2) The Secretary of Defense may only allow a foreign country to provide sole source direction for assistance under this subsection with the concurrence of the Secretary of State.

(i) EQUIPMENT DISPOSITION.—The Secretary of Defense may treat as stocks of the Department of Defense—

(1) equipment procured to carry out a program pursuant to subsection (a) that has not yet been transferred to a foreign country and is no longer needed to support such program or another program carried out pursuant to such subsection; and

(2) equipment that has been transferred to a foreign country to carry out a program pursuant to subsection (a) and is returned by the foreign country to the United States.

1 **SEC. \_\_\_. CLARIFICATION OF DISPUTE RESOLUTION PROCEDURES FOR**  
2 **GENERAL SERVICES ADMINISTRATION PRE- AND POST-AUDIT**  
3 **APPEALS.**

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

5 (1) by striking “(b)” and inserting “(b)(1)”; and

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

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

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

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

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

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

**Section-by-Section Analysis**

This proposal would amend section 3726 of title 31, United States Code (U.S.C.), and section 7102 of title 41, U.S.C., to deconflict the authority of the General Services Administration (GSA) from the Contract Disputes Act (CDA) and provide greater clarity on the process by which a contractor may appeal a GSA offset under its audit authority.

The GSA has authority under section 3726 of title 31, U.S.C., which was enacted as part of the Transportation Act of 1940 (the Transportation Act), to conduct pre- and post-payment audits of invoices submitted by transportation service providers (TSPs) for transportation services provided to Federal entities. While the Transportation Act was written when almost all government transportation was obtained under “tenders of service” (as opposed to Federal Acquisition Regulation (FAR)-based contracts), it does not limit GSA audit authority to tenders of service but applies to FAR-based contracts as well. Under this authority, GSA can offset or take monies from TSPs resulting from overcharges identified by GSA in pre- and post-payment audits.

The GSA’s authority and implementing regulations provide a dispute process for a TSP to contest the GSA’s offsets or monies taken as a result of pre- and post-payment audits. This includes a protest to the GSA Audits Division and a subsequent appeal to the Civilian Board of Contract Appeals. The GSA’s Transportation Act authority conflicts with a contracting officer’s authority under the CDA to resolve disputes relating to transportation services obtained using contracts awarded through the authority of the FAR. Under the CDA, disputes are resolved in accordance with FAR clause 52.233-1, Disputes. Additionally, the Transportation Act conflicts with FAR requirements for a “demand for payment” and contract “debts” as spelled out in FAR clause 52.212-4. Under FAR-based contracts and the CDA, a TSP can protest any offsets/disputes to the contracting officer and subsequently appeal an unfavorable contracting officer final decision to the Armed Services Board of Contract Appeals (ASBCA).

The current conflicting statutes cause confusion for TSPs as to what process to follow should they disagree with a GSA audit. The conflict further creates unnecessary work for the Government as personnel from GSA and the contracting entity continually work through issues regarding who has final authority and what processes govern. It also creates fiscal law issues when GSA collects funds and the transportation provider protests through the contracting officer or ASBCA since neither the contracting officer or ASBCA can require GSA to reimburse the transportation provider.

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

**Changes to Existing Law:** This proposal would amend section 3726 of title 31, United States Code, and section 7102 of title 41, United States Code, as follows:

## **TITLE 31, UNITED STATES CODE**

### **§3726. Payment for transportation**

(a)(1) Each agency that receives a bill from a carrier or freight forwarder for transporting an individual or property for the United States Government shall verify its correctness (to include transportation rates, freight classifications, or proper combinations thereof), using prepayment audit, prior to payment in accordance with the requirements of this section and regulations prescribed by the Administrator of General Services.

(2) The Administrator of General Services may exempt bills, a particular mode or modes of transportation, or an agency or subagency from a prepayment audit and verification and in lieu thereof require a postpayment audit, based on cost effectiveness, public interest, or other factors the Administrator considers appropriate.

(3) Expenses for prepayment audits shall be funded by the agency's appropriations used for the transportation services.

(4) The audit authority provided to agencies by this section is subject to oversight by the Administrator.

(b)(1) The Administrator may conduct pre- or post-payment audits of transportation bills of any Federal agency. The number and types of bills audited shall be based on the Administrator's judgment.

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

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

(c)(1) The Administrator shall adjudicate transportation claims which cannot be resolved by the agency procuring the transportation services, or the carrier or freight-forwarder presenting the bill.

(2) A claim under this section shall be allowed only if it is received by the Administrator not later than 3 years (excluding time of war) after the later of the following dates:

- (A) The date of accrual of the claim.
- (B) The date payment for the transportation is made.
- (C) The date a refund for an overpayment for the transportation is made.
- (D) The date a deduction under subsection (d) of this section is made.

(d) Not later than 3 years (excluding time of war) after the time a bill is paid, the Government may deduct from an amount subsequently due a carrier or freight forwarder an amount paid on the bill that was greater than the rate allowed under-

(1) a lawful tariff under title 49 or on file with the Secretary of Transportation with respect to foreign air transportation (as defined in section 40102(a) of title 49), the Federal Maritime Commission, or a State transportation authority;

(2) a lawfully quoted rate subject to the jurisdiction of the Surface Transportation Board; or



(3) sections 10721, 13712, and 15504 of title 49 or an equivalent arrangement or an exemption.

\* \* \* \* \*

## TITLE 41, UNITED STATES CODE

### §7102. Applicability of chapter

(a) EXECUTIVE AGENCY CONTRACTS.-Unless otherwise specifically provided in this chapter, this chapter applies to any express or implied contract (including those of the nonappropriated fund activities described in sections 1346 and 1491 of title 28) made by an executive agency for-

- (1) the procurement of property, other than real property in being;
- (2) the procurement of services;
- (3) the procurement of construction, alteration, repair, or maintenance of real property; or
- (4) the disposal of personal property

(b) TENNESSEE VALLEY AUTHORITY CONTRACTS.-

(1) In general.-With respect to contracts of the Tennessee Valley Authority, this chapter applies only to contracts containing a clause that requires contract disputes to be resolved through an agency administrative process.

(2) Exclusion.-Notwithstanding any other provision of this chapter, this chapter does not apply to a contract of the Tennessee Valley Authority for the sale of fertilizer or electric power or related to the conduct or operation of the electric power system.

(c) FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION CONTRACTS.-If an agency head determines that applying this chapter would not be in the public interest, this chapter does not apply to a contract with a foreign government, an agency of a foreign government, an international organization, or a subsidiary body of an international organization.

(d) MARITIME CONTRACTS.-Appeals under section 7107(a) of this title and actions brought under sections 7104(b) and 7107(b) to (f) of this title, arising out of maritime contracts, are governed by chapter 309 or 311 of title 46, as applicable, to the extent that those chapters are not inconsistent with this chapter.

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

1 **SEC. \_\_\_\_ . DEFENSE SECURITY COOPERATION UNIVERSITY NAME AND**  
2 **COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.**

3 (a) NAME.—Subsection (e)(3)(E) of section 384 of title 10, United States Code, is  
4 amended by inserting “to be known as the ‘Defense Security Cooperation University’” after  
5 “maintain a school”.

6 (b) UPDATES TO GUIDANCE.—Subsection (e) of such section 384, as amended by  
7 subsection (a) of this section, is further amended by adding at the end the following new  
8 paragraph:

9 “(4) UPDATES TO GUIDANCE.—The Secretary of Defense, with the concurrence of  
10 the Secretary of State, shall issue updated guidance for the execution and administration  
11 of the Program at such times as the Secretary of Defense, with the concurrence of the  
12 Secretary of State, determines that updates to such guidance are necessary to  
13 appropriately carry out the Program.”.

14 (c) CONTRACTS, COOPERATIVE AGREEMENTS, AND GRANTS.—Such section 384 is further  
15 amended—

16 (1) by redesignating subsections (f), (g), and (h), as subsections (g), (h), and (i),  
17 respectively; and

18 (2) by inserting after subsection (e) the following new subsection:

19 “(f) CONTRACTS, COOPERATIVE AGREEMENTS, AND GRANTS .—

20 “(1) AGREEMENTS.—In engaging in research and development projects pursuant  
21 to subsection (a) of section 4001 of this title by a contract, cooperative agreement, or  
22 grant pursuant to subsection (b)(1) of such section, the Secretary may enter into such

1 contract or cooperative agreement or award such grant through the Defense Security  
 2 Cooperation University.

3 “(2) STATUS OF UNIVERSITY.—The Defense Security Cooperation University shall  
 4 be considered a Government-operated Federal laboratory for purposes of section 12 of  
 5 the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a).”.

**[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 formalize the name of the Defense Security Cooperation University (DSCU) and authorize the Secretary of Defense to enter into cooperative research and development agreements through the DSCU. DSCU’s efforts to ensure optimal professionalization and training of the Department’s security cooperation workforce is hampered by the lack of this authority to enter into cooperative research and development agreements with academic institutions and other external organizations with desired subject-matter expertise in security cooperation. Without close collaboration with external organizations, DSCU will be challenged to maintain the high quality and relevance of training content provided to the security cooperation workforce.

The authority to expend funds for research aligns with the authority that Congress provided the Defense Acquisition University (DAU), under section 1746 of title 10, United States Code. To ensure the quality of DAU instruction to the Department’s acquisition workforce, Congress allows DAU to enter into cooperative research and development agreements and to maintain an account to ensure recruitment and retention of acquisition personnel.

**Resource Information:** The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2024 President’s Budget request.

<b>RESOURCE REQUIREMENTS (\$ MILLIONS)</b>									
	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>Appropriation From</b>	<b>Budget Activity</b>	<b>Dash-1 Line Item</b>	<b>Program Element</b>
Defense Security Cooperation University Account	\$17.872	\$18.229	\$18.595	\$18.966	\$19.345	Operation and Maintenance, Defense Wide	04	4GTD	Various
Total	\$17.872	\$18.229	\$18.595	\$18.966	\$19.345	N/A	N/A	N/A	N/A

**Changes to Existing Law:** This proposal would amend section 384 of title 10, United States Code, as follows:

**§ 384. Department of Defense security cooperation workforce development**

(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program to be known as the “Department of Defense Security Cooperation Workforce Development Program” (in this section referred to as the “Program”) to oversee the development and management of a professional workforce supporting security cooperation programs and activities of the Department of Defense, including—

- (1) assessment, planning, monitoring, execution, evaluation, and administration of such programs and activities under this chapter; and
- (2) execution of security assistance programs and activities under the Foreign Assistance Act of 1961 and the Arms Export Control Act by the Department of Defense.

(b) PURPOSE.—The purpose of the Program is to improve the quality and professionalism of the security cooperation workforce in order to ensure that the workforce—

- (1) has the capacity, in both personnel and skills, needed to properly perform its mission, provide appropriate support to the assessment, planning, monitoring, execution, evaluation, and administration of security cooperation programs and activities described in subsection (a), and ensure that the Department receives the best value for the expenditure of public resources on such programs and activities; and
- (2) is assigned in a manner that ensures personnel with the appropriate level of expertise and experience are assigned in sufficient numbers to fulfill requirements for the security cooperation programs and activities of the Department of Defense and the execution of security assistance programs and activities described in subsection (a)(2).

(c) ELEMENTS.—The Program shall consist of such elements relating to the development and management of the security cooperation workforce as the Secretary considers appropriate for the purposes specified in subsection (b), including elements on training, certification, assignment, and career development of personnel of the security cooperation workforce.

(d) MANAGEMENT.—The Program shall be managed by the Director of the Defense Security Cooperation Agency.

(e) GUIDANCE.—

(1) INTERIM GUIDANCE.—Not later than 180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2017, the Secretary shall issue interim guidance for the execution and administration of the Program.

(2) FINAL GUIDANCE.—Not later than one year after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2017, the Secretary shall issue final guidance for the execution and administration of the Program.

(3) SCOPE OF GUIDANCE.—The guidance shall do the following:

- (A) Provide direction to the Department of Defense on the establishment of professional career paths for the personnel of the security cooperation

workforce, addressing training and education standards, promotion opportunities and requirements, retention policies, and scope of workforce demands.

(B) Provide for a mechanism to identify and define training and certification requirements for security cooperation positions in the Department and a means to track workforce skills and certifications.

(C) Provide for a mechanism to establish a program of professional certification in Department of Defense security cooperation for personnel of the security cooperation workforce in different career tracks and levels of competency based on requisite training and experience.

(D) Establish requirements for training and professional development associated with each level of certification provided for under subparagraph (C).

(E) Establish and maintain a school to be known as the “Defense Security Cooperation University” to train, educate, and certify the security cooperation workforce according to standards developed for purposes of subparagraph (C).

(F) Provide for a mechanism for assigning appropriately certified personnel of the security cooperation workforce to assignments associated with key positions in connection with security cooperation programs and activities.

(G) Identify the appropriate composition of career and temporary personnel necessary to constitute the security cooperation workforce.

(H) Identify specific positions throughout the security cooperation workforce to be managed and assigned through the Program.

(4) UPDATES TO GUIDANCE.—The Secretary of Defense, with the concurrence of the Secretary of State, shall issue updated guidance for the execution and administration of the Program at such times as the Secretary of Defense, with the concurrence of the Secretary of State, determines that updates to such guidance are necessary to appropriately carry out the Program.

(f) CONTRACTS, COOPERATIVE AGREEMENTS, AND GRANTS.—

(1) AGREEMENTS.—In engaging in research and development projects pursuant to subsection (a) of section 4001 of this title by a contract, cooperative agreement, or grant pursuant to subsection (b)(1) of such section, the Secretary may enter into such contract or cooperative agreement or award such grant through the Defense Security Cooperation University.

(2) STATUS OF UNIVERSITY.—The Defense Security Cooperation University shall be considered a Government-operated Federal laboratory for purposes of section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a).

(g) SOURCE OF FUNDS.—

(1) IN GENERAL.—Funds available to the Defense Security Cooperation Agency, and other funds available to the Department of Defense for security cooperation programs and activities of the Department of Defense, may be used to carry out the Program.

(2) BUDGET JUSTIFICATION.—Funds necessary to carry out the Program as described in paragraph (1) for a fiscal year shall be identified, with appropriate justification, in the consolidated budget for such fiscal year required by section 381 of this title.

(h) USE OF FUNDS.—Amounts available for use for the Program may be transferred to any account of the military departments or the Defense Agencies for purposes of the Program.

(i) SECURITY COOPERATION WORKFORCE DEFINED.—In this section, the term “security cooperation workforce” means the following:

(1) Members of the armed forces and civilian employees of the Department of Defense working in the security cooperation organizations of United States missions overseas.

(2) Members of the armed forces and civilian employees of the Department of Defense in the geographic combatant commands and functional combatant commands responsible for planning, monitoring, or conducting security cooperation activities.

(3) Members of the armed forces and civilian employees of the Department of Defense in the military departments performing security cooperation activities, including activities in connection with the acquisition and development of technology release policies.

(4) Other military and civilian personnel of Defense Agencies and Field Activities who perform security cooperation activities.

(5) Personnel of the Department of Defense who perform assessments, monitoring, or evaluations of security cooperation programs and activities of the Department of Defense, including assessments under section 383 of this title.

(6) Other members of the armed forces or civilian employees of the Department of Defense who contribute significantly to the security cooperation programs and activities of the Department of Defense by virtue of their assigned duties, as determined pursuant to the guidance issued under subsection (e).

1 **SEC. \_\_\_\_. DUAL BASIC ALLOWANCE FOR HOUSING FOR TRAINING.**

2 Section 403 of title 37, United States Code, is amended in subsection (g)(3) by striking  
 3 “Paragraphs” and inserting “Except in the case of a member of a reserve component without  
 4 dependents who is called or ordered to active duty to attend training for at least 140 days but  
 5 fewer than 365 days, paragraphs”.

**[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 allow reserve component (RC) members without dependents who would normally have to Permanently Change Station (PCS) for attendance at a school that is longer than 139 but less than 365 days, to be paid Basic Allowance for Housing (BAH) at the single rate at the location of the school, as well as BAH at the single rate at the location of their permanent residence, if they are returning to that residence after completion of the school. To be eligible, the member would have to maintain their original residence and be returning to that residence after completion of training.

Note that section 403(d) of title 37, United States Code, already provides statutory authority to provide a second BAH to RC members with dependents attending training, if movement of the dependents is not authorized, the dependents do not reside at or near the duty location, and quarters are not available for assignment to the member. A change to dual-BAH for Service members with dependents will need to be implemented separately in policy via DoDFMR, Volume 7a, Chapter 26.

**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.

Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Air National Guard	3.84	3.93	4.02	4.11	4.21	National Guard Personnel, Air Force	01	N/A	58152/58153
USAF Reserves	1.73	1.77	1.82	1.86	1.90	Reserve Personnel, Air Force	01	00070	N/A

Army National Guard	1.32	1.35	1.38	1.41	1.44	National Guard Personnel, Army	01	SAG 1F	
USAR Reserves	1.81	1.85	1.90	1.95	2.00	Reserve Personnel, Army	01	SAG 1F	
Navy Reserves	1.71	1.74	1.77	1.85	1.88	Reserve Personnel, Navy	01	Various	Various
USMC Reserves	.574	.585	.595	.606	.617	Reserve Personnel, Marine Corps	01	740020	N/A
Total	10.98	11.23	11.49	11.79	12.05				

**Changes to Existing Law:** This proposal would amend section 403 of title 37, United States Code, as follows:

**§403. Basic allowance for housing**

(a) GENERAL ENTITLEMENT.-

(1) Except as otherwise provided by law, a member of a uniformed service who is entitled to basic pay is entitled to a basic allowance for housing at the monthly rates prescribed under this section or another provision of law with regard to the applicable component of the basic allowance for housing. The amount of the basic allowance for housing for a member will vary according to the pay grade in which the member is assigned or distributed for basic pay purposes, the dependency status of the member, and the geographic location of the member. The basic allowance for housing may be paid in advance.

(2) A member of a uniformed service with dependents is not entitled to a basic allowance for housing as a member with dependents unless the member makes a certification to the Secretary concerned indicating the status of each dependent of the member. The certification shall be made in accordance with regulations prescribed by the Secretary of Defense.

(b) BASIC ALLOWANCE FOR HOUSING INSIDE THE UNITED STATES.-(1) The Secretary of Defense shall prescribe the rates of the basic allowance for housing that are applicable for the various military housing areas in the United States. The rates for an area shall be based on the costs of adequate housing determined for the area under paragraph (2).

(2) The Secretary of Defense shall determine the costs of adequate housing in a military housing area in the United States for all members of the uniformed services entitled to a basic allowance for housing in that area. The Secretary shall base the determination upon the costs of adequate housing for civilians with comparable income levels in the same area. After June 30, 2001, the Secretary may not differentiate between members with dependents in pay grades E-1 through E-4 in determining what constitutes adequate housing for members.



(3)(A) The monthly amount of the basic allowance for housing for an area of the United States for a member of a uniformed service shall be the amount equal to the difference between-

(i) the amount of the monthly cost of adequate housing in that area, as determined by the Secretary of Defense, for members of the uniformed services serving in the same pay grade and with the same dependency status as the member; and

(ii) the amount equal to a specified percentage (determined under subparagraph (B)) of the national average monthly cost of adequate housing in the United States, as determined by the Secretary, for members of the uniformed services serving in the same pay grade and with the same dependency status as the member.

(B) The percentage to be used for purposes of subparagraph (A)(ii) shall be determined by the Secretary of Defense and may not exceed the following:

(i) One percent for months occurring during 2015.

(ii) Two percent for months occurring during 2016.

(iii) Three percent for months occurring during 2017.

(iv) Four percent for months occurring during 2018.

(v) Five percent for months occurring after 2018.

(4) An adjustment in the rates of the basic allowance for housing under this subsection as a result of the Secretary's redetermination of housing costs in an area shall take effect on the same date as the effective date of the next increase in basic pay under section 1009 of this title or other provision of law.

(5) On and after July 1, 2001, the Secretary of Defense shall establish a single monthly rate for members of the uniformed services with dependents in pay grades E-1 through E-4 in the same military housing area. The rate shall be consistent with the rates paid to members in pay grades other than pay grades E-1 through E-4 and shall be based on the following:

(A) The average cost of a two-bedroom apartment in that military housing area.

(B) One-half of the difference between the average cost of a two-bedroom townhouse in that area and the amount determined in subparagraph (A).

(6) So long as a member of a uniformed service retains uninterrupted eligibility to receive a basic allowance for housing within an area of the United States, the monthly amount of the allowance for the member may not be reduced as a result of changes in housing costs in the area or the promotion of the member.

(7)(A) Under the authority of this paragraph, the Secretary of Defense may prescribe a temporary increase in the rates of basic allowance for housing otherwise prescribed for a military housing area or a portion of a military housing area if the military housing area or portion thereof-

(i) is located in an area covered by a declaration by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) that a major disaster exists; or

(ii) contains one or more military installations that are experiencing a sudden increase in the number of members of the armed forces assigned to the installation.

(B) The Secretary of Defense shall base the amount of the increase to be made in the rates of basic allowance for housing for an area on a determination by the Secretary of the amount by which the costs of adequate housing for civilians have increased in the area by reason of the disaster or the influx of military personnel, except that the increase may not exceed the amount equal to 20 percent of the rate of basic allowance for housing otherwise prescribed for the area.

(C) A member may be paid a basic allowance for housing at a rate increased under this paragraph only if the member certifies to the Secretary concerned that the member has incurred increased housing costs in the area by reason of the disaster or the influx of military personnel.

(D) Subject to subparagraph (E), an increase in the rates of basic allowance for housing in an area under this paragraph shall remain in effect until the effective date of the first adjustment in rates of basic allowance for housing made for the area pursuant to a redetermination of housing costs in the area under this subsection that occurs after the date of the increase under this paragraph.

(E) An increase in the rates of basic allowance for housing for an area may not be prescribed under this paragraph or continue after December 31, 2022.

(8)(A) The Secretary of Defense may prescribe a temporary adjustment in the current rates of basic allowance for housing for a military housing area or a portion thereof (in this paragraph, "BAH rates") if the Secretary determines that the actual costs of adequate housing for civilians in that military housing area or portion thereof differs from the current BAH rates by more than 20 percent.

(B) Any temporary adjustment in BAH rates under this paragraph shall remain in effect only until the effective date of the first adjustment of BAH rates for the affected military housing area that occurs after the date of the adjustment under this paragraph.

(C) This paragraph shall cease to be effective on September 30, 2024.

(c) BASIC ALLOWANCE FOR HOUSING OUTSIDE THE UNITED STATES.-(1) The Secretary of Defense may prescribe an overseas basic allowance for housing for a member of a uniformed service who is

on duty outside of the United States. The Secretary shall establish the basic allowance for housing under this subsection on the basis of housing costs in the overseas area in which the member is assigned.

(2) So long as a member of a uniformed service retains uninterrupted eligibility to receive a basic allowance for housing in an overseas area and the actual monthly cost of housing for the member is not reduced, the monthly amount of the allowance in an area outside the United States may not be reduced as a result of changes in housing costs in the area or the promotion of the member. The monthly amount of the allowance may be adjusted to reflect changes in currency rates.

(3)(A) In the case of a member of the uniformed services authorized to receive an allowance under paragraph (1), the Secretary concerned may make a lump-sum payment to the member for required deposits and advance rent, and for expenses relating thereto, that are-

(i) incurred by the member in occupying private housing outside of the United States; and

(ii) authorized or approved under regulations prescribed by the Secretary concerned.

(B) Expenses for which a member may be reimbursed under this paragraph may include losses relating to housing that are sustained by the member as a result of fluctuations in the relative value of the currencies of the United States and the foreign country in which the housing is located.

(C) The Secretary concerned shall recoup the full amount of any deposit or advance rent payments made by the Secretary under subparagraph (A), including any gain resulting from currency fluctuations between the time of payment and the time of recoupment.

(d) BASIC ALLOWANCE FOR HOUSING WHEN DEPENDENTS DO NOT ACCOMPANY MEMBER.-(1) A member of a uniformed service with dependents who is on permanent duty at a location described in paragraph (2) may be paid a family separation basic allowance for housing under this subsection at a monthly rate equal to the rate of the basic allowance for housing established under subsection (b) or the overseas basic allowance for housing established under subsection (c), whichever applies to that location, for members in the same grade at that location without dependents.

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

(A) to which the movement of the member's dependents is not authorized at the expense of the United States under section 476 1 of this title, and the member's dependents do not reside at or near the location; and

(B) at which quarters of the United States are not available for assignment to the member.

(3) If a member with dependents is assigned to duty in an area that is different from the area in which the member's dependents reside, the member is entitled to a basic allowance for housing as provided in subsection (b) or (c), whichever applies to the member, subject to the following:

(A) If the member's assignment to duty in that area, or the circumstances of that assignment, require the member's dependents to reside in a different area, as determined by the Secretary concerned, the amount of the basic allowance for housing for the member shall be based on the area in which the dependents reside or the member's last duty station, whichever the Secretary concerned determines to be most equitable.

(B) If the member's assignment to duty in that area is under the conditions of a low-cost or no-cost permanent change of station or permanent change of assignment, the amount of the basic allowance for housing for the member shall be based on the member's last duty station if the Secretary concerned determines that it would be inequitable to base the allowance on the cost of housing in the area to which the member is reassigned.

(C) If the member is reassigned for a permanent change of station or permanent change of assignment from a duty station in the United States to another duty station in the United States for a period of not more than one year for the purpose of participating in professional military education or training classes, the amount of the basic allowance for housing for the member may be based on whichever of the following areas the Secretary concerned determines will provide the more equitable basis for the allowance:

(i) The area of the duty station to which the member is reassigned.

(ii) The area in which the dependents reside, but only if the dependents reside in that area when the member departs for the duty station to which the member is reassigned and only for the period during which the dependents reside in that area.

(iii) The area of the former duty station of the member, if different than the area in which the dependents reside.

(4) A family separation basic allowance for housing paid to a member under this subsection is in addition to any other allowance or per diem that the member receives under this title. A member may receive a basic allowance for housing under both paragraphs (1) and (3).

(e) EFFECT OF ASSIGNMENT TO QUARTERS.-(1) Except as otherwise provided by law, a member of a uniformed service who is assigned to quarters of the United States or a housing facility under the jurisdiction of a uniformed service appropriate to the grade, rank, or rating of the member and adequate for the member and dependents of the member, if with dependents, is not entitled to a basic allowance for housing.

(2) A member without dependents who is in a pay grade above pay grade E-6 and who is assigned to quarters in the United States or a housing facility under the jurisdiction of a uniformed service, appropriate to the grade or rank of the member and adequate for the member,

may elect not to occupy those quarters and instead to receive the basic allowance for housing prescribed for the member's pay grade by this section.

(3) A member without dependents who is in pay grade E-6 and who is assigned to quarters of the United States that do not meet the minimum adequacy standards established by the Secretary of Defense for members in such pay grade, or to a housing facility under the jurisdiction of a uniformed service that does not meet such standards, may elect not to occupy such quarters or facility and instead to receive the basic allowance for housing prescribed for the member's pay grade under this section.

(4) The Secretary concerned may deny the right to make an election under paragraph (2) or (3) if the Secretary determines that the exercise of such an election would adversely affect a training mission, military discipline, or military readiness.

(5) A member with dependents who is assigned to quarters of the United States or a housing facility under the jurisdiction of a uniformed service may be paid the basic allowance for housing if, because of orders of competent authority, the dependents are prevented from occupying those quarters.

(f) INELIGIBILITY DURING INITIAL FIELD DUTY OR SEA DUTY.-(1) A member of a uniformed service without dependents who makes a permanent change of station for assignment to a unit conducting field operations is not entitled to a basic allowance for housing while on that initial field duty unless the commanding officer of the member certifies that the member was necessarily required to procure quarters at the member's expense.

(2)(A) Except as provided in subparagraphs (B) and (C), a member of a uniformed service without dependents who is in a pay grade below pay grade E-6 is not entitled to a basic allowance for housing while the member is on sea duty.

(B) Under regulations prescribed by the Secretary concerned, the Secretary may authorize the payment of a basic allowance for housing to a member of a uniformed service without dependents who is serving in pay grade E-4 or E-5 and is assigned to sea duty. In prescribing regulations under this subparagraph, the Secretary concerned shall consider the availability of quarters for members serving in pay grades E-4 and E-5.

(C) Notwithstanding section 421 of this title, a member of a uniformed service in a pay grade below pay grade E-6 who is assigned to sea duty and is married to another member of a uniformed service is entitled to a basic allowance for housing subject to the limitations of subsection (e).

(3) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, shall prescribe regulations defining the terms "field duty" and "sea duty" for purposes of this section.

(g) RESERVE MEMBERS.-(1) A member of a reserve component without dependents who is called

or ordered to active duty to attend accession training, in support of a contingency operation, or for a period of more than 30 days, or a retired member without dependents who is ordered to active duty under section 688(a) of title 10 in support of a contingency operation or for a period of more than 30 days, may not be denied a basic allowance for housing if, because of that call or order, the member is unable to continue to occupy a residence-

(A) which is maintained as the primary residence of the member at the time of the call or order; and

(B) which is owned by the member or for which the member is responsible for rental payments.

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

(3) Except in the case of a member of a reserve component without dependents who is called or ordered to active duty to attend training for at least 140 days but fewer than 365 days, paragraphs (1) and (2) shall not apply if the member is authorized transportation of household goods under section 476 of this title as part of the call or order to active duty described in such paragraph.

(4) The rate of basic allowance for housing to be paid to the following members of a reserve component shall be equal to the rate in effect for similarly situated members of a regular component of the uniformed services:

(A) A member who is called or ordered to active duty for a period of more than 30 days.

(B) A member who is called or ordered to active duty for a period of 30 days or less in support of a contingency operation.

(5) The Secretary of Defense shall establish a rate of basic allowance for housing to be paid to a member of a reserve component while the member serves on active duty under a call or order to active duty specifying a period of 30 days or less, unless the call or order to active duty is in support of a contingency operation.

(6)(A) This paragraph applies with respect to a member of a reserve component who performs active Guard and Reserve duty (as defined in section 101(d)(6) of title 10).

(B) The rate of basic allowance for housing to be paid to a member described in subparagraph (A) shall be based on the member's permanent duty station, even during instances in which the

member is mobilized for service on active duty other than active Guard and Reserve duty.

(C)(i) During transitions in service status from active Guard and Reserve duty to other active duty and back to active Guard and Reserve duty, or following the start of new periods of service resulting from a change in orders, a member described in subparagraph (A) shall be considered as retaining uninterrupted eligibility to receive a basic allowance for housing in an area as provided for under subsections (b)(6) and (c)(2) so long as the member remains on active duty without a break in service.

(ii) Clause (i) does not apply if the member's permanent duty station changes as a result of orders directing a permanent change in station with the authority for the movement of household goods.

(iii) For purposes of clause (i), a break in active service occurs when one or more calendar days between active service periods do not qualify as active service.

(D) Subsections (d)(3) and (o) also apply to a member described in subparagraph (A).

(h) RENTAL OF PUBLIC QUARTERS.-Notwithstanding any other law (including those restricting the occupancy of housing facilities under the jurisdiction of a department or agency of the United States by members, and their dependents, of the armed forces above specified grades, or by members, and their dependents, of the National Oceanic and Atmospheric Administration and the Public Health Service), a member of a uniformed service, and the dependents of the member, may be accepted as tenants in, and may occupy on a rental basis, any of those housing facilities, other than public quarters constructed or designated for assignment to an occupancy without charge by such a member and the dependents of the member, if any. Such a member may not, because of occupancy under this subsection, be deprived of any money allowance to which the member is otherwise entitled for the rental of quarters.

(i) TEMPORARY HOUSING ALLOWANCE WHILE IN TRAVEL OR LEAVE STATUS.-A member of a uniformed service is entitled to a temporary basic allowance for housing (at a rate determined by the Secretary of Defense) while the member is in a travel or leave status between permanent duty stations, including time granted as delay en route or proceed time, when the member is not assigned to quarters of the United States.

(j) AVIATION CADETS.-The eligibility of an aviation cadet of the Navy, Air Force, Marine Corps, or Coast Guard for a basic allowance for housing shall be determined as if the aviation cadet were a member of the uniformed services in pay grade E-4.

(k) ADMINISTRATION.-(1) The Secretary of Defense shall prescribe regulations for the administration of this section.

(2) The Secretary concerned may make such determinations as may be necessary to administer this section, including determinations of dependency and relationship. When warranted by the circumstances, the Secretary concerned may reconsider and change or modify any such determination. The authority of the Secretary concerned under this subsection may be delegated. Any determination made under this section with regard to a member of the uniformed services is

final and is not subject to review by any accounting officer of the United States or a court, unless there is fraud or gross negligence.

(3) Parking facilities (including utility connections) provided members of the uniformed services for house trailers and mobile homes not owned by the Government shall not be considered to be quarters for the purposes of this section or any other provision of law. Any fees established by the Government for the use of such a facility shall be established in an amount sufficient to cover the cost of maintenance, services, and utilities and to amortize the cost of construction of the facility over the 25-year period beginning with the completion of such construction.

(l) TEMPORARY CONTINUATION OF ALLOWANCE FOR DEPENDENTS OF MEMBERS DYING ON ACTIVE DUTY.—(1) The Secretary of Defense, or the Secretary of Homeland Security in the case of the Coast Guard when not operating as a service in the Navy, may allow the dependents of a member of the armed forces who dies on active duty and whose dependents are occupying family housing provided by the Department of Defense, or by the Department of Homeland Security in the case of the Coast Guard, other than on a rental basis on the date of the member's death to continue to occupy such housing without charge for a period of 365 days.

(2) The Secretary concerned may pay a basic allowance for housing (at the rate that is payable for members of the same grade and dependency status as the deceased member for the area where the dependents are residing) to the dependents of a member of the uniformed services who dies while on active duty and whose dependents—

(A) are not occupying a housing facility under the jurisdiction of a uniformed service on the date of the member's death;

(B) are occupying such housing on a rental basis on such date; or

(C) vacate such housing sooner than 365 days after the date of the member's death.

(3) An allowance may be paid under paragraph (2) to the spouse of the deceased member even though the spouse is also a member of the uniformed services. The allowance paid under such paragraph is in addition to any other pay and allowances to which the spouse is entitled as a member.

(4) The payment of the allowance under paragraph (2) shall terminate 365 days after the date of the member's death.

(m) TEMPORARY CONTINUATION OF RATE OF BASIC ALLOWANCE FOR MEMBERS OF THE ARMED FORCES WHOSE SOLE DEPENDENT DIES WHILE RESIDING WITH THE MEMBER.—(1)

Notwithstanding subsection (a)(2) or any other section of law, the Secretary of Defense or the Secretary of the Department in which the Coast Guard is operating, may, after the death of the sole dependent of a member of the armed forces, continue to pay a basic allowance for housing to such member at the rate paid to such member on the date of such death if—

(A) such sole dependent dies—

(i) while the member is on active duty; and



(ii) while residing with the member, unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the Secretary concerned may by regulation prescribe; and

(B) the member is not occupying a housing facility under the jurisdiction of the Secretary concerned on the date of the death of the sole dependent.

(2) The continuation of the rate of an allowance under this subsection shall terminate upon the earlier of the following to occur:

(A) The day that is one year after the date of the death of the sole dependent.

(B) The permanent change of station, or permanent change of assignment with movement of personal property and household goods under section 453(c) of this title, of the member.

(n) MEMBERS PAYING CHILD SUPPORT.-(1) A member of a uniformed service with dependents may not be paid a basic allowance for housing at the with dependents rate solely by reason of the payment of child support by the member if-

(A) the member is assigned to a housing facility under the jurisdiction of a uniformed service; or

(B) the member is assigned to sea duty, and elects not to occupy assigned quarters for unaccompanied personnel, unless the member is in a pay grade above E-3.

(2) A member of a uniformed service assigned to quarters of the United States or a housing facility under the jurisdiction of a uniformed service who is not otherwise authorized a basic allowance for housing and who pays child support is entitled to the basic allowance for housing differential, except for months for which the amount payable for the child support is less than the rate of the differential. Payment of a basic allowance for housing differential does not affect any entitlement of the member to a partial allowance for quarters under subsection (n).

(3) The basic allowance for housing differential to which a member is entitled under paragraph (2) is the amount equal to the difference between-

(A) the rate of the basic allowance for quarters (with dependents) for the member's pay grade, as such rate was in effect on December 31, 1997, under this section (as in effect on that date); and

(B) the rate of the basic allowance for quarters (without dependents) for the member's pay grade, as such rate was in effect on December 31, 1997, under this section (as in effect on that date).

(4) Whenever the rates of basic pay for members of the uniformed services are increased, the monthly amount of the basic allowance for housing differential computed under paragraph (3) shall be increased by the average percentage increase in the rates of basic pay. The effective date of the increase shall be the same date as the effective date of the increase in the rates of basic pay.

(5) In the case of two members, who have one or more common dependents (and no others), who are not married to each other, and one of whom pays child support to the other, the amount of the basic allowance for housing paid to each member under this section shall be reduced in accordance with regulations prescribed by the Secretary of Defense. The total amount of the

basic allowances for housing paid to the two members may not exceed the sum of the amounts of the allowance to which each member would be otherwise entitled under this section.

(o) PARTIAL ALLOWANCE FOR MEMBERS WITHOUT DEPENDENTS.-(1) A member of a uniformed service without dependents who is not entitled to receive a basic allowance for housing under subsection (b), (c), or (d) is entitled to a partial basic allowance for housing at a rate determined by the Secretary of Defense under paragraph (2).

(2) The rate of the partial basic allowance for housing is the partial rate of the basic allowance for quarters for the member's pay grade as such partial rate was in effect on December 31, 1997, under section 1009(c)(2) of this title (as such section was in effect on such date).

(p) TREATMENT OF CERTAIN MOVES AS NOT BEING REASSIGNMENTS.-(1) In the case of a member who is assigned to duty at a location or under circumstances that make it necessary for the member to be reassigned under the conditions of low-cost or no-cost permanent change of station or permanent change of assignment, the member may be treated for the purposes of this section as if the member were not reassigned if the Secretary concerned determines that it would be inequitable to base the member's entitlement to, and amount of, a basic allowance for housing on the cost of housing in the area to which the member is reassigned.

(2)(A) In the case of a member without dependents who is assigned to a unit that undergoes a change of home port or a change of permanent duty station, if the Secretary concerned determines that it would be inequitable to base the member's entitlement to, and amount of, a basic allowance for housing on the new home port or permanent duty station, the Secretary concerned may—

(i) waive the requirement to base the member's entitlement to, and amount of, a basic allowance for housing on the new home port or permanent duty station member; and

(ii) treat that member for the purposes of this section as if the unit to which the member is assigned did not undergo such a change.

(B) The Secretary concerned may grant a waiver under subparagraph (A) to not more than 100 members in a calendar year.

(C) Not later than March 1 of each calendar year, the Secretary concerned shall provide a briefing to the Committees on Armed Services of the Senate and the House of Representatives on the use of the authority provided by subparagraph (A) during the preceding calendar year that includes—

(i) the number of members granted a waiver under subparagraph (A) during that year; and

(ii) for each such waiver, an identification of—

(I) the grade of the member;

(II) the home port or permanent duty station of the unit to which the member is assigned before the change described in subparagraph (A); and

(III) the new home port or permanent duty station of that unit.

(D) This paragraph shall cease to be effective on December 31, 2027.

(q) INFORMATION ON RIGHTS AND PROTECTIONS UNDER SERVICEMEMBERS CIVIL RELIEF ACT.- The Secretary concerned shall provide to each member of a uniformed service who receives a basic allowance for housing under this section information on the rights and protections available to such member under the Servicemembers Civil Relief Act (50 U.S.C. 3901 et seq.)-

- (1) when such member first receives such basic allowance for housing; and
- (2) each time such member receives a permanent change of station.

1 **SEC. \_\_. EXPANSION OF ACCRUAL FUNDING FOR ALL RETIREE HEALTH CARE.**

2 (a) IN GENERAL.—(1) Section 1111(a) of title 10, United States Code, is amended to read  
3 as follows:

4 “(a)(1) There is established on the books of the Treasury a fund to be known as the  
5 Department of Defense Military Retiree Health Care Fund (hereinafter in this chapter referred to  
6 as the ‘Fund’), which shall be administered by the Secretary of the Treasury. The Fund shall be  
7 used for the accumulation of funds in order to finance on an actuarially sound basis liabilities of  
8 the uniformed services under uniformed services retiree health care programs for eligible  
9 beneficiaries.

10 “(2)(A) The Fund referred to in paragraph (1) is the successor to the Medicare-Eligible  
11 Retiree Health Care Fund (hereinafter in this section referred to as the ‘MERHCF’) as it existed  
12 immediately prior to October 1, 2024. The MERHCF is reestablished as the Department of  
13 Defense Military Retiree Health Care Fund, without closure under chapter 15 of title 31.

14 “(B) All assets and liabilities of the MERHCF are assets and liabilities of the Fund. All  
15 actions taken with respect to the administration of the MERHCF that would have remained in  
16 effect on or after October 1, 2024, are applicable to the Fund.

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

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

23 (2) Section 1111(b) of such title is amended—

1 (A) by striking paragraph (3); and  
2 (B) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4),  
3 respectively.

4 (3) Section 1112 of such title is amended by adding at the end the following new  
5 paragraph:

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

9 (4) Section 1113 of such title is amended—

10 (A) in subsection (a)—

11 (i) by striking “and are medicare eligible”; and

12 (ii) by striking “who are medicare eligible”;

13 (B) in subsection (c)(1)—

14 (i) in the first sentence, by striking “who are medicare eligible”; and

15 (ii) in the second sentence, by striking the period at the end and inserting  
16 “and the Fund.”; and

17 (C) in subsection (d), in the second sentence, by striking “who are medicare  
18 eligible”.

19 (5) Section 1114(a) of such title is amended—

20 (A) in paragraph (1)—

21 (i) in the first sentence, by striking “Medicare-Eligible” and inserting  
22 “Military”.

23 (6) Section 1115 of such title is amended—

1 (A) in subsection (a)—

2 (i) by amending the first two sentences to read as follows: “The Board  
3 shall determine the amount that is the present value (as of October 1, 2024) of  
4 future benefits payable from the Fund that are attributable to service in the  
5 participating uniformed services performed before October 1, 2024 That amount,  
6 less the assets in the Fund as of October 1, 2024, is the original unfunded liability  
7 of the Fund.”; and

8 (ii) by adding at the end the following: “The Board may, if it determines it  
9 to be in the best interest of administration of the Fund, maintain in the  
10 amortization schedule a separate component for unfunded liabilities related to  
11 retiree health program beneficiaries who are ‘medicare-eligible’ persons entitled  
12 to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c  
13 et seq.)”; and

14 (B) in subsection (c)(2), by striking “for medicare eligible beneficiaries”.

15 (b) CONFORMING AMENDMENTS.—(1) The heading for chapter 56 of such title is  
16 amended to read as follows:

17 **“CHAPTER 56—DEPARTMENT OF DEFENSE MILITARY RETIREE**  
18 **HEALTH CARE FUND”.**

19 (2) The table of chapters at the beginning of subtitle A of such title, and at the beginning  
20 of part II of such subtitle, are amended by striking the item related to chapter 56 and inserting the  
21 following:

22 “56. Department of Defense Military Retiree Health Care Fund.....1111”.

23 (3) Section 506(a)(1) of title 14, United States Code, is amended—

- 1 (A) by striking “Medicare-eligible beneficiary” and inserting “beneficiary”; and  
2 (B) by striking “Medicare-Eligible Retiree” and inserting “Military Retiree”.
- 3 (c) EFFECTIVE DATE.—The amendments made by this section take effect October 1,  
4 2024.

### Section-by-Section Analysis

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

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

Consistent with the Board’s recommendation, this section would strike the term “medicare eligible retiree” where it appears and substitute “retiree.” It would also require a new valuation of future benefits payable from the Fund based on its expanded scope, which would result in a new amount as the unfunded liability of the Fund. This unfunded liability would be funded in the same way as it has been for medicare eligible retirees: an annual contribution by the Secretary of the Treasury of the amortized amount calculated by the Board of Actuaries. However, the amortization schedule could provide for separate components for unfunded liabilities prior to October 1, 2024, and those added on or after October 1, 2024.

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

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

	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>Appropriation</b>
Direct Care		-2,313	-2,410	-2,506	-2,605	0130
Private Sector Care		-9,143	-9,498	-9,828	-10,184	0130
Milpers, Army		-245	-256	-267	-279	2010
Milpers, Navy		-314	-329	-343	-358	1453
Milpers, AF		-299	-312	-326	-340	3500
MERHCF, MPA		3,762	3,943	4,132	4,330	1004
MERHCF, MPN		2,640	2,730	2,823	2,915	1000
MERHCF, MPMC		1,403	1,458	1,517	1,588	1001
MERHCF, MPAF		2,479	2,574	2,683	2,796	1007
MERHCF, SF		64	68	71	74	1010
MERHCF, RPA		319	334	350	367	1005
MERHCF, RPN		131	137	145	152	1002
MERHCF, RPMC		57	59	62	65	1003
MERHCF, RPAF		122	128	131	134	1008
MERHCF, NGPA		579	607	636	666	1006
MERHCF, NGPAF		293	305	314	327	1009
<b>Total</b>		-464	-463	-407	-351	

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

**TITLE 10, UNITED STATES CODE**

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

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

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

(2)(A) The Fund referred to in paragraph (1) is the successor to the Medicare-Eligible Retiree Health Care Fund (hereinafter in this section referred to as the "MERHCF") as it existed immediately prior to October 1, 2024. The MERHCF is reestablished as the Department of Defense Military Retiree Health Care Fund without closure under chapter 15 of title 31.



(B) All assets and liabilities of the MERHCF are assets and liabilities of the Fund. All actions taken with respect to the administration of the MERHCF that would have remained in effect on or after October 1, 2024, are applicable to the Fund.

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

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

(b) In this chapter:

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

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

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

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

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

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

## **§ 1112. Assets of Fund**

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

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

(2) Any amount appropriated to the Fund.

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

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

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

### **§ 1113. Payments from the Fund**

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

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

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

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

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

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

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

### **§ 1114. Board of Actuaries**

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

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

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

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

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

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

### **§ 1115. Determination of contributions to the Fund**

(a) The Board shall determine the amount that is the present value (as of October 1, ~~2002~~ 2024) of future benefits payable from the Fund that are attributable to service in the participating uniformed services performed before October 1, ~~2002~~ 2024. That amount, less the assets in the Fund as of October 1, 2024, is the original unfunded liability of the Fund. The Board shall determine the period of time over which the original unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original unfunded liability in accordance with such schedule shall be made as provided in section 1116 of this title. The Board may, if it determines it to be in the best interest of administration of the Fund, maintain in the amortization schedule a separate component for unfunded liabilities related to retiree health program beneficiaries who are "medicare-eligible" persons entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

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

(1) The product of--

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

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

(2) The product of--

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

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

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

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

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

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

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

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

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

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

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

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

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

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## TITLE 14, UNITED STATES CODE

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

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

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

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

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

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

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

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

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

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

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

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

1 **SEC. \_\_. EXTENSIONS, ADDITIONS, AND REVISIONS TO THE MILITARY LANDS**  
2 **WITHDRAWAL ACT RELATING TO BARRY M. GOLDWATER**  
3 **RANGE.**

4 (a) EXTENSION OF WITHDRAWAL AND GILA BEND ADDITION TO BARRY M. GOLDWATER  
5 RANGE.—Section 3031(a)(3) of the Military Lands Withdrawal Act of 1999 (Public Law 106–  
6 65; 113 Stat. 898) is amended—

7 (1) by striking “comprise approximately 1,650,200 acres” and inserting the  
8 following: “comprise—

9 “(A) approximately 1,656,491.94 acres”;

10 (2) by striking “ ‘Barry M. Goldwater Range Land Withdrawal’, dated June 17,  
11 1999” and inserting the following: “ ‘Barry M. Goldwater Range Requested Withdrawal  
12 Extension Map’, dated June 13, 2022”; and

13 (3) by striking “section 3033.” and inserting the following: “section 3033; and

14 “(B) approximately 2,365.89 acres of land in Maricopa County, Arizona,  
15 as generally depicted on the map entitled ‘Gila Bend Addition to Barry M.  
16 Goldwater Range’, dated July 5, 2022, and filed in accordance with section  
17 3033.”.

18 (b) RELATION TO OTHER WITHDRAWALS AND RESERVATIONS.—Section 3031(a) of such  
19 Act is amended—

20 (1) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7),  
21 and (8), respectively;

22 (2) in paragraph (5), as so redesignated, by inserting after “accepted by the  
23 Secretary of the Interior” the following: “, whichever is later”; and

1 (3) by inserting after paragraph (3) the following new paragraph (4):

2 “(4) RELATION TO OTHER WITHDRAWALS AND RESERVATIONS.—

3 “(A) The prior withdrawals and reservations identified as Public Land  
4 Order Nos. 56 and 97, and Executive Order Nos. 8892, 9104, and 9215, are  
5 hereby revoked in their entirety.

6 “(B) Upon the date of the enactment of this paragraph, the patented  
7 mining claim known as the Legal Tender, Mineral Survey No. 3445, located in  
8 Section 26, Township 15 South, Range 10 West, Gila Salt River Meridian,  
9 Arizona, is hereby transferred from the Secretary of the Air Force to the Secretary  
10 of the Interior, at no cost and in ‘as-is’ condition, and shall be managed by the  
11 United States Fish and Wildlife Service as a land parcel included within the  
12 Cabeza Prieta National Wildlife Refuge and in wilderness status as part of the  
13 Cabeza Prieta Wilderness.”.

14 (c) RENEWAL OF CURRENT WITHDRAWAL AND RESERVATION.—Section 3031(d) of such  
15 Act is amended by striking “25 years after the date of the enactment of this Act” and inserting  
16 “on October 5, 2049”.

17 (d) EXTENSION.— Section 3031(e) of such Act is amended—

18 (1) in the heading, by striking “INITIAL”; and

19 (2) in paragraph (1), by striking “initial”.

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

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

The Barry M. Goldwater Range (BMGR), located in southwestern Arizona, has served as a military training range since it was first established to train United States pilots and other



aircrew members during World War II. As the nation's fourth largest land-based range and the largest at which tactical aviation training is the predominant mission, the BMGR remains indispensable to the ability of the U.S. Armed Forces to produce the combat-ready aircrews needed to defend the nation and its interests. The range is also vital for preparing other personnel and units that perform a wide diversity of missions relevant to the air-ground battlefield and is routinely used for operational testing activities.

In December 2017, the Secretaries of the Air Force and Navy found that there is no foreseeable end for the continuing military need for the BMGR and provided notice of this need to Congress and the Secretary of the Interior. In December 2018, the Secretaries of the Air Force and Navy submitted an application for a withdrawal extension to the Secretary of the Interior. A companion land withdrawal application for an addition to BMGR—East of approximately 2,365.89 acres of public land was submitted by the Secretary of the Air Force to the Secretary of the Interior in April 2019.

Subsection (a) of this proposal updates the land description and map depicting BMGR to account for minor changes that have occurred since 1999. Subsection (a) also expands BMGR—East near the Gila Bend Air Force Auxiliary Airfield (AFAF) by withdrawing and reserving approximately 2,365.89 acres of public land (hereinafter, “the Gila Bend Addition”). The Gila Bend Addition would serve three distinct purposes. First, the quarter-section adjacent to Gila Bend AFAF (southwest quarter of Section 19) and the northwest quarter of Section 31 would enhance the security and safety of flight operations at Gila Bend AFAF. Second, the northwest quarter of Section 31 is needed because a portion is within Accident Potential Zone-1 for Runway 17/35 at Gila Bend AFAF. Third, the remaining parcels of the Gila Bend Addition underlie the R-2305 restricted airspace and would allow the Air Force to control land use and access so that surface activities in these parcels remain compatible with training operations in the overlying airspace.

Gila Bend AFAF is a unique support asset integral to the daily operation of the range. Used for practice touch-and-go landings, simulated flameout patterns, precautionary flameout patterns, and as emergency divert field, Gila Bend AFAF provides the facilities required to support maintenance and operations of both the airfield and BMGR-East.

Subsection (b) is a housekeeping provision. While working with the Air Force and Navy on the application to extend the BMGR withdrawal, the Bureau of Land Management identified some real property recordkeeping issues that would be good to address. The new subsection (a)(4)(A) of section 3031 of the Military Lands Withdrawal Act revokes historic Public Land Orders and Executive Orders from the World War II era that withdrew and reserved land in and around BMGR but serve no purpose in light of the current withdrawal. The new subsection (a)(4)(B) of such section 3031 transfers to U.S. Fish and Wildlife Service an old mining site currently owned by the Air Force and located in the Cabeza Prieta National Wildlife Refuge. The Air Force has no use for the site, which is located approximately 20 miles south of BMGR. Subsection (b)(2) extends the withdrawal of land withdrawn in 1986 but not included in the 1999 withdrawal until the relinquishment has been accepted by the Department of the Interior.

Subsection (c) extends the existing land withdrawal and reservation for the BMGR, which is due to expire on October 4, 2024, until October 5, 2049.

Subsection (d) retains the existing procedures for extending the withdrawal and reservation.

**Resource Information:** This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget. The renewal of the BMGR and the addition of the Gila Bend AFAF is accounted for within the Air Force’s FY 2024 President’s Budget request in various appropriations and levels of classification and cannot be isolated. A lapse in the BMGR land withdrawal would have far-reaching, substantial costs, including the movement of equipment and clean-up costs that would take significant resources away from critical mission priorities.

**Changes to Existing Law:** This proposal would amend the Military Lands Withdrawal Act of 1999 (Public Law 106–65; 113 Stat. 885) as follows:

**SEC. 3001. SHORT TITLE.**

This title may be cited as the “Military Lands Withdrawal Act of 1999”.

\* \* \* \* \*

**Subtitle B—Withdrawals in Arizona**

**SEC. 3031. BARRY M. GOLDWATER RANGE, ARIZONA.**

(a) WITHDRAWAL AND RESERVATION.—

\* \* \* \* \*

(3) LAND DESCRIPTION.—The public lands and interests in lands withdrawn and reserved by this subsection ~~comprise approximately~~ comprise—

(A) approximately 1,650,200 acres 1,656,491.94 acres of land in Maricopa, Pima, and Yuma Counties, Arizona, as generally depicted on the map entitled “Barry M. Goldwater Range Land Withdrawal”, dated June 17, 1999 “Barry M. Goldwater Range Requested Withdrawal Extension Map”, dated June 13, 2022, and filed in accordance with ~~section 3033~~ section 3033; and

(B) approximately 2,365.89 acres of land in Maricopa County, Arizona, as generally depicted on the map entitled “Gila Bend Addition to Barry M. Goldwater Range”, dated July 5, 2022, and filed in accordance with section 3033.

(4) RELATION TO OTHER WITHDRAWALS AND RESERVATIONS. —

(A) The prior withdrawals and reservations identified as Public Land Order Nos. 56 and 97, and Executive Order Nos. 8892, 9104, and 9215, are hereby revoked in their entirety.

(B) Upon the date of the enactment of this paragraph, the patented mining claim known as the Legal Tender, Mineral Survey No. 3445, located in Section 26, Township 15 South, Range 10 West, Gila Salt River Meridian, Arizona, is hereby transferred from the Secretary of the Air Force to the Secretary of the Interior, at no cost and in “as-is” condition, and shall be managed

by the United States Fish and Wildlife Service as a land parcel included within the Cabeza Prieta National Wildlife Refuge and in wilderness status as part of the Cabeza Prieta Wilderness.

(45) TERMINATION OF CURRENT WITHDRAWAL.—Except as otherwise provided in section 3032, as to the lands withdrawn by section 1(c) of the Military Lands Withdrawal Act of 1986 (Public Law 99–606), but not withdrawn for military purposes by this section, the withdrawal of such lands under that Act shall not terminate until after November 6, 2001, or until the relinquishment by the Secretary of the Air Force of such lands is accepted by the Secretary of the Interior, whichever is later. The withdrawal under that Act with respect to the Cabeza Prieta National Wildlife Refuge shall terminate on the date of the enactment of this Act.

(56) CHANGES IN USE.—The Secretary of the Navy and the Secretary of the Air Force shall consult with the Secretary of the Interior before using the lands withdrawn and reserved by this section for any purpose other than the purposes specified in paragraph (2).

(67) INDIAN TRIBES.—Nothing in this section shall be construed as altering any rights reserved for Indians by treaty or Federal law.

(78) STUDY.—(A) The Secretary of the Interior, in coordination with the Secretary of Defense, shall conduct a study of the lands referred to in subparagraph (C) that have important aboriginal, cultural, environmental, or archaeological significance in order to determine the appropriate method to manage and protect such lands following relinquishment of such lands by the Secretary of the Air Force. The study shall consider whether such lands can be better managed by the Federal Government or through conveyance of such lands to another appropriate entity.

(B) In carrying out the study required by subparagraph (A), the Secretary of the Interior shall work with the affected tribes and other Federal and State agencies having experience and knowledge of the matters covered by the study, including all applicable laws relating to the management of the resources referred to in subparagraph (A) on the lands referred to in that subparagraph.

\* \* \* \* \*

(d) DURATION OF WITHDRAWAL AND RESERVATIONS.—

(1) IN GENERAL.—Unless extended pursuant to subsection (e), the withdrawal and reservation of lands by this section shall terminate on October 5, 2049 ~~25 years after the date of the enactment of this Act~~, except as otherwise provided in subsection (f)(4).

(e) EXTENSION OF ~~INITIAL~~ WITHDRAWAL AND RESERVATION.—

(1) IN GENERAL.—Not later than three years before the termination date of the ~~initial~~ withdrawal and reservation of lands by this section, the Secretary of the Navy and the Secretary of the Air Force shall notify Congress and the Secretary of the Interior concerning whether the Navy or Air Force, as the case may be, will have a continuing military need, after such termination date, for all or any portion of such lands.

(2) DUTIES REGARDING CONTINUING MILITARY NEED.—(A) If the Secretary of the Navy or the Secretary of the Air Force determines that there will be a continuing military need for any lands withdrawn by this section, the Secretary of the Navy or the Secretary of the Air Force, as the case may be, shall—

(i) consult with the Secretary of the Interior concerning any adjustments to be made to the extent of, or to the allocation of management responsibility for, such lands; and

(ii) file with the Secretary of the Interior, not later than one year after the notice required by paragraph (1), an application for extension of the withdrawal and reservation of such lands.

(B) The general procedures of the Department of the Interior for processing Federal Land withdrawals notwithstanding, any application for extension under this paragraph shall be considered complete if it includes the following:

(i) The information required by section 3 of the Engle Act (43 U.S.C. 157), except that no information shall be required concerning the use or development of mineral, timber, or grazing resources unless, and to the extent, the Secretary of the Navy or the Secretary of the Air Force proposes to use or develop such resources during the period of extension.

(ii) A copy of the most recent public report prepared in accordance with subsection (b)(5).

(3) LEGISLATIVE PROPOSALS.—The Secretary of the Interior, the Secretary of the Navy, and the Secretary of the Air Force shall ensure that any legislative proposal for the extension of the withdrawal and reservation of lands under this section is submitted to Congress not later than May 1 of the year preceding the year in which the existing withdrawal and reservation would otherwise terminate under this section.

1 **SEC. \_\_\_\_ . GRADE DETERMINATIONS FOR REGULAR AND RESERVE ENLISTED**  
2 **MEMBERS.**

3 (a) ENLISTED GRADE DETERMINATIONS.—

4 (1) IN GENERAL.—Chapter 69 of title 10, United States Code, is amended by  
5 inserting after section 1370a the following new section:

6 **“§ 1370b. Enlisted grade determinations.**

7 “(a) RETIREMENT IN HIGHEST GRADE IN WHICH SERVED SATISFACTORILY.—

8 “(1) IN GENERAL.—Unless entitled to a different retired grade under some other  
9 provision of law, a Regular or Reserve enlisted member in the armed forces who retires  
10 under any provision of law other than chapter 61 of this title shall be retired in the highest  
11 grade in which such enlisted member is determined to have served satisfactorily at any  
12 time in the armed forces.

13 “(2) DETERMINATION OF SATISFACTORY SERVICE.—The determination of  
14 satisfactory service of an enlisted member in a grade under paragraph (1) shall be made  
15 by the Secretary of the military department concerned.

16 “(3) EFFECT OF MISCONDUCT IN LOWER GRADE IN DETERMINATION.—If the  
17 Secretary of a military department determines that an enlisted member committed  
18 misconduct in a lower grade than the retirement grade otherwise provided for the member  
19 by this section—

20 “(A) such Secretary may deem the member to have not served  
21 satisfactorily in any grade equal to or higher than such lower grade for purposes  
22 of determining the retirement grade of the member under this section; and

1                   “(B) the grade next lower to such lower grade shall be the retired grade of  
2                   the member under this section.

3                   “(b) CONDITIONAL RETIREMENT GRADE AND RETIREMENT FOR REGULAR OR RESERVE  
4 ENLISTED MEMBERS PENDING INVESTIGATION OR ADVERSE ACTION.—

5                   “(1) IN GENERAL.—When an enlisted member is under investigation for alleged  
6 misconduct or pending the disposition of an adverse personnel action at the time of  
7 retirement, the Secretary of the military department concerned may—

8                   “(A) conditionally determine the highest permanent grade of satisfactory  
9 service of the member pending completion of the investigation or resolution of the  
10 personnel action, as applicable; and

11                   “(B) retire the member in that conditional grade, subject to subsection (c).

12                   “(2) PROHIBITION ON DELEGATION.—The authority of the Secretary of a military  
13 department under paragraph (1) may not be delegated.

14                   “(c) FINAL RETIREMENT GRADE FOLLOWING RESOLUTION OF PENDING INVESTIGATION OR  
15 ADVERSE ACTION.—

16                   “(1) NO CHANGE FROM CONDITIONAL RETIREMENT GRADE.—If the resolution of  
17 an investigation or personnel action with respect to an enlisted member who has been  
18 retired in a conditional retirement grade pursuant to subsection (b) results in a  
19 determination that the conditional retirement grade in which the member was retired will  
20 not be changed, the conditional retirement grade of the member shall, subject to  
21 paragraph (3), be the final retired grade of the member.

22                   “(2) CHANGE FROM CONDITIONAL Retirement GRADE.—If the resolution of an  
23 investigation or personnel action with respect to an enlisted member who has been retired

1 in a conditional retirement grade pursuant to subsection (b) results in a determination that  
2 the conditional retirement grade in which the member was retired should be changed, the  
3 changed retirement grade shall be the final retired grade of the member under this  
4 section.

5 “(3) RECALCULATION OF RETIRED PAY.—

6 “(A) IN GENERAL.— If the final retired grade of an enlisted member is as a  
7 result of a change under paragraph (2), the retired pay of the member under  
8 chapter 71 or 1223 of this title shall be recalculated accordingly, with any  
9 modification of the retired pay of the enlisted member to go into effect as of the  
10 date of the retirement of the member.

11 “(B) PAYMENT OF HIGHER AMOUNT FOR PERIOD OF CONDITIONAL  
12 RETIREMENT GRADE.— If the recalculation of the retired pay of an enlisted  
13 member results in an increase in retired pay, the member shall be paid the amount  
14 by which such increased retired pay exceeded the amount of retired pay paid  
15 during the period beginning on the date of the retirement of the member in such  
16 conditional grade and ending on the effective date of the change of the member’s  
17 retired grade.

18 “(C) RECOUPMENT OF OVERAGE DURING PERIOD OF CONDITIONAL  
19 RETIREMENT GRADE.—If the recalculation of the retired pay of an enlisted  
20 member results in a decrease in retired pay, there shall be recouped from the  
21 member the amount by which the amount of retired pay paid the member for  
22 retirement in the member’s conditional grade exceeded such decreased retired pay  
23 during the period beginning on the date of the retirement of the member in such

1 conditional grade and ending on the effective date of the change of the member's  
2 retired grade.

3 “(d) FINALITY OF RETIRED GRADE DETERMINATIONS.—

4 “(1) IN GENERAL.—Except for a conditional determination authorized by  
5 subsection (b), a determination of the retired grade of an enlisted member pursuant to this  
6 section is administratively final on the day the member is retired, and may not be  
7 reopened, except as provided in paragraph (2).

8 “(2) REOPENING.—A final determination of the retired grade of an enlisted  
9 member may be reopened as follows

10 “(A) If the retirement or retired grade of the member was procured by  
11 fraud.

12 “(B) If substantial evidence comes to light after the retirement that could  
13 have led to a determination of a different retired grade under this section if known  
14 by competent authority at the time of retirement.

15 “(C) If a mistake of law or calculation was made in the determination of  
16 the retired grade.

17 “(D) If the Secretary of the military department determines, pursuant to  
18 regulations prescribed by the Secretary of Defense, that good cause exists to  
19 reopen the determination of retired grade.

20 “(3) NOTICE AND LIMITATIONS.—If a final determination of the retired grade of  
21 an enlisted member is reopened in accordance with paragraph (2), the Secretary of the  
22 military department—

23 “(A) shall notify the member of the reopening; and



1                   “(B) may not make an adverse determination on the retired grade of the  
2                   member until the member has had a reasonable opportunity to respond regarding  
3                   the basis for the reopening and the member’s retired grade.

4                   “(4) MANNER OF MAKING OF CHANGE.—If the retired grade of an enlisted  
5                   member is proposed to be changed through the reopening of the final determination of a  
6                   member’s retired grade under this subsection, the change in grade shall be made in  
7                   accordance with subsection (a) by the Secretary of the military department concerned,  
8                   who may not further delegate that authority.

9                   “(5) RECALCULATION OF RETIRED PAY.— If the final retired grade of an enlisted  
10                  member is changed through the reopening of the member’s retired grade under this  
11                  subsection, the retired pay of the enlisted member under chapter 71 or 1223 of this title  
12                  shall be recalculated. Any modification of the retired pay of an enlisted member as a  
13                  result of the change shall go into effect on the effective date of the change of the  
14                  member’s retired grade, and the member shall not be entitled or subject to any change in  
15                  the amount of retired pay for any period before such effective date.”.

16                  (2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 69  
17                  of such title is amended by inserting after the item relating to section 1370a the following  
18                  new item:

                  “1370b. Enlisted grade determinations.”.

19                  (b) CONFORMING AMENDMENTS TO RETIRED BASE PAY AND RETIRED GRADE

20 PROVISIONS.—

21                  (1) RETIRED BASE PAY.—Section 1407(f) of such title is amended—

22                                  (A) in the heading, by inserting after “AND OFFICERS” the following:

23                                  “AND ENLISTED MEMBERS”;

1 (B) in paragraph (2)(B)—

2 (i) by inserting “or enlisted member” after “in the case of an  
3 officer”; and

4 (B) by striking “1370 or 1370a of this title that the officer” and  
5 inserting “1370, 1370a, or 1370b of this title that the officer or enlisted  
6 member” .

7 (2) RETIRED GRADE.—Section 9341(b) of such title is amended—

8 (A) by inserting “the retirement grade of” after “provision of law,”; and

9 (B) by striking “retires in the regular or reserve grade that the member  
10 holds on the date of the member’s retirement.” and inserting “is determined under  
11 section 1370b of this title.”.

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

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

Generally, a Service member is entitled to retire in the final grade held at the time the member retires. Commissioned officers, however, are subject to a required determination as to whether they served satisfactorily in the final grade they held upon their retirement. This process is known as officer grade determination and is governed by sections 1370 and 1370a of title 10, United States Code, and corresponding Service regulations. If a retiring officer’s service in the highest grade held, or any lesser grade, is determined to be less than satisfactory, the officer may be retired at the grade last held satisfactorily. The officer grade determination process allows the Department to ensure officers are retired at a grade commensurate with their satisfactory service.

Currently, there is no corresponding “enlisted grade determination” process permissible under the law. Existing statutory provisions do not allow for a determination as to whether enlisted Service members served in their final grade satisfactorily.

This proposal would establish the statutory provisions required to authorize use of grade determinations to ensure enlisted Service members are retired in the grade in which they last served satisfactorily. This proposal would create a new provision in law, section 1370b of title 10, United States Code, which mirrors the statutory authority allowing for officer grade determinations. Additionally, this proposal would adjust retired pay statutes to allow corresponding retired pay adjustments that may be required in conjunction with an enlisted grade

determination. These new authorities would ensure the retired grade for enlisted Service members reflects their corresponding quality of service, similar to what currently exists for officer Service members.

**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 adds a new section to title 10, United States Code, as set forth in the legislative text above, and also would amend sections 1407 and 9341 of such title, as follows:

**§1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average**

(a) Use of Retired Pay Base in Computing Retired Pay.-The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service after September 7, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(b) High-Three Average.-Except as provided in subsection (f), the retired pay base or retainer pay base of a person under this section is the person's high-three average determined under subsection (c) or (d).

(c) Computation of High-Three Average for Members Entitled to Retired or Retainer Pay for Regular Service.-

(1) General rule.-The high-three average of a member entitled to retired or retainer pay under any provision of law other than section 1204 or 1205 or [section 12731 of this title](#) is the amount equal to-

(A) the total amount of monthly basic pay to which the member was entitled for the 36 months (whether or not consecutive) out of all the months of active service of the member for which the monthly basic pay to which the member was entitled was the highest, divided by

(B) 36.

(2) Special rule for short-term disability retirees.-In the case of a member who is entitled to retired pay under [section 1201 or 1202 of this title](#) and who has completed less than 36 months of active service, the member's high-three average (notwithstanding paragraph (1)) is the amount equal to-

(A) the total amount of basic pay to which the member was entitled during the period of the member's active service, divided by

(B) the number of months (including any fraction thereof) of the member's active service.

(3) Special Rule for Reserve Component Members.-In the case of a member of a reserve component who is entitled to retired pay under [section 1201 or 1202 of this title](#), the member's high-three average (notwithstanding paragraphs (1) and (2)) is computed in the same manner as prescribed in paragraphs (2) and (3) of subsection (d) for a member entitled to retired pay under [section 1204 or 1205 of this title](#).

(d) Computation of High-Three Average for Members and Former Members Entitled to Retired Pay for Nonregular Service.-

(1) Retired pay under [chapter 1223](#) .-The high-three average of a member or former member entitled to retired pay under [section 12731 of this title](#) is the amount equal to-

(A) the total amount of monthly basic pay to which the member or former member was entitled during the member or former member's high-36 months (or to which the member or former member would have been entitled if the member or former member had served on active duty during the entire period of the member or former member's high-36 months), divided by

(B) 36.

(2) Nonregular service disability retired pay.-The high-three average of a member entitled to retired pay under [section 1204 or 1205 of this title](#) is the amount equal to-

(A) the total amount of monthly basic pay to which the member was entitled during the member's high-36 months (or to which the member would have been entitled if the member had served on active duty during the entire period of the member's high-36 months), divided by

(B) 36.

(3) Special rule for short-term disability retirees.-In the case of a member who is entitled to retired pay under [section 1204 or 1205 of this title](#) and who was a member for less than 36 months before being retired under that section, the member's high-three average (notwithstanding paragraph (2)) is the amount equal to-

(A) the total amount of basic pay to which the member was entitled during the entire period the member was a member of a uniformed service before being so retired (or to which the member would have been entitled if the member had served on active duty during the entire period the member was a member of a uniformed service before being so retired), divided by

(B) the number of months (including any fraction thereof) which the member was a member before being so retired.

(4) High-36 months.-The high-36 months of a member or former member whose retired pay is covered by paragraph (1) or (2) are the 36 months (whether or not consecutive) out of all the months before the member or former member became entitled to retired pay or, in the case of a member or former member entitled to retired pay by reason of an election under [section 12741\(a\) of this title](#), before the member or former member completes the service required under such section 12741(a), for which the monthly basic pay to which the member or former member was entitled (or would have been entitled if serving on active duty during those months) was the highest. In the case of a former member, only months during which the former member was a member of a uniformed service may be used for purposes of the preceding sentence.

(e) Limitation for Enlisted Members Retiring With Less Than 30 Years' Service.-In the case of a member who is retired under [section 7314 or 9314 of this title](#) or who is transferred to the Fleet Reserve or Fleet Marine Corps Reserve under [section 8330 of this title](#), the member's high-36 average shall be computed using only rates of basic pay applicable to months of active duty of the member as an enlisted member.

(f) Exception for Enlisted Members Reduced in Grade and Officers and Enlisted Members Who Do Not Serve Satisfactorily in Highest Grade Held.-

(1) Computation based on pre-high-three rules.-In the case of a member or former member described in paragraph (2), the retired pay base or retainer pay base is determined

under section 1406 of this title in the same manner as if the member or former member first became a member of a uniformed service before September 8, 1980.

(2) Affected members.-A member or former member referred to in paragraph (1) is a member or former member who by reason of conduct occurring after October 30, 2000-

(A) in the case of a member retired in an enlisted grade or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, was at any time reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or an administrative action, unless the member was subsequently promoted to a higher enlisted grade or appointed to a commissioned or warrant grade; and

(B) in the case of an officer or enlisted member, is retired in a grade lower than the highest grade in which served pursuant to section 1370, ~~or 1370a~~, or 1370b of this title that the officer or enlisted member served on active duty satisfactorily in that grade.

(3) Special rule for enlisted members.-In the case of a member who retires within three years after having been reduced in grade as described in paragraph (2)(A), who retires in an enlisted grade that is lower than the grade from which reduced, and who would be subject to paragraph (1) but for a subsequent promotion to a higher enlisted grade or a subsequent appointment to a warrant or commissioned grade, the rates of basic pay used in the computation of the member's high-36 average for the period of the member's service in a grade higher than the grade in which retired shall be the rates of pay that would apply if the member had been serving for that period in the grade in which retired.

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#### **§9341. General rule**

(a)(1) The retired grade of a regular commissioned officer of the Air Force or the Space Force who retires other than for physical disability is determined under section 1370 of this title.

(2) The retired grade of a reserve commissioned officer of the Air Force or the Space Force who retires other than for physical disability is determined under section 1370a of this title.

(b) Unless entitled to a higher retired grade under some other provision of law, the retirement grade of a Regular or Reserve of the Air Force or a Regular or Reserve of the Space Force not covered by subsection (a) who retires other than for physical disability is determined under section 1370b of this title ~~retires in the regular or reserve grade that the member holds on the date of the member's retirement.~~

1 **SEC. \_\_. MODIFICATION OF AUTHORITY TO WAIVE REQUIREMENT TO BE A**  
2 **JOINT QUALIFIED OFFICER BEFORE APPOINTMENT TO THE**  
3 **GRADE OF BRIGADIER GENERAL OR REAR ADMIRAL (LOWER**  
4 **HALF).**

5 Section 619a(b)(3)(A) of title 10, United States Code, is amended by inserting  
6 “medical specialist officer,” after “medical service officer,”.

**Section-by-Section Analysis**

This proposal would amend 10 U.S.C. 619a to incorporate medical specialist officers into the list of medical specialties that are eligible to receive a waiver of the requirement for the joint qualification.<sup>1</sup>

Under current law, an officer may not be appointed to the grade of brigadier general or rear admiral (lower half) unless the officer has met the requirements for joint qualification. However, certain categories of officers are eligible to have this requirement waived by the Secretary of Defense. These categories of officers include doctors, nurses, biomedical science officers, dentists, veterinarians, chaplains, and judge advocates. Not included in the statutory scheme are medical specialist officers, which include dietitians, physical therapists, occupational therapists, physician assistants, and chiropractors. Similar to doctors and nurses (across all the military departments), these officers are often unable to meet the requirements for joint qualification because of the demands of their career model and limited availability of qualifying joint assignments within their respective specialty areas. Accordingly, the eligibility for a waiver should be expanded to include medical specialist officers, such as those officers assigned to the Army Medical Specialist Corps.

By expanding the scope of the statutory scheme to include medical specialist officers, we ensure flexibility with respect to the categories of medical officers that are eligible for consideration for promotion to brigadier general or rear admiral (lower half).

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

**Changes to Existing Law:** This proposal would make the following changes to section 619a of title 10, United States Code:

**§ 619a. Eligibility for consideration for promotion: designation as joint qualified officer required before promotion to general or flag grade; exceptions**

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<sup>1</sup> The term “medical specialist corps officers” includes all Army Medical Specialist Corps Officers (Occupational Therapists (AOC 65A); Physical Therapists (AOC 65B); Dietitian (AOC 65C); Physician Assistant (AOC 65D)).

(a) GENERAL RULE.—An officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may not be appointed to the grade of brigadier general or rear admiral (lower half) unless the officer has been designated as a joint qualified officer in accordance with section 661 of this title.

(b) EXCEPTIONS.—Subject to subsection (c), the Secretary of Defense may waive subsection (a) in the following circumstances:

(1) When necessary for the good of the service.

(2) In the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist.

(3) In the case of—

(A) a medical officer, dental officer, veterinary officer, medical service officer, medical specialist officer, nurse, or biomedical science officer;

(B) a chaplain; or

(C) a judge advocate.

(4) In the case of an officer selected by a promotion board for appointment to the grade of brigadier general or rear admiral (lower half) while serving in a joint duty assignment if the officer's total consecutive service in joint duty assignments is not less than two years and the officer has successfully completed a program of education described in subsections (b) and (c) of section 2155 of this title.

(5) In the case of an officer who served in a joint duty assignment that began before January 1, 1987, if the officer served in that assignment for a period of sufficient duration (which may not be less than 12 months) for the officer's service to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986.

(c) WAIVER TO BE INDIVIDUAL.—A waiver may be granted under subsection (b) only on a case-by-case basis in the case of an individual officer.

(d) SPECIAL RULE FOR GOOD-OF-THE-SERVICE WAIVER.—In the case of a waiver under subsection (b)(1), the Secretary shall provide that the first duty assignment as a general or flag officer of the officer for whom the waiver is granted shall be in a joint duty assignment.

(e) LIMITATION ON DELEGATION OF WAIVER AUTHORITY.—The authority of the Secretary of Defense to grant a waiver under subsection (b) (other than under paragraph (1) of that subsection) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. The regulations shall specifically identify for purposes of subsection (b)(2) those categories of officers for which selection for promotion to brigadier general or, in the case of the Navy, rear admiral (lower half) is based primarily upon scientific and technical qualifications for which joint requirements do not exist.

(g) LIMITATION FOR GENERAL AND FLAG OFFICERS PREVIOUSLY RECEIVING JOINT DUTY ASSIGNMENT WAIVER.—A general officer or flag officer who before January 1, 1999, received a waiver of subsection (a) under the authority of this subsection (as in effect before that date) may not be appointed to the grade of lieutenant general or vice admiral until the officer completes a full tour of duty in a joint duty assignment.



1 **SEC. \_\_\_. MODIFICATION OF LEASING AUTHORITY OF ARMED FORCES**  
2 **RETIREMENT HOME.**

3 (a) AGREEMENTS; APPROVAL AND NOTIFICATION.—Section 1511(i) of the Armed Forces  
4 Retirement Home Act of 1991 (24 U.S.C. 411(i)) is amended by adding at the end the following  
5 new paragraphs:

6 “(9) Before entering into a lease described in this subsection, the Chief Operating Officer  
7 may enter into an agreement with a potential lessee providing for a period of exclusivity, access,  
8 study, or for similar purposes. The agreement shall provide for the payment (in cash or in kind)  
9 by the potential lessee of consideration for the agreement unless the Chief Operating Officer  
10 determines that payment of consideration will not promote the purpose and financial stability of  
11 the Retirement Home or be in the public interest.

12 “(10) No further approval by the Secretary of Defense, nor notification or report to  
13 Congress, shall be required for subordinate leases under this subsection unless the facts or terms  
14 of the original lease have materially changed.”.

15 (b) ADMINISTRATION OF FUNDS.—Section 1511(i)(7) of the Armed Forces Retirement  
16 Home Act of 1991 (24 U.S.C. 411(i)) is amended—

17 (1) by inserting “an agreement with a potential lessee or” after “The proceeds  
18 from”; and

19 (2) by striking the period at the end and inserting “, to remain available for  
20 obligation and expenditure to finance expenses of the Retirement Home related to the  
21 formation and administration of agreements and leases entered into under the provisions  
22 of this subsection.”.

**[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 Armed Forces Retirement Home (AFRH) leasing authority under section 1511(i) of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 411(i)) as follows:

- It would specifically authorize agreements with potential lessees to enter into an exclusivity period, provide access to facilities, conduct studies, and similar purposes in exchange for payment in cash or in kind to the AFRH Trust Fund. Absent authorization, it is unclear whether AFRH can accept payment for these agreements since they are not leases, while providing something of clear value to a potential lessee.
- It would clarify requirements for the AFRH Chief Operating Officer to obtain Secretary of Defense approval to enter into a lease, and to notify Congress of the impending lease agreement, for subleases and parcel leases. The current statute does not distinguish, and the current master plan development project envisions a master lease followed by a succession of parcel and subleases as the project proceeds. Without clarifying this point, it could cause additional delay if Department of Defense approval and congressional notification periods are required for each subordinate lease, especially if the terms of the lease are materially unchanged from those approved and notified for the master lease, or legal uncertainty for AFRH and development partners if only master lease approval and notification has taken place and assumed unnecessary for subordinate leases.
- It would authorize the AFRH Chief Operating Officer to obligate and expend receipts to administer leases and agreements. As currently envisioned, AFRH's Washington campus master plan development project leases will eventually fall to AFRH to administer. Even without this responsibility, proceeding with the development project is likely to involve expenses that are specific to the income-generating real estate project and not connected to core AFRH operations or services to residents. Authorizing the obligation and expenditure of these funds would support this sort of financial operation without the delay that annual appropriations process might pose.

**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 would amend section 1511(i) of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 411(i)) as follows:

### **SEC. 1511. [24 U.S.C. 411] AUTHORITY TO LEASE NON-EXCESS PROPERTY.**

\* \* \* \* \*

(i) AUTHORITY TO LEASE NON-EXCESS PROPERTY.—

(1) Subject to the approval of the Secretary of Defense, whenever the Chief Operating Officer of the Armed Forces Retirement Home considers it advantageous to the Retirement Home, the Chief Operating Officer may lease to such lessee and upon such terms as the Chief Operating Officer considers will promote the purpose and financial stability of the Retirement Home or be in the public interest, real or personal property that is—

(A) under the control of the Retirement Home; and  
(B) not excess property (as defined by section 102 of title 40) subject to disposal under subsection (e)(3).

(2) A lease under this subsection-

(A) may not be for more than five years, unless the Chief Operating Officer determines that a lease for a longer period will promote the purpose and financial stability of the Retirement Home or be in the public interest;

(B) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(C) shall permit the Chief Operating Officer to revoke the lease at any time, unless the Chief Operating Officer determines that the omission of such a provision will promote the purpose and financial stability of the Retirement Home or be in the public interest;

(D) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Chief Operating Officer;

(E) may provide, notwithstanding section 1302 of title 40 or any other provision of law, for the alteration, repair, or improvement, by the lessee, of the property leased as the payment of part or all of the consideration for the lease; and

(F) may not provide for a leaseback by the Retirement Home with an annual payment in excess of \$100,000, or otherwise commit the Retirement Home or the Department of Defense to annual payments in excess of such amount.

(3) In addition to any in-kind consideration accepted under subparagraph (D) or (E) of paragraph (2), in-kind consideration accepted with respect to a lease under this subsection may include the following:

(A) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities of the Retirement Home.

(B) Construction of new facilities for the Retirement Home.

(C) Provision of facilities for use by the Retirement Home.

(D) Facilities operation support for the Retirement Home.

(E) Provision of such other services relating to activities that will occur on the leased property as the Chief Operating Officer considers appropriate.

(4) In-kind consideration under paragraph (3) may be accepted at any property or facilities of the Retirement Home that are selected for that purpose by the Chief Operating Officer.

(5) In the case of a lease for which all or part of the consideration proposed to be accepted under this subsection is in-kind consideration with a value in excess of \$500,000, the Chief Operating Officer may not enter into the lease until at least 30 days after the date on which a report on the facts of the lease is submitted to Congress. This paragraph does not apply to a lease covered by paragraph (6).

(6)(A) If a proposed lease under this subsection involves only personal property, the lease term exceeds one year, or the fair market value of the lease interest exceeds \$100,000, as determined by the Chief Operating Officer, the Chief Operating Officer shall use competitive procedures to select the lessee unless the Chief Operating Officer determines that—

(i) a public interest will be served as a result of the lease; and

(ii) the use of competitive procedures for the selection of certain lessees is unobtainable or not compatible with the public benefit served under clause (i).

(B) Not later than 45 days before entering into a lease described in subparagraph (A), the Chief Operating Officer shall submit to Congress written notice describing the terms of the proposed lease and-

(i) the competitive procedures used to select the lessee; or

(ii) in the case of a lease involving the public benefit exception authorized by subparagraph (A)(ii), a description of the public benefit to be served by the lease.

(7) The proceeds from an agreement with a potential lessee or the lease of property under this subsection shall be deposited in the Armed Forces Retirement Home Trust Fund, to remain available for obligation and expenditure to finance expenses of the Retirement Home related to the formation and administration of agreements and leases entered into under the provisions of this subsection.

(8) The interest of a lessee of property leased under this subsection may be taxed by State or local governments. A lease under this subsection shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

(9) Before entering into a lease described in this subsection, the Chief Operating Officer may enter into an agreement with a potential lessee providing for a period of exclusivity, access, study, or for similar purposes. The agreement shall provide for the payment (in cash or in kind) by the potential lessee of consideration for the agreement unless the Chief Operating Officer determines that payment of consideration will not promote the purpose and financial stability of the Retirement Home or be in the public interest.

(10) No further approval by the Secretary of Defense, nor notification or report to Congress, shall be required for subordinate leases under this subsection unless the facts or terms of the original lease have materially changed.

1 **SEC. \_\_\_. INCREASE IN APPROVAL AND NOTIFICATION THRESHOLDS FOR**  
2 **REPAIR PROJECTS.**

3 (a) APPROVAL THRESHOLD.—Subsection (b) of section 2811 of title 10, United States  
4 Code, is amended by striking “\$7,500,000” and inserting “\$15,000,000”.

5 (b) NOTIFICATION THRESHOLD.—Subsection (d) of such section is amended by striking  
6 “\$7,500,000” and inserting “\$15,000,000”.

**[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**

Repair authority provided in 10 U.S.C. 2811 requires the Secretary concerned to approve and notify congressional committees of repair projects costing more than \$7,500,000. This approval and notification threshold was established in 2004. Additionally, in the FY22 NDAA Congress signaled its level of oversight interest in FSRM projects through a new requirement in 10 U.S.C. 2851, *Supervision of military construction projects*, requiring the Department to post project award information for facility sustainment, restoration, and modernization (FSRM) projects with costs exceeding \$15,000,000--solicitation date, award date, contract recipient, contract award amount, project milestone schedule, and established completion.

Construction cost increases over the 18 years since 2004 have resulted in a much higher (double) number of repair projects which would have been below the approval and notification thresholds in 2004 but are now above those thresholds. Packaging, reviewing, staffing, approving, and notifying these repair projects results in substantially greater project execution timelines as well as increased workload for personnel already stretched with tackling a Department of the Air Force (DAF) \$33B deferred maintenance and repair backlog. The scope and level of work is essentially unchanged in these projects from 2004, but the inherent cost increases over time now require the additional approval steps in the same types of projects’ timelines.

Private sector and DoD cost resources indicate construction costs for similar work have more than doubled since 2004. The Turner Building Cost Index measures costs in the non-residential building construction market in the United States. Factors included to determine and track construction prices include: labor rates and productivity, material prices, and the competitive condition of the marketplace. Figure 1 (below) shows a 2004 index value of 655 and a 2022 index value of 1283. This shows a near double cost of construction. The DoD’s pricing guide shows a similar trend. Unified Facilities Criteria (UFC) 3-2701-01 *DoD Facilities Facility Pricing Guide* is the Department’s cost and pricing guide supporting facility planning, investment and analysis needs. In 2008, the cost to construct a multi-purpose admin facility was

\$205 per square foot. In 2022, that cost increased to \$503 per square foot, representing a 2.45 escalation.

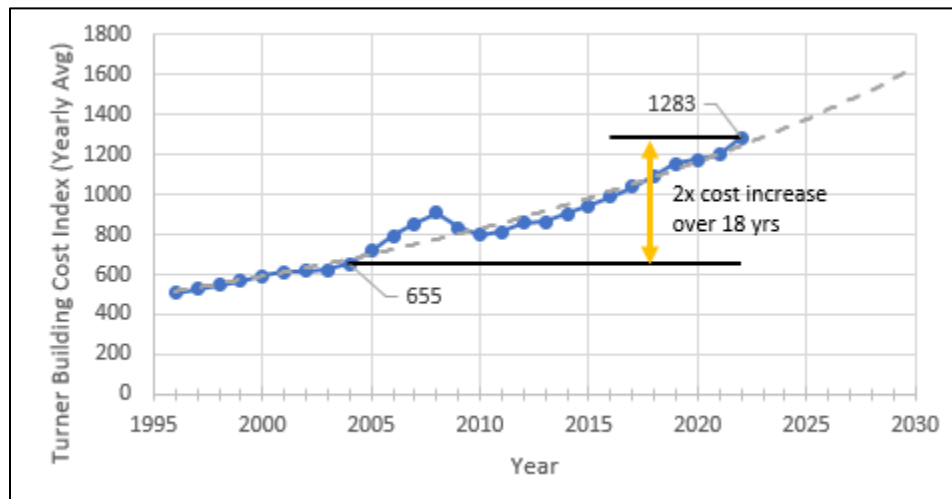


Figure 1 – Turner Building Cost Index 1996 – 2022

Increasing the approval and notification thresholds to \$15,000,000 makes the repair project oversight and visibility consistent with FSRM oversight in the recent change to 10 U.S.C. 2851 and also maintains similar visibility by congressional committees into the repair program as was provided in 2004. The raised approval and notification thresholds would reduce the ever-increasing workload by approximately 1,515 DAF manhours annually for all involved (from installation level up to Headquarter Air Force) by bringing the number of approval and notification packages back in line with levels established in 2004. In Fiscal Year (FY) 22 the DAF staffed 48 repair packages for SAF approval above the \$7,500,000 threshold. By increasing the threshold to \$15,000,000, the number of packages reviewed by SAF/IEE would have been reduced to 23. This package reduction of over 50% correlates well with the construction cost doubling since 2004 without a threshold increase. These additional project reviews delay project execution three to six months thereby reducing the buying power due to rising material and labor costs and inflation and missing timely execution for important missions and quality of life for military members and their families. NOTE: Projects costing below the new thresholds will still require oversight and approval within the DAF, just at lower intermediate headquarter levels than at the Secretariat.

**Resource Information:** This proposal has no impact on the use of resources requested within the FY 2024 President’s Budget request. This proposal only affects which projects require higher level approval and which will be notified to Congressional committees. Although the proposed thresholds increase to \$15,000,000, construction costs have also doubled and therefore this proposal still ensures the same level of congressional oversight and notification as the established 2004 law. It does not affect which or how many projects will be executed.

**Changes to Existing Law:** This proposal would amend section 2811 of title 10, United States Code, as follows:

## **§2811. Repair of facilities**

(a) **REPAIRS USING OPERATIONS AND MAINTENANCE FUNDS.**—Using funds available to the Secretary concerned for operation and maintenance, the Secretary concerned may carry out repair projects for an entire single-purpose facility or one or more functional areas of a multipurpose facility.

(b) **APPROVAL REQUIRED FOR MAJOR REPAIRS.**—A repair project costing more than ~~7,500,000~~ \$15,000,000 may not be carried out under this section unless approved in advance by the Secretary concerned. In determining the total cost of a repair project, the Secretary shall include all phases of a multi-year repair project to a single facility. In considering a repair project for approval, the Secretary shall ensure that the project is consistent with force structure plans, that repair of the facility is more cost effective than replacement, and that the project is an appropriate use of operation and maintenance funds.

(c) **PROHIBITION ON NEW CONSTRUCTION OR ADDITIONS.**—Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.

(d) **CONGRESSIONAL NOTIFICATION.**—When a decision is made to carry out a repair project under this section with an estimated cost in excess of ~~7,500,000~~, \$15,000,000, the Secretary concerned shall submit to the appropriate committees of Congress a report containing—

(1) the justification for the repair project and the current estimate of the cost of the project, including, in the case of a multi-year repair project to a single facility, the total cost of all phases of the project;

(2) if the current estimate of the cost of the repair project exceeds 75 percent of the estimated cost of a military construction project to replace the facility, an explanation of the reasons why replacement of the facility is not in the best interest of the Government; and

(3) a description of the elements of military construction, including the elements specified in section 2802(b) of this title, incorporated into the repair project.

(e) **REPAIR PROJECT DEFINED.**—In this section, the term “repair project” means a project to restore a real property facility, system, or component to such a condition that it may effectively be used for its designated functional purpose.

1 **SEC. \_\_\_\_ . PARTICIPATION IN NATO DEFENSE INNOVATION ACCELERATOR**  
2 **FOR THE NORTH ATLANTIC.**

3 Subchapter II of chapter 138 of title 10, United States Code, is amended by adding at the  
4 end the following new section:

5 **“§2350s. Authority to participate in NATO Defense Innovation Accelerator for the North**  
6 **Atlantic Initiative**

7 **“(a) AUTHORITY TO CONTRIBUTE TO NATO DIANA JOINT FUNDED RESEARCH AND**  
8 **DEVELOPMENT INITIATIVE.—**The Secretary of Defense may make contributions for the United  
9 States share of the costs of NATO DIANA and successor initiatives.

10 **“(b) PROJECT FUNDING.—**Amounts authorized to be appropriated to the Department of  
11 Defense shall be available to carry out the purpose of this section.

12 **“(c) APPLICATION OF ARMS EXPORT CONTROL ACT.—**Any transfer of defense articles or  
13 defense services to a member country of NATO as an in kind contribution under subsection (a)  
14 shall be carried out in accordance with this chapter and the Arms Export Control Act (22 U.S.C.  
15 2751 et seq.).

16 **“(d) DEFINITIONS.—**In this section:

17 **“(1) The term ‘NATO’ means the North Atlantic Treaty Organization.**

18 **“(2) The term ‘NATO DIANA’ means the NATO-chartered Defense Innovation**  
19 **Accelerator for the North Atlantic initiative aimed at accelerating emerging and**  
20 **disruptive technological solutions, including technologies primarily geared for**  
21 **commercial markets that also have potential defense and security applications to critical**  
22 **transatlantic defense and security challenges.**

23 **“(e) TERMINATION.—**The authority provided under this section shall terminate on  
24 December 31, 2034.”.

**Section-by-Section Analysis**



This proposal would give the U.S. Government the authority to contribute to the North Atlantic Treaty Organization (NATO) Defense Innovation Accelerator for the North Atlantic (DIANA) and any successor initiatives. DIANA is a NATO joint-funded program, which is a program within NATO in which Allies decide they will participate but which will not be funded through NATO common funding, to which all Allies already contribute. Allowing the U.S. Department of Defense (DoD) to participate in the NATO DIANA initiative would support implementation of some important elements of the NATO agenda.

Common funds are typically used to support resourcing of NATO bodies, NATO organic capabilities, or capabilities available for use by all Allies to support NATO operations, missions, and activities. Joint funding is the preferred funding method for certain NATO programs such as DIANA, established by a charter agreed to by the North Atlantic Council, that produce multinational capability outcomes.

DIANA is an initiative that NATO Heads of State and Governments endorsed at the Brussels 2021 and the Madrid 2022 NATO Summits and is part of the NATO 2030 agenda to ensure the Alliance remains relevant and fit for purpose. Absent new statutory authority enacted as a result of this critical legislative proposal, the United States will not be able to participate in DIANA or other vital successor jointly funded NATO research and development programs or activities.

**Resource Information:** The resources affected by this proposal are reflected in the table below and are included within the Fiscal Year (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)
North Atlantic Treaty Organization Defense Innovation Accelerator for the North Atlantic	\$12.5	\$8.8	\$8.8	\$8.8	\$8.8	Operation and Maintenance, Army	04	441: International Military Headquarters	
	<b>\$12.5</b>	<b>\$8.8</b>	<b>\$8.8</b>	<b>\$8.8</b>	<b>\$8.8</b>				
<b>Total</b>	<b>\$12.5</b>	<b>\$8.8</b>	<b>\$8.8</b>	<b>\$8.8</b>	<b>\$8.8</b>				

**Changes to Existing Law:** This proposal adds new section 2350s to chapter 138 of title 10, United States Code, as set forth in the legislative text above.

1 **SEC. \_\_\_. PERMANENT AUTHORITY FOR NONCOMPETITIVE APPOINTMENTS**  
2 **OF MILITARY SPOUSES BY FEDERAL AGENCIES.**

3 Section 573(e) of the John S. McCain National Defense Authorization Act for Fiscal  
4 Year 2019 (Public Law 115–232; 5 U.S.C. 3330d note) is repealed.

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

**Section-by-Section Analysis**

This proposal would remove the sunset date in section 573 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019, which temporarily amended section 3330d of title 5, United States Code (U.S.C.), to authorize Federal agencies to noncompetitively appoint spouses of active duty Service members regardless of whether the spouse is geographically relocating due to the Service member receiving military reassignment orders. When this temporary amendment expires on December 31, 2028, the prior provisions of section 3330d of title 5, U.S.C., which limited such appointments to relocating spouses and imposed geographic and other restrictions on use of the authority, will be restored or revived as if section 573 had not been enacted. Removing the sunset date would make the authority provided by section 573 permanent.

A permanent authority to noncompetitively appoint spouses of active duty Service members supports military retention efforts. This authority not only increases the number of military spouses eligible for such appointments, it also allows relocating spouses to apply for vacancies in advance of the Service member receiving orders for an anticipated move and assists spouses of active duty Service members who are deployed or serving on an unaccompanied tour overseas to seek federal employment during the separation. Importantly, the authority assists military spouses to pursue not just a job, but a career with the Federal government, while supporting the career of the Service member. Finally, it streamlines the evaluation criteria used by human resources officials to establish eligibility to use this noncompetitive appointing authority, making it more easily used by Federal agencies to support military spouse employment consistent with Executive Order 13832, “Enhancing Noncompetitive Civil Service Appointments of Military Spouses,” May 9, 2018. Although DoD is unaware of the extent of its use by other agencies, the hiring authority is frequently used in DoD to quickly bring talented military spouses into vacant positions. In FY 2021, the Department of Defense (DoD) used this authority to hire 2,364 military spouses. In the first half of FY 2022, DoD has used this authority to hire 1,047 military spouse and expects this number to significantly increase when large numbers of military personnel relocate during the summer.

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

**Changes to Existing Law:** This proposal would amend section 573 of the John S. McCain

National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 5 U.S.C. 3330d note) as follows:

**SEC. 573. TEMPORARY EXPANSION OF AUTHORITY FOR NONCOMPETITIVE APPOINTMENTS OF MILITARY SPOUSES BY FEDERAL AGENCIES.**

(a) EXPANSION TO INCLUDE ALL SPOUSES OF MEMBERS OF THE ARMED FORCES ON ACTIVE DUTY.—Section 3330d of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraphs (3), (4), and (5); and

(B) by redesignating paragraph (6) as paragraph (3);

(2) by striking subsections (b) and (c) and inserting the following new subsection

(b):

“(b) APPOINTMENT AUTHORITY.—The head of an agency may appoint noncompetitively—

“(1) a spouse of a member of the Armed Forces on active duty; or

“(2) a spouse of a disabled or deceased member of the Armed Forces.”;

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

(4) in subsection (c), as so redesignated, by striking “subsection (a)(6)” in paragraph (1) and inserting “subsection (a)(3)”.

(b) Clerical Amendment.—The table of sections at the beginning of chapter 33 of such title is amended by striking the item relating to section 3330d and inserting the following new item:

“3330d. Appointment of military spouses.”.

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

**“§ 3330d. Appointment of military spouses”.**

(d) [Repealed]

~~(e) SUNSET.—Effective on December 31, 2028—~~

~~(1) the authority provided by this section, and the amendments made by this section, shall expire; and~~

~~(2) the provisions of section 3330d of title 5, United States Code, amended or repealed by such section are restored or revived as if such section had not been enacted.~~

1 **SEC. \_\_\_\_ . PERMANENT MODIFICATION TO THE ARMY NATIONAL GUARD AND**  
2 **AIR NATIONAL GUARD INACTIVE NATIONAL GUARD STATUTE**

3 Section 303 of title 32, United States Code, is amended by inserting after subsection (c)  
4 the following new subsections:

5 “(d) ARMY NATIONAL GUARD.—Under regulations prescribed by the Secretary of the  
6 Army—

7 “(1) an officer of the Army National Guard who fills a vacancy in a federally  
8 recognized unit of the Army National Guard may be transferred from the active Army  
9 National Guard to the inactive Army National Guard;

10 “(2) an officer of the Army National Guard transferred to the inactive Army  
11 National Guard pursuant to paragraph (1) may be transferred from the inactive Army  
12 National Guard to the active Army National Guard to fill a vacancy in a federally  
13 recognized unit;

14 “(3) a warrant officer of the Army National Guard who fills a vacancy in a  
15 federally recognized unit of the Army National Guard may be transferred from the active  
16 Army National Guard to the inactive Army National Guard; and

17 “(4) a warrant officer of the Army National Guard transferred to the inactive  
18 Army National Guard pursuant to paragraph (1) may be transferred from the inactive  
19 Army National Guard to the active Army National Guard to fill a vacancy in a federally  
20 recognized unit.

21 “(e) AIR NATIONAL GUARD.—Under regulations prescribed by the Secretary of the Air  
22 Force—

1           “(1) an officer of the Air National Guard who fills a vacancy in a federally recognized  
2 unit of the Air National Guard may be transferred from the active Air National Guard to the  
3 inactive Air National Guard; and

4           “(2) an officer of the Air National Guard transferred to the inactive Air National  
5 Guard pursuant to paragraph (1) may be transferred from the inactive Air National Guard to the  
6 active Air National Guard to fill a vacancy in a federally recognized unit.”.

**[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 proposed legislative provision will provide a mechanism to retain quality commissioned officers and warrant officers to maintain increased levels of personnel readiness in the National Guard (NG) and provide for more effective and efficient use of force structure in an era of constrained resources. Currently, section 303 of title 32, United States Code, authorizes only enlisted personnel to transfer from the Selected Reserve to the Inactive National Guard (ING). Commissioned and warrant officers are not authorized to be transferred from active status in the Selected Reserve to the ING, part of the Ready Reserves. A change in statute is required to implement policy changes to the current law governing the ING.

The ING currently provides options for enlisted Service members to take a career intermission based on personal life events without separating from the service. However, this statute does not currently allow commissioned or warrant officers to enter the ING.

Under current statutes, States have no options outside of losing valuable mobilization assets to the Individual Ready Reserves if an officer requires a mid-career break for personal or professional reasons.

This authority could also be used to transfer officers who are pending "Withdraw of Federal Recognition" (WOFR) for misconduct or other administrative reasons into the ING. Under the current WOFR process, these officers can still attend monthly drills with their unit, resulting in disruption to training and affecting morale.

This authorization to transfer officers to the ING will provide enhanced career options for commissioned officers who require or desire to take a career intermission. This allows officers to take a mid-career break in service to pursue activities inconsistent with the demands of drilling status and remain productively affiliated with the NG. This enhances the long-term retention of officers in the Selected Reserve. Additionally, retaining these trained and qualified officers reduces the expense of training replacement officers if those officers opt to separate from service instead.

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

**Changes to Existing Law:** This proposal would amend section 303 of title 32, United States Code, as follows:

**32 U.S. Code § 303 - Active and inactive enlistments and transfers**

(a) Under regulations to be prescribed by the Secretary of the Army, a person qualified for enlistment in the active Army National Guard may be enlisted in the inactive Army National Guard for a single term of one or three years. Under regulations prescribed by the Secretary of the Air Force, a person qualified for enlistment in the active Air National Guard may be enlisted in the inactive Air National Guard for a single term of one or three years.

(b) Under such regulations as the Secretary of the Army may prescribe, an enlisted member of the active Army National Guard, not formerly enlisted in the inactive Army National Guard, may be transferred to the inactive Army National Guard. Under such regulations as the Secretary of the Air Force may prescribe, an enlisted member of the active Air National Guard, not formerly enlisted in the inactive Air National Guard, may be transferred to the inactive Air National Guard. Under such regulations as the Secretary concerned may prescribe, a person enlisted in or transferred to the inactive Army National Guard or the inactive Air National Guard may be transferred to the active Army National Guard or the active Air National Guard, as the case may be.

(c) In time of peace, no enlisted member may be required to serve for a period longer than that for which he enlisted in the active or inactive National Guard.

(d) ARMY NATIONAL GUARD. Under regulations prescribed by the Secretary of the Army—

(1) an officer of the Army National Guard who fills a vacancy in a federally recognized unit of the Army National Guard may be transferred from the active Army National Guard to the inactive Army National Guard;

(2) an officer of the Army National Guard transferred to the inactive Army National Guard pursuant to paragraph (1) may be transferred from the inactive Army National Guard to the active Army National Guard to fill a vacancy in a federally recognized unit;

(3) a warrant officer of the Army National Guard who fills a vacancy in a federally recognized unit of the Army National Guard may be transferred from the active Army National Guard to the inactive Army National Guard; and

(4) a warrant officer of the Army National Guard transferred to the inactive Army National Guard pursuant to paragraph (1) may be transferred from the inactive Army National Guard to the active Army National Guard to fill a vacancy in a federally recognized unit.

(e) AIR NATIONAL GUARD. – Under regulations prescribed by the Secretary of the Air Force—

(1) an officer of the Air National Guard who fills a vacancy in a federally recognized unit of the Air National Guard may be transferred from the active Air National Guard to the inactive Air National Guard; and

(2) an officer of the Air National Guard transferred to the inactive Air National Guard pursuant to paragraph (1) may be transferred from the inactive Air National Guard to the active Air National Guard to fill a vacancy in a federally recognized unit.

1 **SEC. \_\_\_\_ . POSTURING THE DEFENSE PRODUCTION ACT TO RESPOND TO**  
2 **INCREASING REQUIREMENTS**

3 (a) REPEAL OF FUND BALANCE LIMITATION.— Section 304 of the Defense Production Act  
4 of 1950 (50 U.S.C. 4534) is amended by striking subsection (e).

5 (b) AMENDMENT TO DEFINITION OF DOMESTIC SOURCE FOR TITLE III.— Section 702(7) of  
6 such Act (50 U.S.C. 4552(7)) is amended—

7 (1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii),  
8 respectively;

9 (2) by striking “The term” and inserting “(A) IN GENERAL.—Except as provided  
10 in subparagraph (B), the term”; and

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

12 “(B) DOMESTIC SOURCE FOR TITLE III.—For purposes of title III, the term  
13 ‘domestic source’ has the meaning provided in subparagraph (A), except that  
14 clause (i) of such subparagraph shall be applied by substituting ‘United States, the  
15 United Kingdom of Great Britain and Northern Ireland, Australia, or Canada’ for  
16 ‘United States or Canada’.”.

17 (c) DESIGNATION OF SECRETARY OF THE AIR FORCE AS A DEPARTMENT OF DEFENSE  
18 EXECUTIVE AGENT—

19 (1) DESIGNATION.—The Secretary of the Air Force shall serve as a Department of  
20 Defense Executive Agent for the program carried out under title III of the Defense  
21 Production Act of 1950 (50 U.S.C. et seq.). The Department of Defense Directive  
22 4400.01E, entitled “Defense Production Act Programs” and dated October 12, 2001, shall  
23 be updated accordingly.



1 (2) REPEAL OF SUPERSEDED PROVISION; CONFORMING AMENDMENT.—

2 (A) Section 1792 of the John S. McCain National Defense Authorization  
3 Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2238; 50 U.S.C. 4531  
4 note) is hereby repealed.

5 (B) Section 226(e) of the National Defense Authorization Act for Fiscal  
6 Year 2018 (Public Law 115–91; 131 Stat. 1335) is amended—

7 (i) by striking “or section 1792 of the John S. McCain National  
8 Defense Authorization Act for Fiscal Year 2019 (50 U.S.C. 4531 note)”;  
9 and

10 (ii) by striking “to implement Defense Production Act transactions  
11 entered into under the authority of sections 4021, 4022, and 4023 of title  
12 10, United States Code” and inserting “for the program carried out under  
13 title III of the Defense Production Act of 1950 (50 U.S.C. et seq.)”.

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

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

The Defense Production Act of 1950 (DPA) provides the President with the authority to create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense. In an effort to broaden the impact of the DPA, parts of the U.S. Code must be updated to reflect the current national security priorities and advance an agile program. By removing key barriers to the execution of DPA authorities, the industrial base will be better positioned to provide the DoD with critical technology, resulting in increased industrial base readiness and lethality. In addressing the statutory hurdles that limit the DPA, the program will be able to achieve its full potential and create a greater impact.

**Section 304(e) [50 U.S.C. 4534(e)]** Removing this limitation ensures that the DPA Title III Program will not be penalized for increased appropriations. As the DPA authorities are increasingly leveraged to respond to the needs of other agencies as well as the most critical national defense requirements, the balance of the DPA Fund is anticipated to rise accordingly. While the DPA Title III Program always pursues the most expedient path to effort execution, some acquisition or mitigation strategies cannot be completed in the span of a year. As such, the

law should be amended to allow for an increased balance so that funds that are appropriated or transferred into the DPA Fund are not returned to the Treasury and are allowed to be utilized for their intended purposes over a period of time.

**Section 702(7)(A) [50 U.S.C. 4552(7)(A)]** The DPA currently defines the Defense Industrial Base as “domestic sources which are providing, or which would be reasonably expected to provide, materials or services to meet national defense requirements during peacetime, national emergency, or war.” (50 U.S.C. 4552(6)). The DPA further defines a domestic source as:

[A] business concern... that performs in the United States or Canada substantially all of the research and development, engineering, manufacturing, and production activities required of such business concern under a contract with the United States relating to a critical component or a critical technology item. (50 U.S.C. 4552(7))

This definition unnecessarily constrains select DPA authorities and limits their abilities to ensure a robust industrial base through use of Title III. Adopting a definition specific to Title III that includes the nation’s closest allies will aid the DPA Title III Program in its mission to ensure the timely availability of essential industrial resources to support national defense and homeland security requirements. The DPA Title III Program will be able to engage with companies in the third and fourth tiers of supply chains and exercise larger control over supply chains as a whole.

This change in legislation will bring the DPA in closer alignment with the National Technology and Industrial Base (NTIB). Section 881 of the 2017 National Defense Authorization Act (Public Law 114–328) expanded the definition of the NTIB from the United States and Canada to the United States, the United Kingdom of Great Britain and Northern Ireland, and Australia. The reason behind this expansion was to allow the U.S. Government to leverage the resources of its closest allies to enrich U.S. manufacturing and industrial base capabilities and increase the nation’s advantage in an environment of great competition. This same reasoning applies to the proposed change to the DPA.

**Section 301 note [Section 1792 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2238; 50 U.S.C. 4531 note)]** The designation of the Secretary of the Air Force as the sole and exclusive Department of Defense executive agent for the DPA Title III program unnecessarily constrains the ability of the program to execute efforts in support of national security requirements. The increased appropriations to the program requires DoD to utilize all available contracting mechanisms to expediently obligate funds. By changing the designation of the Secretary of the Air Force as “the sole and exclusive Department of Defense executive agent” to “a Department of Defense executive agent” the DPA Title III program will be able to leverage additional contracting resources when necessary without having to undertake laborious and time-consuming delegation activities.

**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. This proposal has budgetary impact because these statutory changes will impact the ability of the DPA Title III program to rapidly execute the below appropriations.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Defense Production Act	968.605	767.807	556.484	567.059	325.857	Defense Production Act Purchases	01	Title III	0902199D8Z
Total	968.605	767.807	556.484	567.059	325.857				

**Changes to Existing Law:** This proposal would amend sections 304 and 702 of the Defense Production Act of 1950 (50 U.S.C. 4534 and 4552), section 1792 of Public Law 115–232 (50 U.S.C. 4531 note), and section 226 of Public Law 115–91 as follows:

**SEC. 304 (50 U.S.C. 4534). Defense Production Act Fund**

**(a) ESTABLISHMENT OF THE FUND**

There is established in the Treasury of the United States a separate fund to be known as the “Defense Production Act Fund” (in this section referred to as the “Fund”).

**(b) MONEYS IN THE FUND**

There shall be credited to the Fund—

- (1) all moneys appropriated for the Fund, as authorized by section 711 [4561]; and
- (2) all moneys received by the Fund on transactions entered into pursuant to section 303 [4533].

**(c) USE OF FUND**

The Fund shall be available to carry out the provision and purposes of this title, subject to the limitations set forth in this Act and in appropriations Acts.

**(d) DURATION OF FUND**

Moneys in the Fund shall remain available until expended.

**~~(e) FUND BALANCE~~**

~~The Fund balance at the close of each fiscal year shall not exceed \$750,000,000, excluding any moneys appropriated to the Fund during that fiscal year or obligated funds. If, at the close of any fiscal year, the Fund balance exceeds \$750,000,000, the amount in excess of \$750,000,000 shall be paid into the general fund of the Treasury.~~

**(f) FUND MANAGER**

The President shall designate a Fund manager. The duties of the Fund manager shall include—

- (1) determining the liability of the Fund in accordance with subsection (g);
- (2) ensuring the visibility and accountability of transactions engaged in through the Fund;
- and
- (3) reporting to the Congress each year regarding activities of the Fund during the previous fiscal year.

**(g) LIABILITIES AGAINST FUND**

When any agreement entered into pursuant to this title after December 31, 1991, imposes any contingent liability upon the United States, such liability shall be considered an obligation against the Fund.

\* \* \* \* \*

**SEC. 702 (50 U.S.C. 4552). Definitions**

For the purposes of this Act, the following definitions shall apply:

**(1) CRITICAL COMPONENT**

The term “critical component” includes such components, subsystems, systems, and related special tooling and test equipment essential to production, repair, maintenance, or operation of weapon systems or other items of equipment identified by the President as being essential to the execution of the national security strategy of the United States. Components identified as critical by a National Security Assessment conducted pursuant to section 113(i) of title 10 or by a Presidential determination as a result of a petition filed under section 232 of the Trade Expansion Act of 1962 [19 U.S.C. 1862] shall be designated as critical components for purposes of this Act, unless the President determines that the designation is unwarranted.

**(2) CRITICAL INFRASTRUCTURE**

The term “critical infrastructure” means any systems and assets, whether physical or cyber-based so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

**(3) CRITICAL TECHNOLOGY**

The term “critical technology” includes any technology designated by the President to be essential to the national defense.

**(4) CRITICAL TECHNOLOGY ITEM**

The term “critical technology item” means materials directly employing, derived from, or utilizing a critical technology.

**(5) DEFENSE CONTRACTOR**

The term “defense contractor” means any person who enters into a contract with the United States—

(A) to furnish materials, industrial resources, or a critical technology for the national defense; or

(B) to perform services for the national defense.

**(6) DOMESTIC INDUSTRIAL BASE**

The term “domestic industrial base” means domestic sources which are providing, or which would be reasonably expected to provide, materials or services to meet national defense requirements during peacetime, national emergency, or war.

**(7) DOMESTIC SOURCE.—**

(A) IN GENERAL.—Except as provided in subparagraph (B), the The term “domestic source” means a business concern—

(Ai) that performs in the United States or Canada substantially all of the research and development, engineering, manufacturing, and production activities required of such business concern under a contract with the United States relating to a critical component or a critical technology item; and

(Bii) that procures from business concerns described in subparagraph (A) substantially all of any components and assemblies required under a contract with the United States relating to a critical component or critical technology item.

(B) DOMESTIC SOURCE FOR TITLE III.—For purposes of title III, the term “domestic source” has the meaning provided in subparagraph (A), except that clause (i) of such subparagraph shall be

applied by substituting “United States, the United Kingdom of Great Britain and Northern Ireland, Australia, or Canada” for “United States or Canada”.

**(8) FACILITIES**

The term “facilities” includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches, or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

**(9) FOREIGN SOURCE**

The term “foreign source” means a business entity other than a “domestic source.”

**(10) GUARANTEEING AGENCY**

The term “guaranteeing agency” means a department or agency of the United States engaged in procurement for the national defense.

**(11) HOMELAND SECURITY**

The term “homeland security” includes efforts—

- (A) to prevent terrorist attacks within the United States;
- (B) to reduce the vulnerability of the United States to terrorism;
- (C) to minimize damage from a terrorist attack in the United States; and
- (D) to recover from a terrorist attack in the United States.

**(12) INDUSTRIAL RESOURCES**

The term “industrial resources” means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) needed to establish or maintain an efficient and modern national defense industrial base.

**(13) MATERIALS**

The term “materials” includes—

- (A) any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and
- (B) any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

**(14) NATIONAL DEFENSE**

The term “national defense” means programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conduct pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act and critical infrastructure protection and restoration.

**(15) PERSON**

The term “person” includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.

**(16) SERVICES**

The term “services” include any effort that is needed for or incidental to—

- (A) the development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item;
- (B) the construction of facilities;
- (C) the movement of individuals and property by all modes of civil transportation; or
- (D) other national defense programs and activities.

**(17) SMALL BUSINESS CONCERN**

The term “small business concern” means a business concern that meets the requirements of section 3(a) of the Small Business Act [15 U.S.C. 632(a)] and the regulations promulgated pursuant to that section, and includes such business concerns owned and controlled by socially and economically disadvantaged individuals or by women.

\* \* \* \* \*

**~~SEC. 1792. (50 U.S.C. 4531 NOTE) LIMITATION ON CANCELLATION OF DESIGNATION OF SECRETARY OF THE AIR FORCE AS DEPARTMENT OF DEFENSE EXECUTIVE AGENT FOR A CERTAIN DEFENSE PRODUCTION ACT PROGRAM.~~**

~~(a) LIMITATION ON CANCELLATION OF DESIGNATION.—The Secretary of Defense may not implement the decision, issued on July 1, 2017, to cancel the designation, under Department of Defense Directive 4400.01E, entitled “Defense Production Act Programs” and dated October 12, 2001, of the Secretary of the Air Force as the Department of Defense Executive Agent for the program carried out under title III of the Defense Production Act of 1950 (50 U.S.C. 4531 et seq) until the date specified in subsection (c).~~

~~(b) DESIGNATION.—The Secretary of the Air Force shall continue to serve as the sole and exclusive Department of Defense Executive Agent for the program described in subsection (a) until the date specified in subsection (c).~~

~~(c) DATE SPECIFIED.—The date specified in this subsection is the date of the enactment of a joint resolution or an Act approving the implementation of the decision described in subsection (a).~~

\* \* \* \* \*

**Section 226 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1335):**

**SEC. 226. LIMITATION ON CANCELLATION OF DESIGNATION EXECUTIVE AGENT FOR A CERTAIN DEFENSE PRODUCTION ACT PROGRAM.**

(a) LIMITATION ON CANCELLATION OF DESIGNATION.—The Secretary of Defense may not implement the decision, issued on July 1, 2017, to cancel the designation, under Department of Defense Directive 4400.1E, entitled “Defense Production Act Programs” and dated October 12, 2001, of the currently assigned Department of Defense Executive Agent for the program carried out under title III of the Defense Production Act of 1950 (50 U.S.C. 4531 et seq.) until the Secretary has—

- (1) completed the review and assessment required by subsection (b)(1); and
- (2) carried out the briefing required by subsection (c).

(b) REVIEW AND ASSESSMENT REQUIRED.—

- (1) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of the Air Force, shall conduct a review and assessment of the program described in subsection (a).

(2) ELEMENTS.—The review and assessment required by paragraph (1) shall include the following:

(A) Assessment of the current management structure for the program, including analysis of the mechanisms for accountability, as well as cost and management controls currently in place.

(B) Analysis of alternatives for proposals to modify that management structure to increase accountability, cost and management controls. Such analysis of alternatives should consider the relative merits of centralization and decentralization, roles of other military departments in program management and contracting, as well as the different roles the Office of the Secretary of Defense might play in management, oversight and execution.

(C) Recommendations for improving the assessment and selection of projects in order to—

(i) ensure that projects selected are appropriate for use of funds appropriated to carry out title III of the Defense Production Act of 1950;

(ii) ensure that sufficient vetting and management controls are in place to ensure a reasonable degree of confidence that project ideas or the companies being supported will be viable; and

(iii) increase overall successful execution for selected projects.

(D) Such other matters as the Secretary considers appropriate.

(c) BRIEFING REQUIRED.—The Secretary shall brief the appropriate Committees of Congress on the findings of the Secretary with respect to the review and assessment conducted under subsection (b).

(d) NOTIFICATION REQUIRED.—In the event the Secretary of Defense decides to cancel the designation, under Department of Defense Directive 4400.1E, entitled “Defense Production Act Programs” and dated October 12, 2001, of the currently assigned Department of Defense Executive Agent for the program described in subsection (a), the Secretary shall submit to the appropriate committees of Congress a written notification of such decision at least 60 days before the decision goes into effect.

(e) DESIGNATION OF OTHER EXECUTIVE AGENTS.—Notwithstanding the requirements of this section ~~or section 1792 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (50 U.S.C. 4531 note)~~, the Secretary of Defense may designate one or more Executive Agents within the Department of Defense (other than the Executive Agent described in subsection (a)) ~~to implement Defense Production Act transactions entered into under the authority of sections 4021, 4022, and 4023 of title 10, United States Code for the program carried out under title III of the Defense Production Act of 1950 (50 U.S.C. et seq.)~~.

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

(1) the Committee on Armed Services and the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Armed Services and the Committee on Financial Services of the House of Representatives.

1 **SEC. \_\_\_\_ . PROJECTS EXECUTED BY THE UNITED STATES UNDER THE NATO**  
2 **SECURITY INVESTMENT PROGRAM.**

3 Section 2350q of title 10, United States Code, is amended—

4 (1) in subsection (c), by amending paragraph (3) to read as follows:

5 “(3) If contributions are made under paragraph (1) as reimbursement for a project or  
6 portion of a project previously completed by the Department of Defense, such contributions shall  
7 be credited to appropriations for the Program, and shall merge with and remain available for the  
8 same purposes and duration as such appropriations.”; and

9 (2) in subsection (e)—

10 (A) by striking paragraph (2);

11 (B) by striking “(1) In the event” and inserting “In the event”; and

12 (C) by striking “using any unobligated funds” and all that follows through the  
13 period at the end and inserting “using any unobligated funds appropriated for military  
14 construction, including appropriations available for operation and maintenance when the  
15 aggregate amount of insufficient contributions for a project does not exceed the funding  
16 ceiling specified in section 2805(c) of this title on spending from appropriations available  
17 for operation and maintenance for unspecified minor military construction.”.

**Section-by-Section Analysis**

This proposal would amend section 2350q of title 10, United States Code, by (1) mandating that the Department of Defense (DoD) credit all financial recoupments from the North Atlantic Treaty Organization (NATO) for NATO Security Investment Program (NSIP) projects pre-financed by the United States into appropriations solely available for the NSIP; and (2) authorizing the Secretary of Defense to use funds appropriated for military construction and operation and maintenance to pay the costs of funding shortfalls for U.S. executed NSIP projects when the completion of such projects is in the national interest of the United States.

Section 2350q(c) currently requires the Department of Defense to credit amounts recouped from NATO for NSIP projects pre-financed by the United States into the military



construction appropriation(s) used to finance the project, if such appropriation(s) have not yet expired. If the appropriation(s) have expired, the current language requires the Department to credit recouped funds into NSIP appropriations. This proposal would amend section 2350q(c) so that all recoupments would only be credited to the NSIP appropriations. Crediting recoupments solely to the NSIP appropriation: 1) ensures these funds will be used to support future NSIP projects, 2) helps guard against project cancelation where the United States is not able to meet its program cost share obligations, and 3) contributes to the United States fulfilling its overall funding obligation to the NSIP.

Section 2350q(e) currently permits the Secretary of Defense to fund all costs necessary for the Department of Defense to carry out a NSIP project that are not covered by NATO using “funds appropriated for the [NSIP] for military construction.” There currently is no such appropriation, making the provision not implementable without changes to existing budgeting and appropriation processes. This proposal would amend section 2350q(e) to permit the funding of costs not covered by NATO through the use of unobligated funds appropriated for military construction, to include appropriations available for operation and maintenance when the aggregate cost of insufficient contributions for a project does not exceed the funding ceiling specified in section 2805(c) of title 10, United States Code, on spending from appropriations available for operation and maintenance for unspecified minor military construction. This authority is needed so that the United States can execute NSIP projects that have elements not funded by the NATO common funded program, such as project scope that is above the minimum military requirement established by NATO but required by the United States user.

**Budget Implications:** The Fiscal Year (FY) 2024 NSIP funding request is listed in the table below and reflects the best estimate of resources requested within the FY 2024 President’s Budget that are impacted by this proposal. The Department is currently not able to estimate the timing and amount of recoupments (reimbursements) because of the following factors outside of DoD control: the time needed by NATO to determine whether it will reimburse costs for a given project; if a decision is made to do reimbursement, the time required for NATO to work the project into an approved program; uncertainty over when a detailed cost breakout for a completed project can be submitted to NATO for reimbursement; the time needed for NATO staff to screen project submissions; the availability of NATO funds to provide reimbursement, which varies each year; and, if the United States is not executing a project, the time required for the United States to coordinate with the country executing the project, where that country subsequently coordinates reimbursement with NATO.

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)
NSIP	293.434	353.069	428.929	525.095	646.670	NATO Security Investment	01	D96D0005	

						Program (0804D)			
Total	293.434	353.069	428.929	525.095	646.670				

**Changes to Existing Law:** This proposal would amend section 2350q of title 10, United States Code, as shown below:

**§ 2350q. Execution of projects under the North Atlantic Treaty Organization Security Investment Program**

(a) **AUTHORITY TO EXECUTE PROJECTS.**—When the United States is designated as the Host Nation for purposes of executing a project under the North Atlantic Treaty Organization Security Investment Program (in this section referred to as the ‘Program’), the Secretary of Defense may accept such designation and carry out such project consistent with the requirements of this section.

(b) **PROJECT FUNDING.**—The Secretary of Defense may fund authorized expenditures of projects accepted under subsection (a) with—

- (1) contributions under subsection (c);
- (2) appropriations of the Department of Defense for the Program when directed by the North Atlantic Treaty Organization to apply amounts of such appropriations as part of the share of contributions of the United States for the Program; or
- (3) any combination of amounts described in paragraphs (1) and (2).

(c) **AUTHORITY TO ACCEPT CONTRIBUTIONS.**—(1) The Secretary of Defense may accept contributions from the North Atlantic Treaty Organization and member nations of the North Atlantic Treaty Organization for the purpose of carrying out a project under subsection (a).

(2) Contributions accepted under paragraph (1) shall be placed in an account established for the purpose of carrying out the project for which the funds were provided and shall remain available until expended.

(3)~~(A)~~ If contributions are made under paragraph (1) as reimbursement for a project or portion of a project previously completed by the Department of Defense, such contributions shall be credited to—appropriations for the Program, and shall merge with and remain available for the same purposes and duration as such appropriations.

~~(i) the appropriations used for the project or portion thereof, if such appropriations have not yet expired; or~~

~~(ii) the appropriations for the Program, if the appropriations described in clause (i) have expired.~~

~~(B) Funding credited under subparagraph (A) shall merge with and remain available for the same purposes and duration as the appropriations to which credited.~~

(d) **OBLIGATION AUTHORITY.**—The construction agent of the Department of Defense designated by the Secretary of Defense to execute a project under subsection (a) may recognize the North Atlantic Treaty Organization project authorization amounts as budgetary resources to incur obligations against for the purposes of executing the project.

(e) INSUFFICIENT CONTRIBUTIONS.—~~(1)~~In the event that the North Atlantic Treaty Organization does not agree to contribute funding for all costs necessary for the Department of Defense to carry out a project under subsection (a), including necessary personnel costs of the construction agent designated by the Department of Defense, contract claims, and any conjunctive funding requirements that exceed the project authorization or standards of the North Atlantic Treaty Organization, the Secretary of Defense, upon determination that completion of the project is in the national interest of the United States, may fund such costs, and undertake such conjunctively funded requirements not otherwise authorized by law, using any unobligated funds ~~available among funds appropriated for the Program for military construction~~ appropriated for military construction, including appropriations available for operation and maintenance when the aggregate amount of insufficient contributions for a project does not exceed the funding ceiling specified in section 2805(c) of this title on spending from appropriations available for operation and maintenance for unspecified minor military construction.

~~(2) The use of funds under paragraph (1) from appropriations for the Program may be in addition to or in place of any other funding sources otherwise available for the purposes for which those funds are used.~~

(f) AUTHORIZED EXPENDITURE DEFINED.—In this section, the term ‘authorized expenditures’ means project expenses for which the North Atlantic Treaty Organization has agreed to contribute funding.

1    **SEC. \_\_. PROTECTION AGAINST MISUSE OF NAVAL SPECIAL WARFARE**  
2                   **COMMAND INSIGNIA.**

3           (a) IN GENERAL.—Chapter 891 of title 10, United States Code, is amended by adding at  
4 the end the following new section:

5    **“§ 8922. Protection against misuse of insignia of Naval Special Warfare Command**

6           “(a) DEFINITIONS.—In this section:

7                   “(1) COVERED NAVAL SPECIAL WARFARE INSIGNIA.—The term ‘covered Naval  
8 Special Warfare insignia’ means any of the following:

9                           “(A) The Naval Special Warfare Insignia comprising or consisting of the  
10 design of an eagle holding an anchor, trident, and flint-lock pistol.

11                           “(B) The Special Warfare Combatant-craft Crewman Insignia comprising  
12 or consisting of the design of the bow and superstructure of a Special Operations  
13 Craft on a crossed flint-lock pistol and enlisted cutlass.

14                           “(C) Any colorable imitation of the insignia referred to in subparagraphs  
15 (A) and (B).

16                   “(2) COVERED PERSON.—The term ‘covered person’ means any individual,  
17 association, partnership, or corporation.

18           “(b) PROHIBITION AGAINST UNAUTHORIZED USE.—(1) Subject to subsection (c), no  
19 covered person shall, without the authorization of the Secretary of the Navy, use any covered  
20 Naval Special Warfare insignia—

21                           “(A) as the name under which the covered person does business for the purpose of  
22 trade; or

1           “(B) in a manner which reasonably could lead the public to believe that any  
2 project or business in which the covered person is engaged, or product that the covered  
3 person manufactures, deals in, or sells, has been in any way endorsed, authorized,  
4 sponsored, or approved by, or is associated with, the Department of Defense or the  
5 Department of the Navy.

6           “(2) Whoever violates this subsection shall be fined not more than \$20,000 for each  
7 violation.

8           “(c) EXCEPTION.—Subsection (b) shall not apply to the use of a covered Naval Special  
9 Warfare insignia for purposes of criticism, comment, news reporting, analysis, research, or  
10 scholarship.

11           “(d) TREATMENT OF DISCLAIMERS.—A determination of whether a covered person has  
12 violated this section shall be made without regard to any use of a disclaimer of affiliation,  
13 connection, or association with, endorsement by, or approval of the United States Government,  
14 the Department of Defense, the Department of the Navy, or any subordinate organization thereof  
15 to the extent consistent with international obligations of the United States.

16           “(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the  
17 authority of the Secretary of the Navy to register any symbol, name, phrase, term, acronym, or  
18 abbreviation otherwise capable of registration under the provisions of the Act of July 5, 1946  
19 (commonly referred to as the ‘Trademark Act of 1946’) (15 U.S.C. 1051 et seq.).”.

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

“8922. Protection against misuse of Naval Special Warfare Command insignia.”.

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

This proposal would add a new section to chapter 891 of title 10, United States Code, to comprehensively protect the listed insignia used by the Department of the Navy, Naval Special Warfare Command, and organizations including Navy SEALs.

The Department of the Navy, Naval Special Warfare Command, and other organizations, including the Navy SEALs, makes widespread use of their insignia. All such insignia, in various ways, identify organizations, personnel, operations, and equipment associated with Naval Special Warfare Command and its components. As such, they perform important public functions in identifying an official relationship with the Department of the Navy, Naval Special Warfare Command and its components. The unauthorized use of the subject insignia has the potential of confusing or misleading the public as to the nature of any connection between the Department of the Navy and its components and the activities of the unauthorized user.

This proposal specifically provides special protection to the Naval Special Warfare Command and its components because these organizations within the Department of the Navy face a unique and immediate need for such special protection. The operational success of the SEALs throughout their history, and particularly in recent years, has subjected the SEALs to unwanted media and public attention. Numerous commercial entities have attempted to exploit the fame of the SEALs by selling SEALs-branded merchandise and services (which include the identified insignia), and even filing applications with the U.S. Patent and Trademark Office seeking registrations that include the Special Warfare Trident Insignia as well as other Naval Special Warfare Command names and abbreviations. In view of the recent proliferation of unauthorized uses of the insignia of Naval Special Warfare Command and the SEALs, the need for immediate protection is more acute.

Both Federal trademark law and similar State-enacted laws provide exclusivity in, and legal protections for, the use of symbols, words, and phrases that act as trademarks, service marks, and other types of marks. These laws primarily protect marks used “in commerce.” While both State governments and Federal agencies may claim ownership rights in trademarks, service marks, collective marks, and other types of marks, the public functions served by governments often vary considerably from traditional commerce. The need to provide protection against misuse of such insignia and names and to guard against confusion is, however, no less important.

Congress has long-recognized the unique challenges of protecting insignia and even the names of United States agencies and departments such as the Coast Guard (14 U.S.C. 639) the Central Intelligence Agency (50 U.S.C. 3513), the National Security Agency (50 U.S.C. 3613), the Defense Intelligence Agency (10 U.S.C. 425), and the National Aeronautics and Space Administration (51 U.S.C. 20141). Existing statutes provide only limited protection for military insignia (10 U.S.C. 771; 18 U.S.C. 701, 712; see also, 32 C.F.R. Part 507), although, in 1984, statutory protection similar to those described above was extended to the “seal, emblem, name, [and] initials of the United States Marine Corps” (10 U.S.C. 7881).

Subsection (a) of the proposed new section identifies insignia that have originated within, and have acquired special meaning related to, the Department of Navy, Naval Special Warfare Command, its components, and its personnel. A reasonable number of exceptions to this exclusivity would be recognized. The Department of the Navy would retain the ability to use and license all exclusively-owned marks for any use covered by the Trademark Act of 1946 (15 U.S.C. 1051 et seq.) and its existing authority under 10 U.S.C. 2260 to retain and expend the fees earned from such licensing would remain unchanged.

Subsection (b) of the proposed new section would prohibit use of the marks identified in subsection (a) where such use would be likely to suggest a false affiliation, connection or association with, endorsement by, or approval of, the Department of the Navy.

Subsection (c) of the proposed new section states explicit exceptions to the prohibition in subsection (b) for commentary and criticism.

Subsection (d) of the proposed new section states that an outside party would not be able to use the identified marks merely by disclaiming approval, endorsement, or authorization.

Subsection (e) of the proposed new section would provide that the proposed statute would not limit the ability of the Department of the Navy to seek any other forms of relief provided under Federal, State, or common law. This subsection would preserve, among other remedies, traditional trademark and anti-counterfeiting claims available to the Department of the Navy.

**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 would add a new section to chapter 891 of title 10, United States Code, the full text of which is shown in the legislative language above.

1 **SEC. \_\_\_\_ . PROTECTION OF OVERSEAS FACILITIES AND ASSETS FROM**  
2 **UNMANNED AIRCRAFT.**

3 (a) IN GENERAL.—Chapter 3 of title 10, United States Code, is amended by adding at  
4 the end the following new section:

5 **“§ 130j. Clarification of the applicability of laws with respect to certain activities outside**  
6 **the United States related to unmanned aircraft**

7 “Sections 32, 1030, and 1367 of title 18 and section 46502 of title 49 shall not be  
8 construed to apply to activities of the Department of Defense or the Coast Guard that are  
9 conducted outside the United States and are related to the mitigation of threats from unmanned  
10 aircraft systems or unmanned aircraft.”.

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

“130j. Clarification of the applicability of laws with respect to certain activities outside of the United States  
related to unmanned aircraft.”.

**Section-by-Section Analysis**

This proposal would ensure that Federal statutes do not restrict the Department of Defense or the Coast Guard in protecting facilities and assets from unmanned aircraft outside the United States. Currently, Federal criminal statutes restrict the Department’s ability to counter unmanned aircraft outside the United States, including when such aircraft are conducting “mere surveillance” of military operations. “Mere surveillance” of military operations can jeopardize operational security and be predictive of a threat to military personnel and operations at a future time. Federal criminal statutes previously identified as potentially restricting counter-unmanned-aircraft operations are 18 U.S.C. § 1367 (interference with the operation of a satellite), 49 U.S.C. § 46502 (aircraft piracy), 18 U.S.C. §§2510-2522 (Wiretap Act), 18 U.S.C. §§ 3121-3127 (Pen/Trap Statute), 18 U.S.C. § 1030 (Computer Fraud and Abuse Act), and 18 U.S.C. § 32 (Aircraft Sabotage Act).

A related statute, 10 U.S.C. § 130i, allows the Department of Defense to protect certain facilities and assets inside the United States from unmanned-aircraft threats, as defined by the Secretary of Defense, in consultation with the Secretary of Transportation. Section 130i provides that 49 U.S.C. § 46502 and any provision of title 18, U.S.C., do not apply to activities undertaken by the Department of Defense in accordance with section 130i. Section 130i, however, does not apply outside of the United States.



The Computer Fraud and Abuse Act and the Aircraft Sabotage Act have been held to have extraterritorial application. See *United States v. Ivanov*, 175 F. Supp. 2d 367, 374-75 (D. Conn. 2001) (noting that the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 has extraterritorial application); *United States v. Hamidullin*, 114 F. Supp. 3d 365, 384 (“The text of the applicable federal statutes makes it clear that Congress intended [the Aircraft Sabotage Act, 18 U.S.C. § 32(a),] to apply extraterritorially.”) (quoting *United States v. Yousef*, 327 F.3d 56, 86 (2d Cir. 2003)). The analysis that applies to the Aircraft Sabotage Statute also applies to the aircraft piracy statute. Cf. *Yousef*, 327 F.3d 56 at 86-87. Although there has been no holding related to the extraterritoriality of 18 U.S.C. § 1367, the ambit of the offense – interference with the authorized operation of a communications or weather satellite or obstruction or hindering any satellite transmission – indicates that it has extraterritorial application. These statutes are cited in the proposal because of their extraterritorial effect.

The Wiretap Act has been held not to apply outside the United States. *Stowe v. DeVoy*, 588 F.2d 336, 341 (2d Cir. 1978), *cert. denied*, 442 U.S. 931 (1979) (citing *United States v. Toscanino*, 500 F.2d 267, 279 (2d Cir. 1974)). Additionally, the Pen/Trap Statute appears not to have extraterritorial application because there is no clear indication that Congress intended 18 U.S.C. §§ 3121-3127 to have extraterritorial application. See *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010) (“When a statute gives no clear indication of extraterritorial application, it has none.”). Moreover, there is the contrary indication in 18 U.S.C. § 3123, which provides for orders authorizing the installation and use of a pen register or trap and trace device “anywhere within the United States.” 18 U.S.C. § 3123(a)(1). Accordingly, these provisions of law are not listed in the proposal.

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

**Changes to Existing Law:** This proposal adds a new section to chapter 3 of title 10, United States Code, the full text of which is shown in the legislative language above.

1 **SEC. \_\_\_. REAL PROPERTY AUTHORITY RELATING TO THE PENTAGON**  
2 **RESERVATION.**

3 Section 2674 of title 10, United States Code, is amended—

4 (1) in subsection (f)(1), by striking “and the Raven Rock Mountain Complex” and  
5 inserting “the Raven Rock Mountain Complex, and such property and facilities as may be  
6 acquired under subsection (g)”;

7 (2) by adding at the end the following new subsection:

8 “(g) PENTAGON RESERVATION REAL PROPERTY ACQUISITION.— Notwithstanding section  
9 2682 of this title, the Secretary may acquire fee title to real property and facilities for inclusion in  
10 the Pentagon Reservation. If the purchase price to acquire fee title to real property or facilities  
11 for inclusion in the Pentagon Reservation exceeds the limitation specified in section 2663(c) of  
12 this title for an acquisition of low-cost interests in land, the Secretary may acquire the real  
13 property or facilities only if the acquisition is specifically authorized by law in a Military  
14 Construction Authorization Act.”.

**Section-by-Section Analysis**

Section 2674 of chapter 159 of title 10, United States Code, provides that the Pentagon Reservation, as the Headquarters of the Department of Defense (DoD), is under the jurisdiction, custody, and control of the Secretary of Defense, not a military department. This is unique in that all other DoD property is under the jurisdiction, custody, and control of the Secretaries of the military departments. In order to ensure the Secretary had the authorities necessary to operate, maintain, and manage the Pentagon Reservation, section 2821(e) of the National Defense Authorization Act for Fiscal Year 2006 amended section 2661 of title 10 to add subsection (d), which states that the terms “Secretary of a Military Department” and “Secretary concerned” include the Secretary of Defense with respect to the Pentagon Reservation. (Public Law 109–163, §2821(e)). That amendment did not, however, authorize the Secretary of Defense to acquire real property to add to what constitutes the Pentagon Reservation. This provision would provide the Secretary with the authority to acquire fee title to property or facilities to include in the Pentagon Reservation.

Section 2682 of title 10 requires that a real property facility under the jurisdiction of DoD that is used by an activity or agency of DoD (other than a military department) shall be under the

jurisdiction of a military department designated by the Secretary of Defense. Section 2674 is an exception to this rule for many purposes, but not for real property acquisition. If the Secretary wishes to acquire property for incorporation into the Pentagon Reservation, such property must first be acquired by a military department designated by the Secretary and then subsequently transferred to the Secretary. Additionally, because the Pentagon Reservation is specifically defined in 10 U.S.C. §2674(f) and does not provide for the inclusion of any additional property, adding property into what constitutes the Pentagon Reservation cannot occur until Congress amends section 2674(f). This process is unnecessarily constraining and inefficient.

A lost opportunity in the summer of 2018 is an example of why the proposed amendments are necessary. In June 2018, DoD received an unsolicited proposal to sell the building at 4850 Mark Center Drive and the adjoining land at 4860 Mark Center Drive to DoD. These properties are adjacent to and contiguous with the Pentagon Reservation Mark Center Campus. Washington Headquarters Services (WHS) and the Pentagon Force Protection Agency conducted an initial inspection to assess necessary security upgrades and retrofit requirements for estimating start-up costs. WHS proposed to purchase 4850 Mark Center Drive and transition DoD tenants from the Suffolk Building leased office space to achieve efficiencies and significant cost savings, with a return on investment at 13 years. WHS calculated the facility lifecycle cost savings at \$150 million over a 27-year period, or \$9.5 million per year. WHS could not accomplish the acquisition in part because it first had to be programmed and budgeted through a military department. WHS sought support from the Army, but the time required and associated administrative burdens made it impossible to acquire an option on the property before the owner found another buyer. If WHS had been able to act on the Secretary's behalf without relying on a military department, the outcome may have been different. Enactment of this legislation will remove obstacles to the Department taking advantage of similar opportunities in the future, opening up the possibility of DoD achieving significant cost savings during periods of relatively low market rates.

**Resource Information:** This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2024 President's Budget. Acquisition and disposal of Pentagon Reservation property has been and will be infrequent enough that the tasks associated with future undertakings will be accomplished with existing personnel resources.

**Changes to Existing Law:** This proposal would amend section 2674 of title 10, United States Code, as follows:

**§ 2674. Operation and control of Pentagon Reservation and defense facilities in National Capital Region**

\*\*\*\*\*

(f) DEFINITIONS.- In this section:

(1) The term "Pentagon Reservation" means the Pentagon, the Mark Center Campus, ~~and the Raven Rock Mountain Complex,~~ and such property and facilities as may be acquired under subsection (g).

(2) The term “National Capital Region” means the geographic area located within the boundaries of (A) the District of Columbia, (B) Montgomery and Prince Georges Counties in the State of Maryland, (C) Arlington, Fairfax, Loudoun, and Prince William Counties and the City of Alexandria in the Commonwealth of Virginia, and (D) all cities and other units of government within the geographic areas of such District, Counties, and City.

(3) The term “Pentagon” means that area of land (consisting of approximately 227 acres) and improvements thereon, including parking areas, located in Arlington County, Virginia, containing the Pentagon Office Building and its supporting facilities.

(4) The term “Mark Center Campus” means that area of land (consisting of approximately 16 acres) and improvements thereon, including parking areas, located in Alexandria, Virginia, and known on the day before the date of the enactment of this paragraph as the Fort Belvoir Mark Center Campus.

(5) The term “Raven Rock Mountain Complex” means that area of land (consisting of approximately 720 acres) and improvements thereon, including parking areas, at the Raven Rock Mountain Complex and its supporting facilities located in Maryland and Pennsylvania.

(g) PENTAGON RESERVATION REAL PROPERTY ACQUISITION.—Notwithstanding section 2682 of this title, the Secretary may acquire fee title to real property and facilities for inclusion in the Pentagon Reservation. If the purchase price to acquire fee title to real property or facilities for inclusion in the Pentagon Reservation exceeds the limitation specified in section 2663(c) of this title for an acquisition of low-cost interests in land, the Secretary may acquire the real property or facilities only if the acquisition is specifically authorized by law in a Military Construction Authorization Act.

1 **SEC. \_\_\_. REDUCING OR ELIMINATING CERTAIN PRESCRIPTION DRUG**  
2 **COPAYMENTS.**

3 (a) IN GENERAL.—Section 1074g(a)(6) of title 10, United States Code, is amended by  
4 adding at the end the following new subparagraphs:

5 “(D) Notwithstanding subparagraphs (A), (B), and (C), the Secretary, in consultation with  
6 the Pharmacy and Therapeutics Committee established under subsection (b), may waive or  
7 reduce cost-sharing amounts under this subsection for specific therapeutic classes of  
8 pharmaceuticals or specific pharmaceutical agents that support preventive care or are likely to  
9 reduce overall healthcare costs.

10 “(E) Notwithstanding subparagraphs (A), (B), and (C), the Secretary may waive or  
11 reduce cost-sharing amounts under this subsection for the dependents of a member of the  
12 uniformed services described in section 1074(c)(3)(B) of this title if the dependents are enrolled  
13 in the TRICARE Prime Remote program and accompany the member to the member’s duty  
14 assignment at Government expense.”.

15 (b) TECHNICAL AMENDMENTS.—Section 1074g(a)(2)(F)(i) of such title is amended—

16 (1) in subsection (a)(2)(F), by striking “over-the-counter” each place it appears  
17 and inserting “nonprescription”; and

18 (2) in subsection (i)(3), by striking “over-the-counter” and inserting  
19 “nonprescription”.

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

**Section-by-Section Analysis**

This proposal would amend section 1074g of title 10, United States Code, to establish authority to reduce or waive copayments to (1) increase utilization of preventative medications as a means to reduce overall healthcare costs, and (2) to reduce the financial burden associated

with prescription drug costs on dependents accompanying their active duty service members on assignments to remote or isolated locations in support of mission requirements (resulting in their enrollment in TRICARE Prime Remote<sup>1</sup>).

While changes in the pharmacy industry have impacted drug costs, the existing authority prohibits DoD from adjusting pharmacy copayments in a manner that would incentivize beneficiaries to utilize the most cost-effective pharmacy point of service and/or medications that could promote prevention and better medical outcomes, while lowering costs for themselves and the Government. This proposal gives the Department the flexibility to adjust pharmacy copayments through data-driven decisions that identify opportunities to incentivize beneficiaries to utilize the most cost-effective point of service (retail pharmacies or mail order) and could result in significant savings for both the Government and beneficiaries. This proposal allows the Department to more effectively manage the TRICARE Pharmacy Program, increase use and compliance with preventative medications, and improve healthcare outcomes while reducing overall healthcare costs for TRICARE and minimizing beneficiary out-of-pocket expenses.

With respect to service members assigned to remote or isolated locations (not located near a military installation), the Department has identified a disparity in treatment in the area of prescription drug costs. Currently, active duty service members are not required to pay a copayment for covered prescriptions from military pharmacies, home delivery, or retail network pharmacies. Similarly, for their dependents, there is no cost for covered generic or brand-name drugs at military pharmacies. However, dependents will incur a copayment for the same covered brand-name drugs and generic drugs if received through home delivery or disbursed at retail pharmacies.

Approximately 58,000 active duty dependents do not have a viable “no cost” pharmacy option because of where they are assigned (more than 50 miles or one hour’s drive from a military hospital or clinic). Accordingly, they must rely on Express Scripts<sup>2</sup> or retail pharmacies to meet their prescription drug needs. Depending on the type of medication and the frequency with which it is taken, pharmacy costs can cause significant, undue hardship for active duty service members and their families who are permanently stationed at locations that are not near a military medical treatment facility. This is a cost that they would not incur, but for their assignment location. The Department of Defense estimates that the copayment costs incurred by servicemember dependents were approximately \$4 million in Calendar Year 2020 and are estimated to increase by 4 percent every year.

Elimination or reduction of the copayment requirement for those dependents accompanying their active duty service members on assignments to locations requiring enrollment in TRICARE Prime Remote would ensure that these families are not financially disadvantaged relative to those of service members assigned to military installations with the appropriate services.

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<sup>1</sup> Tricare Prime Remote provides healthcare coverage, through civilian providers, for military members and their families on remote assignment. To qualify, the military member must be assigned to a duty location that is more than 50 miles or approximately one hour’s drive time from the nearest Military Treatment Facility (MTF). Tricare Prime Remote is available only in the U.S.

<sup>2</sup> Express Scripts is an online pharmacy and a pharmacy benefit manager specializing in medication home delivery.

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

<b>RESOURCE IMPACT (\$MILLIONS)</b>									
<b>Program</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/SAG</b>	<b>Program Element (for all RDT&amp;E programs)</b>
Defense Health Program	4.68	4.87	5.07	5.27	5.48	Operation and Maintenance, Defense Health Program	01	2	
Total	4.68	4.87	5.07	5.27	5.48				

\*FY20 cost based on a Military Health System Medical Analysis and Reporting Tool (M2) pull was approximately \$4 million. Assumes a 4% increase due to inflation

<b>PERSONNEL IMPACTED</b>					
<b>Program</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>
DoD	58,000	58,000	58,000	58,000	58,000
Total	58,000	58,000	58,000	58,000	58,000

**Changes to Existing Law:** This proposal would amend section 1074g of title 10, United States Code, as follows:

**§ 1074g. Pharmacy benefits program**

(a) PHARMACY BENEFITS.—(1) The Secretary of Defense, after consulting with the other administering Secretaries, shall establish an effective, efficient, integrated pharmacy benefits program under this chapter (hereinafter in this section referred to as the “pharmacy benefits program”).

(2)(A) The pharmacy benefits program shall include a uniform formulary of pharmaceutical agents, which shall assure the availability of pharmaceutical agents in the complete range of therapeutic classes. The selection for inclusion on the uniform formulary of particular pharmaceutical agents in each therapeutic class shall be based on the relative clinical and cost effectiveness of the agents in such class. With respect to members of the uniformed services, such uniform formulary shall include pharmaceutical agents on the joint uniform formulary established under section 715 of the National Defense Authorization Act for Fiscal Year 2016.

(B) In considering the relative clinical effectiveness of agents under subparagraph (A), the Secretary shall presume inclusion in a therapeutic class of a pharmaceutical agent, unless the Pharmacy and Therapeutics Committee established under subsection (b) finds that a pharmaceutical agent does not have a significant, clinically meaningful therapeutic advantage in

terms of safety, effectiveness, or clinical outcome over the other drugs included on the uniform formulary.

(C) In considering the relative cost effectiveness of agents under subparagraph (A), the Secretary shall rely on the evaluation by the Pharmacy and Therapeutics Committee of the costs of agents in a therapeutic class in relation to the safety, effectiveness, and clinical outcomes of such agents.

(D) The Secretary shall establish procedures for the selection of particular pharmaceutical agents for the uniform formulary. Such procedures shall be established so as best to accomplish, in the judgment of the Secretary, the objectives set forth in paragraph (1). Except as provided in subparagraph (F), no pharmaceutical agent may be excluded from the uniform formulary except upon the recommendation of the Pharmacy and Therapeutics Committee.

(E) Pharmaceutical agents included on the uniform formulary shall be available to eligible covered beneficiaries through—

(i) facilities of the uniformed services, consistent with the scope of health care services offered in such facilities and additional determinations by the Pharmacy and Therapeutics Committee of the relative clinical and cost effectiveness of the agents;

(ii) retail pharmacies designated or eligible under the TRICARE program or the Civilian Health and Medical Program of the Uniformed Services to provide pharmaceutical agents to covered beneficiaries; or

(iii) the national mail-order pharmacy program.

(F)(i) The Secretary may implement procedures to place selected ~~over-the-counter~~ nonprescription drugs on the uniform formulary and to make such drugs available to eligible covered beneficiaries. An ~~over-the-counter~~ nonprescription drug may be included on the uniform formulary only if the Pharmacy and Therapeutics Committee established under subsection (b) finds that the ~~over-the-counter~~ nonprescription drug is cost effective and clinically effective. If the Pharmacy and Therapeutics Committee recommends an ~~over-the-counter~~ nonprescription drug for inclusion on the uniform formulary, the drug shall be considered to be in the same therapeutic class of pharmaceutical agents, as determined by the Committee, as similar prescription drugs.

(ii) Regulations prescribed by the Secretary to carry out clause (i) shall include the following with respect to ~~over-the-counter~~ nonprescription drugs included on the uniform formulary:

(I) A determination of the means and conditions under paragraphs (5) and (6) through which ~~over-the-counter~~ nonprescription drugs will be available to eligible covered beneficiaries and the amount of cost sharing that such beneficiaries will be required to pay for ~~over-the-counter~~ nonprescription drugs, if any, except that no such cost sharing may be required for a member of a uniformed service on active duty.

(II) Any terms and conditions for the dispensing of ~~over-the-counter~~ nonprescription drugs to eligible covered beneficiaries.

(3) The pharmacy benefits program shall assure the availability of clinically appropriate pharmaceutical agents to members of the armed forces, including, where appropriate, agents not included on the uniform formulary described in paragraph (2).

(4) The pharmacy benefits program may provide that prior authorization be required for certain pharmaceutical agents to assure that the use of such agents is clinically appropriate.

(5) The pharmacy benefits program shall assure the availability to eligible covered beneficiaries of pharmaceutical agents not included on the uniform formulary. Such



pharmaceutical agents shall be available through the national mail-order pharmacy program under terms and conditions that shall include cost-sharing by the eligible covered beneficiary as specified in paragraph (6).

(6)(A) In the case of any of the years 2018 through 2027, the cost-sharing amounts under this subsection for eligible covered beneficiaries shall be determined in accordance with the following table:

For:	The cost-sharing amount for a 30-day supply of a retail generic is:	The cost-sharing amount for a 30-day supply of a retail formulary is:	The cost-sharing amount for a 90-day supply of a mail order generic is:	The cost-sharing amount for a 90-day supply of a mail order formulary is:	The cost-sharing amount for a 90-day supply of a mail order non-formulary is:
2018	\$11	\$28	\$7	\$24	\$53
2019	\$11	\$28	\$7	\$24	\$53
2020	\$13	\$33	\$10	\$29	\$60
2021	\$13	\$33	\$10	\$29	\$60
2022	\$14	\$38	\$12	\$34	\$68
2023	\$14	\$38	\$12	\$34	\$68
2024	\$16	\$43	\$13	\$38	\$76
2025	\$16	\$43	\$13	\$38	\$76
2026	\$16	\$48	\$14	\$44	\$85
2027	\$16	\$48	\$14	\$44	\$85

(B) For any year after 2027, the cost-sharing amounts under this subsection for eligible covered beneficiaries shall be equal to the cost-sharing amounts for the previous year adjusted by an amount, if any, determined by the Secretary to reflect changes in the costs of pharmaceutical agents and prescription dispensing, rounded to the nearest dollar.

(C) Notwithstanding subparagraphs (A) and (B), the cost-sharing amounts under this subsection for a dependent of a member of the uniformed services who dies while on active duty, a member retired under chapter 61 of this title, or a dependent of a member retired under such chapter shall be equal to the cost-sharing amounts, if any, for 2017.

(D) Notwithstanding subparagraphs (A), (B), and (C), the Secretary, in consultation with the Pharmacy and Therapeutics Committee established under subsection (b), may waive or reduce cost-sharing amounts under this subsection for specific therapeutic classes of pharmaceuticals or specific pharmaceutical agents that support preventive care or are likely to reduce overall healthcare costs.

(E) Notwithstanding subparagraphs (A), (B), and (C), the Secretary may waive or reduce cost-sharing amounts under this subsection for the dependents of a member of the uniformed services described in section 1074(c)(3)(B) of this title if the dependents are enrolled in the TRICARE Prime Remote program and accompany the member to the member's duty assignment at Government expense.

(7) The Secretary shall establish procedures for eligible covered beneficiaries to receive pharmaceutical agents that are not included on the uniform formulary but that are considered to be clinically necessary. Such procedures shall include peer review procedures under which the Secretary may determine that there is a clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary, in which case the pharmaceutical agent shall be provided under the same terms and conditions as an agent on the uniform formulary. Such procedures shall also include an expeditious appeals process for an eligible covered beneficiary, or a

network or uniformed provider on behalf of the beneficiary, to establish clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary.

(8) In carrying out this subsection, the Secretary shall ensure that an eligible covered beneficiary may continue to receive coverage for any maintenance pharmaceutical that is not on the uniform formulary and that was prescribed for the beneficiary before October 5, 1999, and stabilized the medical condition of the beneficiary.

(9)(A) Beginning on October 1, 2015, the pharmacy benefits program shall require eligible covered beneficiaries generally to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail-order pharmacy program.

(B) The Secretary shall determine the maintenance medications subject to the requirement under subparagraph (A). The Secretary shall ensure that—

(i) such medications are generally available to eligible covered beneficiaries through retail pharmacies only for an initial filling of a 30-day or less supply; and

(ii) any refills of such medications are obtained through a military treatment facility pharmacy or the national mail-order pharmacy program.

(C) The Secretary may exempt the following prescription maintenance medications from the requirement of subparagraph (A):

(i) Medications that are for acute care needs.

(ii) Such other medications as the Secretary determines appropriate.

(10) Notwithstanding paragraphs (2), (5), and (6), in order to encourage the use by covered beneficiaries of pharmaceutical agents that provide the best clinical effectiveness to covered beneficiaries and the Department of Defense (as determined by the Secretary, including considerations of better care, healthier people, and smarter spending), the Secretary may, upon the recommendation of the Pharmacy and Therapeutics Committee established under subsection (b) and review by the Uniform Formulary Beneficiary Advisory Panel established under subsection (c)—

(A) exclude from the pharmacy benefits program any pharmaceutical agent that the Secretary determines provides very little or no clinical effectiveness to covered beneficiaries and the Department under the program; and

(B) give preferential status to any non-generic pharmaceutical agent on the uniform formulary by treating it, for purposes of cost-sharing under paragraph (6), as a generic product under the TRICARE retail pharmacy program and mail order pharmacy program.

(b) ESTABLISHMENT OF COMMITTEE.—(1) The Secretary of Defense shall, in consultation with the Secretaries of the military departments, establish a Pharmacy and Therapeutics Committee for the purpose of developing the uniform formulary of pharmaceutical agents required by subsection (a), reviewing such formulary on a periodic basis, and making additional recommendations regarding the formulary as the committee determines necessary and appropriate. The committee shall include representatives of pharmacies of the uniformed services facilities and representatives of providers in facilities of the uniformed services. Committee members shall have expertise in treating the medical needs of the populations served through such entities and in the range of pharmaceutical and biological medicines available for treating such populations. The committee shall function under procedures established by the Secretary under the regulations prescribed under subsection (j).

(2) The committee shall meet at least quarterly and shall, during meetings, consider for inclusion on the uniform formulary under the standards established in subsection (a) any drugs newly approved by the Food and Drug Administration.

(c) ADVISORY PANEL.—(1) Concurrent with the establishment of the Pharmacy and Therapeutics Committee under subsection (b), the Secretary shall establish a Uniform Formulary Beneficiary Advisory Panel to review and comment on the development of the uniform formulary. The Secretary shall consider the comments of the panel before implementing the uniform formulary or implementing changes to the uniform formulary.

(2) The Secretary shall determine the size and membership of the panel established under paragraph (1), which shall include members that represent—

- (A) nongovernmental organizations and associations that represent the views and interests of a large number of eligible covered beneficiaries;
- (B) contractors responsible for the TRICARE retail pharmacy program;
- (C) contractors responsible for the national mail-order pharmacy program; and
- (D) TRICARE network providers.

(d) PROCEDURES.—(1) In the operation of the pharmacy benefits program under subsection (a), the Secretary of Defense shall assure through management and new contractual arrangements that financial resources are aligned such that the cost of prescriptions is borne by the organization that is financially responsible for the health care of the eligible covered beneficiary.

(2) The Secretary shall use a modification to the bid price adjustment methodology in the managed care support contracts current as of October 5, 1999, to ensure equitable and timely reimbursement to the TRICARE managed care support contractors for pharmaceutical products delivered in the nonmilitary environments. The methodology shall take into account the “at-risk” nature of the contracts as well as managed care support contractor pharmacy costs attributable to changes to pharmacy service or formulary management at military medical treatment facilities, and other military activities and policies that affect costs of pharmacy benefits provided through the Civilian Health and Medical Program of the Uniformed Services. The methodology shall also account for military treatment facility costs attributable to the delivery of pharmaceutical products in the military facility environment which were prescribed by a network provider.

(3) With respect to the TRICARE retail pharmacy program described in subsection (a)(2)(E)(ii), the Secretary shall ensure that a contract entered into with a TRICARE pharmacy program contractor includes requirements described in section 1860D–12(b)(6) of the Social Security Act (42 U.S.C. 1395w–112(b)(6)) to ensure the provision of information regarding the pricing standard for prescription drugs.

(e) PHARMACY DATA TRANSACTION SERVICE.—The Secretary of Defense shall implement the use of the Pharmacy Data Transaction Service in all fixed facilities of the uniformed services under the jurisdiction of the Secretary, in the TRICARE retail pharmacy program, and in the national mail-order pharmacy program.

(f) PROCUREMENT OF PHARMACEUTICALS BY TRICARE RETAIL PHARMACY PROGRAM.—With respect to any prescription filled after January 28, 2008, the TRICARE retail pharmacy program shall be treated as an element of the Department of Defense for purposes of the

procurement of drugs by Federal agencies under section 8126 of title 38 to the extent necessary to ensure that pharmaceuticals paid for by the Department of Defense that are provided by pharmacies under the program to eligible covered beneficiaries under this section are subject to the pricing standards in such section 8126.

(g) SHARING OF INFORMATION WITH STATE PRESCRIPTION DRUG MONITORING PROGRAMS.—(1) The Secretary of Defense shall establish and maintain a program (to be known as the “Military Health System Prescription Drug Monitoring Program”) in accordance with this subsection. The program shall include a special emphasis on drugs provided through facilities of the uniformed services.

(2) The program shall be—

(A) comparable to prescription drug monitoring programs operated by States, including such programs approved by the Secretary of Health and Human Services under section 399O of the Public Health Service Act (42 U.S.C. 280g–3); and

(B) applicable to designated controlled substance prescriptions under the pharmacy benefits program.

(3)(A) The Secretary shall establish appropriate procedures for the bi-directional sharing of patient-specific information regarding prescriptions for designated controlled substances between the program and State prescription drug monitoring programs.

(B) The purpose of sharing of information under this paragraph shall be to prevent misuse and diversion of opioid medications and other designated controlled substances.

(C) Any disclosure of patient-specific information by the Secretary under this paragraph is an authorized disclosure for purposes of the health information privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191).

(4)(A) Any procedures developed pursuant to paragraph (3)(A) shall include appropriate safeguards, as determined by the Secretary, concerning cyber security of Department of Defense systems and operational security of Department personnel.

(B) To the extent the Secretary considers appropriate, the program may be treated as comparable to a State program for purposes of bi-directional sharing of controlled substance prescription information.

(5) For purposes of this subsection, any reference to a program operated by a State includes any program operated by a county, municipality, or other subdivision within that State.

(h) LABELING.—The Secretary of Defense shall ensure that drugs made available through the facilities of the armed forces under the jurisdiction of the Secretary include labels and other labeling that are in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(i) DEFINITIONS.—In this section:

(1) The term “eligible covered beneficiary” means a covered beneficiary for whom eligibility to receive pharmacy benefits through the means described in subsection (a)(2)(E) is established under this chapter or another provision of law.

(2) The term “pharmaceutical agent” means drugs, biological products, and medical devices under the regulatory authority of the Food and Drug Administration.

(3) The term “~~over-the-counter drug~~ nonprescription” means a drug that is not subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

(4) The term “prescription drug” means a drug that is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

(j) REGULATIONS.—The Secretary of Defense shall, after consultation with the other administering Secretaries, prescribe regulations to carry out this section.

1 **SEC. \_\_\_\_ . REPORT REQUIREMENT AND REPEAL OF LIMITATION ON USE OF**  
2 **FUNDS FOR PURCHASING GLOBAL POSITIONING SYSTEM**  
3 **RECEIVER CARDS.**

4 (a) REPORT REQUIREMENT.— Section 1610(d) of the John S. McCain National Defense  
5 Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2281 note) is  
6 amended—

7 (1) by striking “2021”, and inserting “2030”; and

8 (2) by inserting at the end the following new paragraph:

9 “(4) The programs of the Department purchasing Global Position System receiver  
10 cards that are not capable of receiving M-code from the Global Positioning System, and  
11 for each program identified—

12 “(A) the manufacturer, model, quantity, and end-use purpose of such  
13 receiver cards purchased;

14 “(B) the projected number of such receiver cards yet to be purchased  
15 within the Future Years Defense Program, by fiscal year; and

16 “(C) the projected schedule of M-code implementation in the program,  
17 including development, integration, and fielding efforts, or justification for why  
18 M-code receiving capability will not be implemented in the program.”.

19 (b) REPEAL OF LIMITATION.—Section 913 of the Ike Skelton National Defense  
20 Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2281) note is repealed.

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

**Section-by-Section Analysis**

This proposal would (1) extend and expand the reporting requirement under section 1610  
of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law

115-232; 10 U.S.C. 2281 note) (FY 2019 NDAA) on Military Code (M-code) modernization efforts and (2) repeal section 913 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2281 note) (FY2011 NDAA), which limits funding for Global Positioning System (GPS) equipment that is not capable of receiving M-code.

Section 913 of the FY2011 NDAA prohibits purchases of GPS user equipment with Department of Defense (DoD) funds unless the equipment is capable of receiving M-Code from the GPS, or a waiver is granted by the Secretary of Defense (SECDEF) (currently delegated to the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) if M-Code equipment is not available or not required.

Repealing section 913 eliminates the over constraint of program technical Positioning, Navigation, and Timing (PNT) solutions and duplication of requirements-setting authority and acquisition oversight between the Milestone Decision Authority (MDA) and the section 913 waiver authority. Implementation of a waiver process for section 913 and annual reporting requirements between 2019 and 2021 under section 1610 of the FY2011 NDAA have demonstrated in recent years the critical need to consolidate data to detail DoD M-Code modernization progress, M-Code implementation plans, and continued non-M-Code GPS user equipment purchases and fielding activities. Utility of this aggregation is reinforced and extended in this proposal by expanding the section 1610 reporting requirement to include non-M-Code GPS user equipment purchase and integration activities through 2030.

Prohibiting a specific technical solution for all materiel acquisitions by limiting the use of funds for equipment purchases over constrains the defense acquisition process and overrules results of systems engineering conducted to develop functional and performance requirements at an appropriate point in acquisition lifecycles to maximize efficient use of DoD funds and delivery of critical capabilities. A cornerstone of innovation in U.S. Defense acquisition is separation of the requirements, acquisitions, and funding processes in the Defense Acquisition System to ensure that optimal threat-paced capabilities reach the warfighter in a cost-effective manner. Mandating a technical solution from outside this framework risks stifling innovation and fielding technical solutions that are not primarily selected for maximum operational impact. For this reason, requirements, acquisition, and funding processes are separated, but iterated in concert across the acquisition lifecycle timeline.

Section 913 mandates a technical solution DoD-wide in this manner: GPS user equipment using M-Code, the next generation of GPS signal encryption, by prohibiting the purchase of non-M-Code GPS user equipment with DoD funds. The SECDEF is granted authority in section 913 to issue waivers for this limitation when M-Code GPS user equipment is not available or not required. However, determining whether to implement M-Code GPS technology in the weapons system specification on any given program is a complex systems engineering, program management, and operational risk decision driven by factors including M-Code GPS user equipment technical maturity, operational role of GPS signals and marginal benefit of M-Code specific to the program, potential alternative PNT sources or solutions, resource and schedule costs of M-Code implementation, and negative trade-offs with competing priorities, including modular open-system architectures. The decision is an example of one undertaken by Program

Managers reconciling the independent requirements, acquisition, and funding processes repeatedly throughout the acquisition lifecycle, with oversight from the MDA.

Once a program reaches the phase of execution at which funds are obligated or expended to purchase equipment, denial of a section 913 waiver requested by the Program is an outside redundant oversight function that risks cost, schedule, and performance of the program. This reality heavily weights waiver decisions away from these risks, severely limiting potential of section 913 to steer DoD acquisitions using an enterprise-level viewpoint to a more resilient and capable joint force. Such Senior leader actions instead need to be informed by program data regardless of whether equipment purchases have begun. Section 913 also elevates the waiver decision authority in most cases to an official above the MDA and requires that the waiver authority collect and assess information necessary to determine whether a waiver is allowed by section 913. This waiver process is therefore duplicative of MDA oversight, especially of requirements development and systems engineering results, but occurs only in late phases of the acquisition lifecycle once purchases begin during execution. As a result, the statutorily mandated oversight poses significant risk of delayed program schedules and cost increases when section 913 impedes program purchases that were already justified by the requirements development process and appropriately overseen by the MDA.

Section 4204(e) of title 10, United States Code, protects against this situation in general by stating: “The Secretary of Defense shall review the acquisition oversight process for major defense acquisition programs and shall-(1) limit outside requirements for documentation to an absolute minimum on those programs where the service acquisition executive of the military department that is managing the program is the milestone decision authority; and (2) ensure that any policies, procedures, and activities related to oversight efforts conducted outside of the military departments with regard to major defense acquisition programs shall be implemented in a manner that does not unnecessarily increase program costs or impede program schedules.” Section 913 in effect mandates a conflict with such section 4204(e) by requiring an oversight process in the form of purchase waivers that inherently risk increasing program costs and impeding program schedules.

However, execution of section 913 has demonstrated the significant value of compiling data and information from programs in support of waiver submissions by enabling programming, planning, budget, and execution decisions of Senior leaders that strategically prioritize and accelerate critical elements of M-Code GPS, and more generally PNT modernization. GPS is a uniquely enterprise-wide technical system affecting nearly all DoD materiel. Aggregation of data detailing M-Code modernization progress (as was already required by section 1610 through 2021), along with projected and actual acquisitions of GPS user equipment that is not capable of receiving M-Code from the GPS, is therefore necessary regardless of the Acquisition Category (ACAT) and MDA of a given program. Some operational and acquisition-based externalities that apply to the GPS enterprise overall can only be identified in the aggregated dataset. An example is a development program with a low ACAT level (e.g. III) upon which several priority ACAT I programs are relying to deliver a critical subcomponent for M-Code GPS user equipment integration. The DoD is only able to effectively assess the sensitivity of cumulative operational risk on this hypothetical development program by aggregating development, integration, and fielding plans of all programs involved, which are normally subject to oversight by different



MDA officials. This concept has been implemented in support of section 913 waivers, which require submission of program-specific supporting information to the Office of the Secretary of Defense for waiver consideration.

Aggregated datasets from both section 1610 reporting requirements and information collected to support section 913 waivers show that the section 913 funding limitation, which took effect in fiscal year 2017, remains ahead of M-Code GPS technical and operational readiness, but is already obsolete in driving the established DoD and Defense Industrial Base commitment to implementing M-Code GPS. This contradiction is in part due to delays in critical M-Code user equipment developments, significant subsequent efforts required for programs to integrate M-Code equipment that is developed, and commercial markets driving rapid obsolescence. Section 913 has sent a strong demand signal to the Defense Industrial Base contributing to unavailability of current military GPS components before M-Code replacements are fully available. As implied by criteria for waivers allowed in section 913, situations in DoD system acquisition and sustainment in which M-Code GPS technology is not required are likely to persist in perpetuity, whether in sustaining legacy systems or acquiring systems that lack a substantial capability increase from costly M-Code integration. Increased unavailability of non-M-Code GPS user equipment is currently a significant production risk to current programs during a gap between the emergence of initial M-Code GPS user equipment solutions and completion of integration efforts required before such solutions can replace legacy equipment. Section 913 therefore severely limits the ability of the DoD to make strategic prioritization decisions based on operational risk assessments and capability analysis to focus rapid M-Code GPS transitions on cases with the most impact while low-priority modernization cases offer cost saving offsets.

This proposal eliminates significant risks of program negative cost and schedule impacts by striking section 913. Operational needs, capability requirements, resulting weapons systems specifications, and Defense Industrial Base market offering consolidations reflect the DoD commitment to implement M-Code GPS technology as rapidly as resources and technical development limitations allow, regardless of the section 913 mandate. This proposal maintains the data consolidation that has proven valuable with the confluence of section 1610 and the section 913 waiver process by extending the section 1610 annual reporting requirement timespan and additionally including non-M-Code GPS user equipment purchase details. The intent is to eliminate the current process duplication by reconsolidating authority to determine whether M-Code is appropriate for implementation in a given program to the MDA along with oversight of other program technical decisions that determine the ultimate capability delivered to the warfighter, but continue to mandate collection and reporting of the justifying data that identifies enterprise-level risks and vulnerabilities for Senior leaders and GPS enterprise planners.

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

**Changes to Existing Law:** This proposal would amend section 1610 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2281 note) and section 913 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2281 note) as follows:

**Section 1610 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2281 note):**

**SEC. 1610. DESIGNATION OF COMPONENT OF DEPARTMENT OF DEFENSE RESPONSIBLE FOR COORDINATION OF MODERNIZATION EFFORTS RELATING TO MILITARY-CODE CAPABLE GPS RECEIVER CARDS.**

(a) Designation.-Not later than 30 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense, in coordination with the Secretaries of the military departments and the heads of Defense Agencies the Secretary determines appropriate, shall designate a component of the Office of the Secretary of Defense to be responsible for coordinating common solutions for the M-code modernization efforts among the military departments, Defense Agencies, and other appropriate elements of the Department of Defense.

(b) Roles and Responsibilities.-The roles and responsibilities of the component selected under subsection (a) shall include the following:

(1) Identify the elements of the Department of Defense and the programs of the Department that require M-code capable receiver cards and determine-

(A) the number of total receiver cards required by the Department, including the number required for each such element and program and the military departments;

(B) the timeline, by fiscal year, for each program of the Department conducting M-code modernization efforts; and

(C) the projected cost for each such program.

(2) Systematically collect integration test data, lessons learned, and design solutions, and share such information with other elements of the Department, including with respect to each program of the Department that requires M-code capable receiver cards.

(3) Identify ways the Department can prevent duplication in conducting M-code modernization efforts, and identify, to the extent practicable, potential cost savings that could be realized by addressing such duplication.

(4) Coordinate the integration, testing, and procurement of M-code capable receiver cards to ensure that the Department maximizes the buying power of the Department, reduces duplication, and saves resources, where possible.

(c) Support.-The Secretary of Defense shall ensure the military departments, the Defense Agencies, and other elements of the Department of Defense provide the component selected under subsection (a) with the appropriate support and resources needed to perform the roles and responsibilities under subsection (b), and shall clarify the roles of the Chief Information Officer and the Council on Oversight of the Department of Defense Positioning, Navigation, and Timing Enterprise with respect to M-code modernization efforts.

(d) Reports.—Not later than March 15, 2019, and annually thereafter through ~~2021~~2030, the Secretary of Defense shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on M-code modernization efforts. Each report shall include, with respect to the period covered by the report, the following:

(1) The projected cost and schedule, by fiscal year, for the Department to acquire M-code capable receiver cards.

(2) The programs of the Department conducting M-code modernization efforts.

(3) The number of M-code capable receiver cards procured by the Department, the number of such receiver cards yet to be procured, and the percentage of the M-code modernization efforts completed by each program identified under paragraph (2).

(4) The programs of the Department purchasing Global Position System receiver cards that are not capable of receiving M-code from the Global Positioning System, and for each program identified—

(A) the manufacturer, model, quantity, and end-use purpose of such receiver cards purchased;

(B) the projected number of such receiver cards yet to be purchased within the Future Years Defense Program, by fiscal year; and

(C) the projected schedule of M-code implementation in the program, including development, integration, and fielding efforts, or justification for why M-code receiving capability will not be implemented in the program.

(e) Definitions.—In this section:

(1) The term “M-code capable receiver card” means a Global Positioning System receiver card that is capable of receiving military code that provides enhanced positioning, navigation, and timing capabilities and improved resistance to existing and emerging threats, such as jamming.

(2) The term “M-code modernization efforts” means the development, integration, testing, and procurement programs of the Department of Defense relating to developing M-code capable receiver cards.

**Section 913 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2281 note):**

**~~SEC. 913. Limitation on Use of Funds for Purchasing Global Positioning System User Equipment.~~**

~~(a) In General. Except as provided in subsections (b) and (c), none of the funds authorized to be appropriated or otherwise made available by this Act or any other Act for the Department of~~

~~Defense may be obligated or expended to purchase user equipment for the Global Positioning System during fiscal years after fiscal year 2017 unless the equipment is capable of receiving the military code (commonly known as the 'M code') from the Global Positioning System.~~

~~(b) Exception. The limitation under subsection (a) shall not apply with respect to the purchase of passenger vehicles or commercial vehicles in which Global Positioning System equipment is installed.~~

~~(c) Waiver. The Secretary of Defense may waive the limitation under subsection (a) if the Secretary determines that~~

~~(1) suitable user equipment capable of receiving the military code from the Global Positioning System is not available; or~~

~~(2) with respect to a purchase of user equipment, the Department of Defense does not require that user equipment to be capable of receiving the military code from the Global Positioning System.~~

~~(d) Limitation on Delegation of Waiver Authority. The Secretary of Defense may not delegate the authority to make a waiver under subsection (c) to an official below the level of the Secretaries of the military departments or the Under Secretary of Defense for Acquisition, Technology, and Logistics.~~

1 **SEC. \_\_\_\_ . REPEAL AND MODIFICATION OF REPORTING REQUIREMENTS**

2 (a) AUDIT OF DEPARTMENT OF DEFENSE FINANCIAL STATEMENTS.—Section 240a of title  
3 10, United States Code, is amended—

4 (1) by striking subsection (b); and

5 (2) by striking “(a) ANNUAL AUDIT REQUIRED.—”.

6 (b) FINANCIAL IMPROVEMENT AND AUDIT REMEDIATION PLAN.—Section 240b(b) of title  
7 10, United States Code, is amended—

8 (1) in paragraph (1)—

9 (A) in subparagraph (A), by striking “June 30, 2019, and annually  
10 thereafter” and inserting “July 31 each year”;

11 (B) in subparagraph (B)—

12 (i) by striking clauses (vii) through (x); and

13 (ii) by redesignating clauses (xi), (xii), and (xiii) as clauses (vii),  
14 (viii), and (ix), respectively; and

15 (C) by striking subparagraph (C); and

16 (2) in paragraph (2), in each of subparagraphs (A) and (B)—

17 (A) by striking “June 30’ and inserting “July 31”; and

18 (B) by striking the last sentence.

19 (c) ANNUAL REPORTS ON FUNDING.—Section 1009(c) of the National Defense  
20 Authorization Act for Fiscal Year 2020 (P.L. 116-92; 10 U.S.C. 240b note) is amended by  
21 striking “five days” and inserting “10 days”.

**[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:

**Audit of Department of Defense financial statements (10 U.S.C. 240a).** This proposal would eliminate the reporting requirement in subsection (b) of section 240a of title 10, United States Code, which is redundant to other briefings and reports. This would reduce the redundancy of information Congress receives from the DoD. These audit results are released November 15 in the DoD Agency Financial Report; on January 31 through the Semiannual Corrective Action Plan Briefing to Congress; and on June 30 in the annual Financial Improvement and Audit Remediation Report.

**Financial Improvement and Audit Remediation Plan (10 U.S.C. 240b).** This proposal would modify the reporting requirement in section 240b of title 10 by extending the due dates to July 31 of each year and eliminating those elements pertaining to auditing services under contract and audit remediation services under contract. Moving the due dates of the annual report and semiannual briefings from June 30 to July 31 would provide Congress a more complete picture of DoD's audit status by presenting progress data as of the end of quarter three of each fiscal year. DoD has demonstrated it is consistently above the percent thresholds for audit services and audit remediation services under contract. Requirements to capture and report this information can give the appearance that Congress has directed DoD to limit competition to independent public accounting firms. Eliminating this requirement would alleviate confusion over DoD's contracting process and reduce the risk of challenges to the contracting process that could delay audit services or audit remediation services.

**Annual Reports on Funding (Section 1009(c) of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92; 10 U.S.C. 240b note)).** This proposal would change the reporting due date from five days following the submission of the President's Budget to 10 days following the submission of the President's Budget. This would align the submission of this reporting requirement with other similar reports and would not change or diminish the information reported 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 amend sections 240a and 240b of title 10, United States Code, and section 1009 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92) as follows:

### Title 10, United States Code

#### § 240a. Audit of Department of Defense financial statements

- (a) ANNUAL AUDIT REQUIRED.—The Secretary of Defense shall ensure that a full audit is performed on the financial statements of the Department of Defense for each fiscal year as required by section 3521(e) of title 31.
- ~~(b) ANNUAL REPORT ON AUDIT.—The Secretary shall submit to Congress the results of the audit performed in accordance with subsection (a) for a fiscal year by not later than March 31 of the following fiscal year.~~

## **§ 240b. Financial Improvement and Audit Remediation Plan**

### (a) FINANCIAL IMPROVEMENT AND AUDIT REMEDIATION PLAN.—

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

(2) ELEMENTS.—The plan required by paragraph (1) shall—

(A) describe specific actions to be taken, including interim milestones with a detailed description of the subordinate activities required, and estimate the costs associated with—

(i) correcting the financial management deficiencies that impair the ability of the Department of Defense to prepare timely, reliable, and complete financial management information;

(ii) ensuring the financial statements of the Department of Defense go under full financial statement audit, and that the Department leadership makes every effort to reach an unmodified opinion as soon as possible;

(iii) ensuring the audit of the financial statements of the Department of Defense for each fiscal year after fiscal year 2020 occurs by not later than March 31 following such fiscal year;

(iv) achieving an unqualified audit opinion for each major element of the statement of budgetary resources of the Department of Defense; and

(v) addressing the existence and completeness of each major category of Department of Defense assets; and

(B) systematically tie the actions described under subparagraph (A) to business process and control improvements and business systems modernization efforts described in section 2222 of this title.

### (b) REPORT AND BRIEFING REQUIREMENTS.—

(1) ANNUAL REPORT.—

(A) IN GENERAL.—

Not later than ~~June 30, 2019, and annually thereafter~~ July 31 each year, the Under Secretary of Defense (Comptroller) shall submit to the congressional defense committees a report on the status of the implementation by the Department of Defense of the Financial Improvement and Audit Remediation Plan under subsection (a).

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

(i) An analysis of the consolidated corrective action plan management summary prepared pursuant to section 240c of this title.

(ii) Current Department of Defense-wide information on the status of corrective actions plans related to critical capabilities and material weaknesses, including the standard data elements recommended in the implementation guide for Office of Management and Budget Circular A-123, for the armed forces, military departments, and Defense Agencies.

(iii) A current description of the work undertaken and planned to be undertaken by the Department of Defense, and the military departments, Defense Agencies, and other organizations and elements of the Department, to test and verify transaction data pertinent to obtaining an unqualified audit of their financial statements, including from feeder systems.

(iv) A current projected timeline of the Department in connection with the audit of the full financial statements of the Department, to be submitted to Congress annually not later than six months after the submittal to Congress of the budget of the President for a fiscal year under section 1105 of title 31, including the following:

(I) The date on which the Department projects the beginning of an audit of the full financial statements of the Department, and the military departments, Defense Agencies, and other organizations and elements of the Department, for a fiscal year.

(II) The date on which the Department projects the completions of audits of the full financial statements of the Department, and the military departments, Defense Agencies, and other organizations and elements of the Department, for a fiscal year.

(III) The dates on which the Department estimates it will obtain an unqualified audit opinion on the full financial statements of the



Department, the military departments, the Defense Agencies, and other organizations and elements of the Department for a fiscal year.

(v) A current estimate of the anticipated annual costs of maintaining an unqualified audit opinion on the full financial statements of the Department, the military departments, the Defense Agencies, and other organizations and elements of the Department for a fiscal year after an unqualified audit opinion on such full financial statements for a fiscal year is first obtained.

(vi) A certification of the results of the audit of the financial statements of the Department performed for the preceding fiscal year, and a statement summarizing, based on such results, the current condition of the financial statements of the Department.

~~(vii) If less than 50 percent of the auditing services under contract, as described in the briefing required under paragraph (2), are being performed by professionals meeting the qualifications described in section 240d(b) of this title, a detailed description of the risks associated with the risks of the acquisition strategy of the Department with respect to conducting audits and an explanation of how the strategy complies with the policies expressed by Congress.~~

~~(viii) If less than 25 percent of the auditing services under contract, as described in the briefing required under paragraph (2), are being performed by professionals meeting the qualifications described in section 240d(b) of this title, a written certification that the staffing ratio complies with commercial best practices and presents no increased risk of delay in the Department's ability to achieve a clean audit opinion.~~

~~(ix) If less than 50 percent of the audit remediation services under contract, as described in the briefing required under paragraph (2)(B), are being performed by individual professionals meeting the qualifications described in subsection (c), a detailed description of the risks associated with the risks of the acquisition strategy of the Department with respect to conducting audit remediation activities and an explanation of how the strategy complies with the policies expressed by Congress.~~

~~(x) If less than 25 percent of the audit remediation services under contract, as described in the briefing required under paragraph (2)(B), are being performed by individual professionals meeting the qualifications described in subsection (c), a written certification that the staffing ratio complies with commercial best practices and presents no increased risk of delay in the Department's ability to achieve a clean audit opinion.~~

~~(xi vii)~~ A description of audit activities and results for classified programs, including a description of the use of procedures and requirements to prevent unauthorized exposure of classified information in such activities.

~~(xii viii)~~ An identification of the manner in which the corrective action plan or plans of each department, agency, component, or element of the Department of Defense, and the corrective action plan of the Department as a whole, support the National Defense Strategy (NDS) of the United States.

~~(xiii ix)~~ A description of the incentives available pursuant to the guidance required by section 1004(a) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, including a detailed explanation of how such incentives were provided during the fiscal year covered by the report.

~~(C) ADDITIONAL REQUIREMENTS.—~~

~~(i) UNCLASSIFIED FORM.—~~

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

~~(ii) DELEGATION.—~~

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

(2) SEMIANNUAL BRIEFINGS.—(A) Not later than January 31 and ~~June 30~~ July 31 each year, the Under Secretary of Defense (Comptroller) and the comptrollers of the military departments shall provide a briefing to the congressional defense committees on the status of the corrective action plan. ~~Such briefing shall include both the absolute number and percentage of personnel performing the amount of auditing services being performed by professionals meeting the qualifications described in section 240d(b) of this title.~~

(B) Not later than January 31 and ~~June 30~~ July 31 each year, the Under Secretary of Defense (Comptroller) and the comptrollers of the military departments shall provide a briefing to the congressional defense committees on the status of the corrective action plan. ~~Such briefing shall include both the absolute number and percentage of personnel performing the amount of audit remediation services being performed by professionals meeting the qualifications described in subsection (e).~~

(3) CRITICAL CAPABILITIES DEFINED.—In this subsection, the term “critical capabilities” means the critical capabilities described in the Department of Defense report titled “Financial Improvement and Audit Readiness (FIAR) Plan Status Report” and dated May 2016.

- (c) SELECTION OF AUDIT REMEDIATION SERVICES.—The selection of audit remediation service providers shall be based, among other appropriate criteria, on qualifications, relevant experience, and capacity to develop and implement corrective action plans to address internal control and compliance deficiencies identified during a financial statement or program audit.

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**Section 1009 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92):**

**SEC. 1009. PLAN OF THE DEPARTMENT OF DEFENSE FOR FINANCIAL MANAGEMENT INFORMATION.**

(a) ELEMENT ON SUPPORT OF NDS BY CORRECTIVE ACTION PLANS.—[amended section 240b(b)(1)(B) of title 10, United States Code]

(b) TECHNICAL AMENDMENT.—[amended section 240b(b)(1)(B)(i) of title 10, United States Code]

(c) ANNUAL REPORTS ON FUNDING FOR CORRECTIVE ACTION PLANS.—[10 U.S.C. 240b note] Not later than ~~five~~ 10 days after the submittal to Congress under section 1105(a) of title 31, United States Code, of the budget of the President for any fiscal year after fiscal year 2020, the Secretary of Defense shall submit to the congressional defense committees a report setting forth a detailed estimate of the funding required for such fiscal year to procure, obtain, or otherwise implement each process, system, and technology identified to address the current corrective action plans of the departments, agencies, components, and elements of the Department of Defense, and the corrective action plan of the Department as a whole, for purposes of chapter 9A of title 10, United States Code, during such fiscal year.

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1 **SEC. \_\_\_. EXPANSION OF DEFENSE WORKING CAPITAL FUND CONTRACT**  
2 **AUTHORITY FOR SERVICE OR SUPPLY REQUIREMENTS OF**  
3 **VESSELS OPERATED IN SUPPORT OF NATIONAL SECURITY.**

4 Section 2208(k) of title 10, United States Code, is amended by adding at the end the  
5 following new paragraph:

6 “(3) A contract for services or supplies related to vessels operated in support of national  
7 security, including vessel charters, management and crew operations, maintenance and repair,  
8 and vessel-related equipment, financed by a working-capital fund may be awarded in advance of  
9 the availability of funds in the working capital fund for the procurement.”.

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

**Section-by-Section Analysis**

This proposal would amend section 2208 of title 10, United States Code (U.S.C.), to provide contract authority for service or supply requirements for vessels operated in support of national security.

Statutory authority does not presently permit a Department of Defense working capital fund activity to employ the use of contract authority except to maintain inventory stock levels or to acquire capital assets. 10 U.S.C. § 2210(b) states, “Obligations may, without regard to fiscal year limitations, be incurred against *anticipated reimbursements* to stock funds in such amounts and for such period as the Secretary of Defense, with the approval of the President, may determine to be necessary to maintain stock levels consistently with planned operations for the next fiscal year.” (Italics added for emphasis.). In addition, section 342(b) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484, 10 U.S.C. 2208 note) states, “The Secretary of Defense may award contracts for capital assets of the Fund *in advance of the availability of funds* in the subaccount, to the extent provided for in appropriation Acts.” (Italics added for emphasis.)

The Military Sealift Command (MSC), a working capital fund activity, provides maritime-related transportation services in support of national security that fall into neither of the foregoing categories. In managing its Transportation Working Capital Fund (TWCF) and Navy Working Capital Fund (NWCF) resources, MSC cannot presently award transportation maintenance and overhaul contracts sufficiently in advance to avoid adverse operational impacts to U.S. Navy and U.S. Transportation Command (USTRANSCOM) customers. Specifically, MSC cannot obtain long-lead time parts and components for ship repair availabilities or for ship

operating services contracts, efforts that must be precisely scheduled to allow continuous forward presence and support to critical Fleet operations. Inability to award contracts sufficiently in advance of the availability of funding can adversely impact ship operating schedules and often leaves maintenance efforts inefficient, more expensive, and even incomplete for MSC's low-density, high-demand vessels. MSC requires authority to award contracts in advance of the receipt of customer sales orders (customer funding) consistent with the authority provided for the Supply Management Activity Group and for the acquisition of capital assets.

The measure would be budget-neutral, with no additional costs. It would only permit award in advance of the availability of specific working capital funds. The resultant benefits of amending 10 U.S.C. § 2208 to cover national security related sea transportation and operation services provided by MSC would be to avoid disruption of services required for USTRANSCOM, the Department of Defense, and U.S. Navy operating forces, vital services that must continue uninterrupted throughout the calendar year, without regard for the fiscal year, e.g., ship charter services, vessel maintenance and repair, and other critical functions.

**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 amends section 2208 of title 10. United States Code, as follows:

### § 2208. Working-capital funds

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

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

- (A) An unspecified minor military construction project under section 2805(c) of this title.
- (B) Automatic data processing equipment or software.
- (C) Any other equipment.
- (D) Any other capital improvement.

(3) A contract for services or supplies related to vessels operated in support of national security, including vessel charters, management and crew operations, maintenance and repair, and vessel-related equipment, financed by a working-capital fund may be awarded in advance of the availability of funds in the working capital fund for the procurement.

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