

1 **SEC. ____ . AUTHORITY TO RETAIN CERTAIN MILITARY TECHNICIANS WHO**
2 **LOSE DUAL STATUS.**

3 (a) RETENTION OF CERTAIN MILITARY TECHNICIANS.—Section 10216 of title 10, United
4 States Code, is amended—

5 (1) in subsection (g)(1), by striking “subsection (d)” and inserting “subsections (d)
6 and (e)”; and

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

8 “(h) RETENTION OF CERTAIN MILITARY TECHNICIANS WHO LOSE DUAL STATUS DUE TO
9 VOLUNTARY TRANSFER TO THE RETIRED RESERVE OR AS A RESULT OF PHYSICAL DISABILITY—(1)
10 Notwithstanding subsections (d) and (e) of this section, section 10217(e) of this title, or
11 subsections (a)(3) and (b) of section 10218 of this title, if a military technician (dual status) who
12 is employed under section 3101 of title 5 loses such dual status due to voluntary transfer to the
13 Retired Reserve or as the result of a physical disability as determined under chapter 61 of this
14 title, the person may be retained as a non-dual status technician so long as—

15 “(A) the person, while a non-dual status technician, is not disqualified from
16 performing the non-dual status functions or position because of performance, medical, or
17 other reasons; and

18 “(B) the disability is not the result of intentional misconduct or willful neglect and
19 was not incurred during a period of unauthorized absence.

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

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

1 (b) MODIFICATION TO CONDITIONS FOR RETIREMENT.—Section 8456(a)(1)(A) of title 5,
2 United States Code, is amended by inserting “and is not otherwise retained as a non-dual status
3 technician pursuant to section 10216(h) of title 10” before the semicolon.

Section-by-Section Analysis

This proposal would amend section 10216 of title 10, United States Code, (Section 10216) to provide for retention of certain military technicians who lose their dual-status as a result of a voluntary retirement or a physical disability, not just a combat-related disability. It would also make corresponding edits to section 8456 of title 5, United States Code, to make it clear that retention under Section 10216 would not subject the individual to the retirement requirements of that section.

Military technicians (also known as military technicians (dual status)) are federal civilian employees who provide support to reserve units, either in the "organizing, administering, instructing or training of the Selected Reserve" or by maintaining and repairing reserve component equipment and supplies.¹ Some military technicians may also perform certain operational support duties and provide training to active component personnel, Department of Defense contractors and civilians, and foreign military personnel.² Military technicians are required to maintain membership in the Selected Reserve as a condition of their employment. This means that they are required to attend weekend drills and annual training with their reserve unit, which is usually the one that employs them as civilians during the week. Military technicians can be involuntarily ordered to active duty in the same way as other members of the Selected Reserve.³ When we lose these skilled professionals due to the loss of their dual status such loss materially impacts readiness due to the reduction in operational capabilities of entire units.

This proposal seeks to ensure that military technicians who lose their “dual status” as a result of a retirement or a physical disability, regardless of whether the disability is combat-related, are eligible to continue employment as a technician in a civilian capacity.⁴ This proposal would not extend to dual status technicians in the National Guard employed pursuant to section 709(b) of title 32. With respect to the exception for retirement, this proposal is primarily focused on “gray area retirees” or those retirees from the Reserve who have completed 20 years of service and are eligible for retirement benefits but are not yet old enough (typically age 60) to start receiving benefits. To maintain readiness, it’s imperative that we provide these technicians with opportunities for continued service. By supporting them, we safeguard the efficiency, effectiveness, and preparedness of our forces, ensuring that they remain capable of meeting any challenge.

¹ 10 U.S.C. 10216

² *Id.*

³ There are no military technicians in the Navy Reserve, the Marine Corps Reserve, or the Coast Guard Reserve.

⁴ The Army calculates that 156 military technicians (dual status) were retained after losing their dual status due to a combat related disability in the last four fiscal years.

This proposal would also ensure that military technicians who lose their dual status as a result of a combat disability receive the same retention opportunities as members who lose their dual status as a result of voluntary retirement or physical disability. This would be accomplished by excepting out the 12-month limitation on compensation found in subsection (e).

If adopted, this proposal would amend Section 10216 to ensure that military technicians are eligible for continued employment when they lose their dual status. Such eligibility would continue in the event of a retirement or physical disability, regardless of the source of the disability (so long as it is not the result of intentional misconduct or willful neglect and was not incurred during a period of unauthorized absence). Such an amendment would allow the department to retain highly skilled workers thereby improving readiness and efficiency.⁵

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President's Budget.

Changes to Existing Law: This proposal would amend section 10216 of title 10, United States Code, and section 8456 of title 5, United States Code, as follows:

TITLE 10, UNITED STATES CODE

§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.

⁵ The Army estimates that it can take up to 12 months to hire and fully train a technician

(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 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)~~ **subsections (d) and (e)** 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.

(h) RETENTION OF CERTAIN MILITARY TECHNICIANS WHO LOSE DUAL STATUS DUE TO VOLUNTARY TRANSFER TO THE RETIRED RESERVE OR AS A RESULT OF A PHYSICAL DISABILITY.—

(1) Notwithstanding subsection (d) and (e) of this section, section 10217(e) of this title, or subsections (a)(3) and (b) of section 10218 of this title, if a military technician (dual status) who is employed under section 3101 of title 5 loses such dual status due to voluntary transfer to the Retired Reserve or as the result of a physical disability as determined under chapter 61 of this title, the person may be retained as a non-dual status technician so long as—

(A) 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; and

(B) the disability is not the result of intentional misconduct or willful neglect and was not incurred during a period of unauthorized absence.

(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.

TITLE 5, UNITED STATES CODE

§8456. Military reserve technicians

(a)(1) Except as provided in paragraph (2) or (3), an individual shall be retired under this subchapter if the individual—

(A) is separated from employment as a military reserve technician by reason of a disability that disqualifies the individual from membership in a reserve component of the Armed Forces specified in section 10101 of title 10 or from holding the military grade required for such employment and is not otherwise retained as a non-dual status technician pursuant to section 10216(h) of title 10;

(B) is not considered to be disabled under section 8451(a)(1)(B);

(C) is not appointed to a position in the Government (whether under subsection (b) or otherwise); and

(D) has not declined an offer of an appointment to a position in the Government under subsection (b).

- (2) Payment of any annuity for an individual pursuant to this section terminates—
- (A) on the date the individual is appointed to a position in the Government (whether pursuant to subsection (b) or otherwise);
 - (B) on the date the individual declines an offer of appointment to a position in the Government under subsection (b); or
 - (C) as provided under section 8455(a).
- (3) An individual eligible to retire under section 8414(c) shall not be eligible to retire under this section.

(b) Any individual applying for or receiving any annuity pursuant to this section shall, in accordance with regulations prescribed by the Office, be considered by any agency of the Government before any vacant position in the agency is filled if—

- (1) the position is located within the commuting area of the individual's former position;
- (2) the individual is qualified to serve in such position, as determined by the head of the agency; and
- (3) the position is at the same grade or equivalent level as the position from which the individual was separated.

1 **SEC. ____ . EXEMPTION FROM FEDERAL, STATE, AND LOCAL PERMIT**
2 **REQUIREMENTS FOR CERTAIN MILITARY CONSTRUCTION**
3 **PROJECTS.**

4 Section 2802 of title 10, United States Code, is amended by inserting after subsection (c)
5 the following new subsection:

6 “(d) No Federal, State, or local permit shall be required for any military construction
7 project that is authorized as described in subsection (a).”.

[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 exempt the Department of Defense (DoD) from any requirement to obtain a permit from a Federal government agency or State or local agency for military construction (MILCON) projects conducted under section 2802 of title 10, United States Code (10 U.S.C 2802).

10 U.S.C. 2802 requires congressional authorization and appropriation for MILCON construction projects in excess of \$9,000,000. These MILCON projects are funded through the DoD’s Planning, Programming, Budgeting, and Execution (PPBE) process. The MILCON process includes: (1) identifying the requirement for the new facility and initial project development through the DD1391 process; (2) the prioritization of the MILCON project within the military department’s chain of command; (3) consolidation and budgeting within the Office of the Secretary of Defense culminating in the MILCON portion of the annual budget request and Future Years Defense Program (FYDP); (4) review and adjustment of the submitted FYDP list, including individual DD1391s, by congressional defense committees; (5) passage and enactment of the MILCON appropriations act – each MILCON project is separately funded and listed in the accompanying Joint Explanatory Statement; and, (6) design and execution by the designated DoD construction agent.

The DD1391 controls the design and execution of the MILCON project and by the time that Congress authorizes and appropriates funds for the MILCON project there is extensive review of the project, including its compliance with appropriate environmental laws, such as the National Environmental Policy Act, Clean Water Act, Rivers and Harbors Act, Endangered Species Act, and Coastal Zone Management Act. As part of a MILCON project, DoD is often required to obtain permits under various environmental protection and navigation statutes, the most common being the Clean Water Act (33 U.S.C. 1344) and the Rivers and Harbors Act (33 U.S.C. 403). In many cases, the process for DoD to request a permit and the regulator to review and consider the request causes unacceptable delay and increased costs to the MILCON project.

In the extreme case, the regulator has not issued a permit and projects necessary to the national defense have stalled completely.

Pursuant to 10 U.S.C. 2802(f), the services have an obligation to consult with impacted Indian tribes and avoid or mitigate within the design and implementation of MILCON projects that are likely to significantly impact tribal lands, known sacred sites, or tribal treaty rights. When a tribal treaty right may be significantly impacted by a proposed MILCON project, the services and the affected Tribe(s) engage in government-to-government consultations to discuss the impact and attempt to agree on appropriate consultation or mitigation. Generally speaking, the end result of government-to-government consultations is two-fold: (1) a Memorandum of Agreement between the affected Tribe(s) and the military service on mitigation; and (2) when relevant, a permit (e.g. a Clean Water Act permit from the U.S. Army Corps of Engineers). If the military service and the Tribes are unable to come to an agreement on avoidance and mitigation, the regulator may not issue a permit over tribal objection, even when necessary to the national defense.

This proposal does not alter the requirement for the services to consult, avoid, and mitigate, when appropriate, for projects that are likely to significantly impact tribal lands, known sacred sites, or tribal treaty rights. This proposal will however impact the end product of some government-to-government consultations by altering the permit requirement.

This amendment to the military construction authority is needed to ensure that the projects authorized and appropriated by Congress can be built to establish deterrence and provide the defense of our nation. This provision will facilitate the construction of priority projects in an expeditious manner and provide the Secretaries of the military departments the ability to man, train, and equip their forces.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year 2027 President's Budget.

Changes to Existing Law: This proposal would insert a new subsection (d) to section 2802 of title 10, United States Code, as follows:

§2802. Military construction projects

(a) The Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects, land acquisitions, and defense access road projects (as described under section 210 of title 23) as are authorized by law.

(b) Authority provided by law to carry out a military construction project includes authority for—

- (1) surveys and site preparation;
- (2) acquisition, conversion, rehabilitation, and installation of facilities;
- (3) acquisition and installation of equipment and appurtenances integral to the project;

- (4) acquisition and installation of supporting facilities (including utilities) and appurtenances incident to the project;
- (5) planning, supervision, administration, and overhead incident to the project;
- and
- (6) personnel and personal services contracts required to carry out paragraphs (1) through (5).

(c) In determining the scope of a proposed military construction project, the Secretary concerned shall submit to the President such recommendations as the Secretary considers to be appropriate regarding the incorporation and inclusion of life-cycle cost-effective practices as an element in the project documents submitted to Congress in connection with the budget submitted pursuant to section 1105 of title 31 for the fiscal year in which a contract is proposed to be awarded for the project.

(d) No Federal, State, or local permit shall be required for any military construction project that is authorized as described in subsection (a).

(e) ****

(f)(1) In addition to any other applicable consultation requirement pursuant to law or Department of Defense policy, if a proposed military construction project is likely to significantly impact tribal lands, known sacred sites, or tribal treaty rights, the Secretary concerned shall initiate consultation with the tribal government of each impacted Indian tribe—

- (A) to determine the nature and extent of such impact;
- (B) to determine whether such impact can be avoided or mitigated in the design and implementation of the project; and
- (C) if such impact cannot be avoided, to develop feasible measures consistent with applicable law to mitigate the impact and estimate the cost of the mitigation measures.

(2) As part of the Department of Defense Form 1391 submitted to the appropriate committees of Congress for a military construction project covered by paragraph (1), the Secretary concerned, to the extent possible at the time of such submission, shall include a description of the current status of the consultation conducted under such paragraph and specifically address each of the items specified in subparagraphs (A), (B), and (C) of such paragraph.

(3) The requirement under paragraph (1) does not affect the obligation of the Secretary concerned to comply with any other applicable consultation requirement pursuant to law or Department of Defense policy.

(4) In this subsection:

(A) The term “Indian tribe” has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(B) The term “tribal government” means the recognized governing body of an Indian tribe.

(C) The term “sacred site” has the meaning given that term in Executive Order No. 13007, as in effect on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020 [Dec. 20, 2019].

1 **SEC. ____.** **MODIFICATIONS TO DEPARTMENT OF DEFENSE CIVILIAN**
2 **ACQUISITION WORKFORCE PERSONNEL DEMONSTRATION**
3 **PROJECT.**

4 (a) REPEAL OF LIMITATION ON NUMBER OF ACQDEMO PARTICIPANTS.—Section 1762
5 of title 10, United States Code, is amended by striking subsection (c).

6 (b) REPEAL OF OBSOLETE PROVISIONS RELATING TO ASSESSMENTS.—Such section is
7 further amended by striking subsections (e) and (f).

8 (c) CONFORMING REDESIGNATIONS.—Such section is further amended—

9 (1) by redesignating subsections (d), (g), and (h) as subsections (c), (d), and
10 (e), respectively; and

11 (2) in subsection (e), as so redesignated, by striking “subsection (g)” and
12 inserting “subsection (d)”.

**[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 1762 of title 10, United States Code, to eliminate the employee cap on the Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo). This change aligns with President Trump’s priorities of strengthening American leadership and national security, as well as Secretary of Defense Hegseth’s goals of rebuilding the military and restoring deterrence—by reinforcing a system that ties employee contributions to mission outcomes, accountability, and merit.

 AcqDemo is the primary personnel and contribution system for over 63,000 acquisition professionals in the Department of Defense (DoD), including the Air Force Materiel Command, the Army Materiel Command, the United States Space Force, the United States Space Command, the Naval Air Systems Command, the Naval Sea Systems Command, the Marine Corps, and the Missile Defense Agency. Additional organizations have expressed interest in joining the contribution system but with the existing limitation on the number of participants we are unable to bring them into the program. AcqDemo’s design links contribution and compensation, rewarding merit, innovation, and contribution to the mission, and is not based on longevity within the Government. Since its inception in 1999, Congress has continually extended AcqDemo’s authority.

Over the next five years, the Warfighting Acquisition Workforce (WAW) will obligate more than \$1 trillion for new acquisitions, while sustaining and managing major programs valued at \$7 trillion over their lifecycle. The Department must recruit and cultivate workforce talent to maintain strategic readiness against a strategic opponent security threat. This proposal will enable the DoD to sustain the highly successful personnel initiatives implemented through AcqDemo, which includes direct hiring authorities, streamlined and broadband classification, differential pay, and compensation flexibilities that over the last 27 years have led to innovation and effective acquisition processes. AcqDemo, by design, enhances the agility, effectiveness, and professionalism of the WAW and its support personnel, directly tying their work to readiness and lethality as they equip our military.

This Administration and Congress have shown a strong commitment to modernizing the Federal workforce and enhancing national security through agile, skills-based personnel systems. Removing the cap on participants would support these goals by expanding access to a proven, contribution-based performance system that rewards merit and results—rather than tenure—while allowing the Department to attract and retain top talent in critical acquisition roles.

Budget Implications: This proposal has no significant impact on the use of resources requested within the FY 2027 President’s Budget.

Changes to Existing Law: This proposal would amend section 1762 of title 10, United States Code, as follows:

§1762. Demonstration project relating to certain acquisition personnel management policies and procedures

(a) COMMENCEMENT.—The Secretary of Defense is authorized to carry out a demonstration project, the purpose of which is to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense and supporting personnel assigned to work directly with the acquisition workforce.

(b) TERMS AND CONDITIONS.—

(1) Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to section 4703 of title 5 and all other provisions of such title that apply with respect to any demonstration project under such section.

(2) Subject to paragraph (3), in applying section 4703 of title 5 with respect to a demonstration project described in subsection (a)—

(A) “180 days” in subsection (b)(4) of such section shall be deemed to read “120 days”;

(B) “90 days” in subsection (b)(6) of such section shall be deemed to read “30 days”; and

(C) subsection (d)(1) of such section shall be disregarded.

(3) Paragraph (2) shall not apply with respect to a demonstration project unless-

(A) for each organization or team participating in the demonstration project—

(i) at least one-third of the workforce participating in the demonstration project consists of members of the acquisition workforce; and

(ii) at least two-thirds of the workforce participating in the demonstration project consists of members of the acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce; and

(B) the demonstration project commences before October 1, 2007.

(4) The Secretary of Defense shall exercise the authorities granted to the Office of Personnel Management under section 4703 of title 5 for purposes of the demonstration project authorized under this section.

~~(c) LIMITATION ON NUMBER OF PARTICIPANTS.—The total number of persons who may participate at any one time in the demonstration project under this section may not exceed 130,000.~~

~~(c)~~ (d) EFFECT OF REORGANIZATIONS.—The applicability of paragraph (2) of subsection (b) to an organization or team shall not terminate by reason that the organization or team, after having satisfied the conditions in paragraph (3) of such subsection when it began to participate in a demonstration project under this section, ceases to meet one or both of the conditions set forth in subparagraph (A) of such paragraph (3) as a result of a reorganization, restructuring, realignment, consolidation, or other organizational change.

~~(e) ASSESSMENTS.—~~

~~(1) The Secretary of Defense shall designate an independent organization to conduct two assessments of the acquisition workforce demonstration project described in subsection (a).~~

~~(2) Each such assessment shall include the following:~~

~~(A) A description of the workforce included in the project.~~

~~(B) An explanation of the flexibilities used in the project to appoint individuals to the acquisition workforce and whether those appointments are based on competitive procedures and recognize veteran's preferences.~~

~~(C) An explanation of the flexibilities used in the project to develop a performance appraisal system that recognizes excellence in performance and offers opportunities for improvement.~~

~~(D) The steps taken to ensure that such system is fair and transparent for all employees in the project.~~

~~(E) How the project allows the organization to better meet mission needs.~~

~~(F) An analysis of how the flexibilities in subparagraphs (B) and (C) are used, and what barriers have been encountered that inhibit their use.~~

~~(G) Whether there is a process for—~~

~~(i) ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the performance appraisal period; and~~

~~(ii) setting timetables for performance appraisals.~~

~~(H) The project's impact on career progression.~~

~~(I) The project's appropriateness or inappropriateness in light of the complexities of the workforce affected.~~

~~(J) The project's sufficiency in terms of providing protections for diversity in promotion and retention of personnel.~~

~~(K) The adequacy of the training, policy guidelines, and other preparations afforded in connection with using the project.~~

~~(L) Whether there is a process for ensuring employee involvement in the development and improvement of the project.~~

~~(3) The first assessment under this subsection shall be completed not later than September 30, 2012. The second and final assessment shall be completed not later than September 30, 2016. The Secretary shall submit to the covered congressional committees a copy of each assessment within 30 days after receipt by the Secretary of the assessment.~~

~~(f) COVERED CONGRESSIONAL COMMITTEES.—In this section, the term “covered congressional committees” means—~~

~~(1) the Committees on Armed Services of the Senate and the House of Representatives;~~

~~(2) the Committee on Homeland Security and Governmental Affairs of the Senate; and~~

~~(3) the Committee on Oversight and Government Reform of the House of Representatives.~~

~~(dg)~~ **(dg)** TERMINATION OF AUTHORITY.—The authority to conduct a demonstration project under this section shall terminate on December 31, 2031.

~~(eh)~~ **(eh)** CONVERSION.—Within 6 months after the authority to conduct a demonstration project under this section is terminated as provided in subsection **(dg)**, employees in the project shall convert to the civilian personnel system created pursuant to section 9902 of title 5.

SEC. ____. **MODIFICATION OF RESIDENCY REQUIREMENTS FOR JUDGES OF**
THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL
CIRCUIT AND JUDGES OF THE UNITED STATES COURT OF
FEDERAL CLAIMS.

(a) RESIDENCY REQUIREMENT FOR JUDGES OF THE FEDERAL CIRCUIT.—Section 44(c) of title 28, United States Code, is amended by striking “within fifty miles of the District of Columbia.” and inserting “in a judicial district of the United States.”.

(b) RESIDENCY REQUIREMENT FOR JUDGES OF THE COURT OF FEDERAL CLAIMS.—Section 175 of title 28, United States Code, is amended—

(1) by striking subsections (a) and (c);

(2) by redesignating subsection (b) as subsection (a);

(3) in subsection (a), as so redesignated, by striking “shall reside within fifty miles of the District of Columbia.” and inserting “of the United States Court of Federal Claims shall reside in a judicial district of the United States.”; and

(4) by adding at the end the following new subsection (b):

“(b) The official duty station of a judge of the Court of Federal Claims in active service shall be the District of Columbia, or that place where the Director provides chambers to such judge where he performs a substantial portion of his judicial work, which is nearest the place where the judge maintains his actual abode in which he customarily lives. The place where a retired judge maintains the actual abode in which such judge customarily lives shall be deemed to be the judge’s official duty station for the purposes of section 456 of this title.”

1 (c) OFFICIAL DUTY STATION FOR JUDGES OF THE FEDERAL CIRCUIT.—Section 456(b) of
2 title 28, United States Code, is amended by striking “the United States Court of Appeals for the
3 Federal Circuit,”.

**[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 requirement that judges of the Court of Appeals for the Federal Circuit (Federal Circuit) and the United States Court of Federal Claims (CFC) reside within 50 miles of the District of Columbia. Instead, Federal Circuit and CFC judges would be required to live in a judicial district of the United States. It would likewise set the official duty station of such judges as the place where the Director of the Administrative Office of the United States Courts (AO) provides chambers to such judges where such judges perform a substantial portion of their judicial work nearest the place where such judges maintain their actual abode in which they customarily live. Put simply, this proposal would: (1) permit judges of the Federal Circuit and CFC to live in any judicial district of the United States; and (2) set such judge’s official duty station as the chambers nearest their home provided to them by the AO.

Unlike the federal district courts and most federal courts of appeals, the Federal Circuit and CFC are courts of nationwide jurisdiction, limited only by the classes of claims they may hear.

The Federal Circuit has “exclusive jurisdiction” over an “appeal from a final decision of” *any* “district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court of the Northern Mariana Islands” in “any civil action” relating “to patents or plant variety protection.” 28 U.S.C. 1295(a)(1). This includes appeals from decisions of the Patent Trial and Appeal Board of the U.S. Patent and Trademark Office, *id.* 1295(a)(4). Its jurisdiction also includes but is not limited to appeals of a large portion of monetary claims against the United States, *id.* 1295(a)(2); jurisdiction over all appeals from the CFC and the United States Court of International Trade, *id.* 1295(a)(3), (5); and appeals “from a final order or final decision of the Merit Systems Protection Board,” *id.* 1295(a)(9).

The CFC similarly has nationwide jurisdiction over certain classes of claims. As set forth at 28 U.S.C. 1491(a), the CFC has “jurisdiction to render judgement upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” This expansive jurisdiction over monetary claims against the Federal government notably includes military pay cases. The CFC, along with the district courts, also has jurisdiction over so-called bid protests, in which an interested party objects “to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement.” *Id.* 1491(b). The

CFC’s jurisdiction is not confined only to contract-related claims, however. For example, it also has exclusive jurisdiction over proceedings to determine whether a petitioner is “entitled to compensation . . . and the amount of such compensation” under the National Vaccine Injury Compensation Program.” 42 U.S.C. 300aa-12.

Despite these courts’ nationwide jurisdiction, active judges of both must currently “reside within fifty miles of the District of Columbia” and maintain their official duty stations there as well. This restriction is unlike those imposed on judges of other courts with nationwide jurisdiction. Most notably, the judges of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit)—which similarly has nationwide jurisdiction in certain contexts—are exempt from the statutory requirement that they “be a resident of the circuit for which” they are appointed. *See* 28 U.S.C. 44(c). This is because “[t]here are points of striking difference in the responsibilities which Congress gives to the District of Columbia Court” and those Congress gives to the other regional courts of appeals. *U.S. ex rel. Laughlin v. Eicher*, 56 F. Supp. 972, 974 (D.C. 1944). Such “points of striking difference” include in large part that court’s “special national responsibilities.” *Id.* Indeed, Congress has granted the D.C. Circuit exclusive jurisdiction, for example, over certain appeals “from decisions and orders of the” Federal Communications Commission, 42 U.S.C. 402(b), and certain Clean Air Act actions. *Id.* 7607(b)(1).

This proposal would thus help harmonize the requirements for judges of the Federal Circuit and CFC with those applicable to judges of other courts with nationwide jurisdiction, like the D.C. Circuit. Perhaps to a greater degree than the D.C. Circuit, the Federal Circuit and CFC have “special national responsibilities” *far different* from the responsibilities Congress has given the federal district courts and regional courts of appeals. It therefore makes sense that Federal Circuit and CFC judges—like judges of the D.C. Circuit—be permitted to reside anywhere in the United States. This will support the President’s agenda of bringing government closer to the people and ensure that judges of these courts have the flexibility to live amongst the Americans that come before them each day. Of course, should judges of these courts wish to reside in or around the District of Columbia, they may continue to do so. And the Federal Circuit would continue to hold argument at the Howard T. Markey National Courts Building in Washington, D.C.; Federal Circuit judges living elsewhere would simply travel for argument days as judges of the regional circuits do.

The Department of War (DoW) —like all other Federal agencies appearing before these courts—has an interest in ensuring the judges hearing its cases understand the legal and practical ramifications of the government, and the relevant court’s, decisions. This proposal would further this interest. CFC judges hearing Fifth Amendment takings claims from every corner of the nation and Federal Circuit judges hearing military pay appeals would be permitted to reside and work among the very Americans whose deeply personal and life-altering claims come before them. No longer would the judges of these courts be forcibly siloed in the District of Columbia.

Improving the operation of these courts will likewise directly bolster national security, a primary interest of both DoW and the President. Indeed, delay and inefficiency before these courts—including that caused by requiring District of Columbia-based CFC judges to travel nationwide to visit case sites and hold hearings—hampers DoW’s ability to efficiently acquire

new technology, engage in construction projects, and undertake a host of other activities vital to America’s interests. This proposal will help remedy such issues.

Pursuant to the above, this proposal would amend section 44 of title 28, United States Code, by removing the requirement that judges of the Federal Circuit “reside within 50 miles of the District of Columbia” and instead requiring only that such judges reside in a judicial district of the United States. This would, in effect, permit such judges to live in any judicial district established in chapter 5 of title 28, United States Code.

By amending section 456 of title 28, this proposal would clarify that—should a judge of the Federal Circuit decide to reside 50 or more miles outside of the District of Columbia—such judge’s official duty station would be located at the chambers provided to them by the AO Director nearest their residence, at which they perform the substantial portion of their judicial work. This is standard practice for judges of regional courts of appeals. *See* 28 U.S.C. 456(e).

Similarly, this proposal would amend section 175 of title 28, United States Code, by removing the requirement that judges of the CFC “reside within 50 miles of the District of Columbia” and instead requiring only that such judges reside in a judicial district of the United States. This would likewise permit such judges to live in any judicial district established in chapter 5 of title 28, United States Code. This proposal similarly clarifies that any CFC judges residing 50 or more miles outside of the District of Columbia will have their official duty station at the chambers provided them by the AO Director nearest their residence, at which they perform the substantial portion of their judicial work.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President’s Budget.

Changes to Existing Law: This proposal would amend title 28, United States Code, as follows:

§44. Appointment, tenure, residence and salary of circuit judges

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

Circuits	Number of Judges
District of Columbia	11
First	6
Second	13
Third	14
Fourth	15
Fifth	17
Sixth	16
Seventh	11

Eighth	11
Ninth	29
Tenth	12
Eleventh	12
Federal	12.

(b) Circuit judges shall hold office during good behavior.

(c) Except in the District of Columbia, each circuit judge shall be a resident of the circuit for which appointed at the time of his appointment and thereafter while in active service. While in active service, each circuit judge of the Federal judicial circuit appointed after the effective date of the Federal Courts Improvement Act of 1982, and the chief judge of the Federal judicial circuit, whenever appointed, shall reside within fifty miles of the District of Columbia in a judicial district of the United States. In each circuit (other than the Federal judicial circuit) there shall be at least one circuit judge in regular active service appointed from the residents of each state in that circuit.

(d) Each circuit judge shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), as adjusted by section 461 of this title.

* * * * *

§175. Official duty station; residence

~~(a) The official duty station of each judge of the United States Court of Federal Claims is the District of Columbia.~~

~~(b)~~ (a) After appointment and while in active service, each judge of the United States Court of Federal Claims shall reside in a judicial district of the United States ~~shall reside within fifty miles of the District of Columbia.~~

~~(c) Retired judges of the Court of Federal Claims are not subject to restrictions as to residence. The place where a retired judge maintains the actual abode in which such judge customarily lives shall be deemed to be the judge's official duty station for the purposes of section 456 of this title.~~

(b) The official duty station of a judge of the Court of Federal Claims in active service shall be the District of Columbia, or that place where the Director provides chambers to such judge where he performs a substantial portion of his judicial work, which is nearest the place where the judge maintains his actual abode in which he customarily lives. The place where a retired judge maintains the actual abode in which such judge customarily lives shall be deemed to be the judge's official duty station for the purposes of section 456 of this title.

* * * * *

§456. Traveling expenses of justices and judges; official duty stations

(a) The Director of the Administrative Office of the United States Courts shall pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official duty station for any continuous period of less than thirty calendar days (1) all

necessary transportation expenses certified by the justice or judge; and (2) payments for subsistence expenses at rates or in amounts which the Director establishes, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States and after considering the rates or amounts set by the Administrator of General Services and the President pursuant to section 5702 of title 5. The Director of the Administrative Office of the United States Courts shall also pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business under an assignment authorized under chapter 13 of this title which exceeds in duration a continuous period of thirty calendar days, all necessary transportation expenses and actual and necessary expenses of subsistence actually incurred, notwithstanding the provisions of section 5702 of title 5, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States.

(b) The official duty station of the Chief Justice of the United States, the Justices of the Supreme Court of the United States, and the judges of the United States Court of Appeals for the District of Columbia Circuit, ~~the United States Court of Appeals for the Federal Circuit~~, and the United States District Court for the District of Columbia shall be the District of Columbia.

(c) The official duty station of the judges of the United States Court of International Trade shall be New York City.

(d) The official duty station of each district judge shall be that place where a district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(e) The official duty station of a circuit judge shall be that place where a circuit or district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, or that place where the Director provides chambers to the judge where he performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(f) The official duty station of a retired judge shall be established in accordance with section 374 of this title.

(g) Each circuit or district judge whose official duty station is not fixed expressly by this section shall notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and official duty station upon his appointment and from time to time thereafter as his official duty station may change.

1 **SEC. ____.** **TREATMENT UNDER FREEDOM OF INFORMATION ACT OF CERTAIN**
2 **DEPARTMENT OF DEFENSE NATIONAL SECURITY INFORMATION**
3 **PROPERLY DESIGNATED AS CONTROLLED UNCLASSIFIED**
4 **INFORMATION.**

5 Chapter 3 of title 10, United States Code, is amended—

6 (1) by redesignating section 130f as section 130h; and

7 (2) by inserting after section 130e the following new section 130f:

8 **“§ 130f. Treatment under Freedom of Information Act of certain national security**
9 **information designated as controlled unclassified information**

10 “(a) EXEMPTION.—The Secretary of Defense may exempt Department of Defense
11 information from disclosure under section 552 of title 5 (commonly referred to as the ‘Freedom
12 of Information Act’), upon a written determination that—

13 “(1) the information is—

14 “(A) controlled unclassified information; and

15 “(B) Department of Defense national security information; and

16 “(2) the public interest consideration in the disclosure of such information does
17 not outweigh the harm to the Department of Defense of the disclosure of such
18 information.

19 “(b) DESIGNATION OF INFORMATION.—In addition to any other authority or requirement
20 regarding protection from disclosure, the Secretary may designate information as being
21 Department of Defense national security information and controlled unclassified information,
22 including designation during the course of the creation of such information, to ensure that such
23 information is not disseminated without authorization. Information so designated is subject to the

determination process under subsection (a) to determine whether to exempt such information from disclosure described in such subsection.

“(c) INFORMATION PROVIDED TO STATE AND LOCAL GOVERNMENTS.—

“(1) Information covered by a written determination under subsection (a) or designated under subsection (b) that is provided to a State or local government shall not be disclosed by that State or local government, notwithstanding a State or local law authorizing or requiring such disclosure.

“(2) If a person requests pursuant to a State or local law that a State or local government disclose information that is designated as Department of Defense national security information and controlled unclassified information under subsection (b), the State or local government shall notify the Secretary of Defense of such a request and provide the Secretary an opportunity to determine whether to exempt such information from disclosure under subsection (a) .

“(d) TRANSPARENCY.—Each determination under subsection (a) shall be made in writing and accompanied by a statement of the basis for the determination. All such determinations and statements of basis shall be available to the public, upon request.

“(e) DEFINITIONS.—In this section:

“(1) CONTROLLED UNCLASSIFIED INFORMATION.—The term ‘controlled unclassified information’ means information that is properly designated as controlled unclassified information in accordance with Executive Order 13556, or its successor order.

“(2) DEPARTMENT OF DEFENSE NATIONAL SECURITY INFORMATION.—The term ‘Department of Defense national security information’ means national defense information—

47 “(A) that has been determined to require protection against unauthorized
48 disclosure; and
49 “(B) that, if disclosed, would reveal vulnerabilities in Department of
50 Defense national defense operations or programs that, if exploited, would likely
51 result in the significant disruption of, or damage of or to, Department of Defense
52 operations or protected programs.”.

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

Section-by-Section Analysis

This proposal would add a new section 130f to title 10, United States Code. The new section would exempt national security information generated by the Department of Defense that meets the criteria outlined in subsection (a) of the new section 130f from disclosure, including disclosure in response to requests under the Freedom of Information Act (5 U.S.C. 552). This proposal would protect Department of Defense national security information from public disclosure where the information would reveal vulnerabilities in Department of Defense national defense operations or programs to potential adversaries. While some controlled unclassified information (CUI) categories have non-disclosure requirements or authorities in law, a more uniform protection for national security information that has been designated as CUI will greatly reduce complexity and result in more consistent withholding decisions.

This provision would permit the Department of Defense to withhold from disclosure certain CUI that relates to national security information while balancing the public’s right to request information, with the goal of keeping citizens informed and holding the government accountable. If enacted, it would mitigate the risks of CUI national security information divulging vulnerabilities in U.S. national defense.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2027 President’s Budget.

Changes to Existing Law: This proposal would add a new section to title 10, United States Code, which is shown in full in the legislative text above.