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APR 25 2008

GENERAL COUNSEL

The Honorable Richard B. Cheney  
President of the Senate  
Washington, DC 20515

Dear Mr. President:

The Department of Defense requests that the Congress enact the enclosed legislative proposals that would implement initiatives concerning military spousal benefits presented by the President in his State of the Union Address.

The purpose of each proposal is stated in the accompanying section-by-section analysis.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presenting of these legislative proposals for your consideration and the consideration of the Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "D. J. Dell'Orto".

Daniel J. Dell'Orto  
Acting

Enclosure:  
As stated





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GENERAL COUNSEL

The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
Washington, DC 20515

Dear Madam Speaker:

The Department of Defense requests that the Congress enact the enclosed legislative proposals that would implement initiatives concerning military spousal benefits presented by the President in his State of the Union Address.

The purpose of each proposal is stated in the accompanying section-by-section analysis.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presenting of these legislative proposals for your consideration and the consideration of the Congress.

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**SEC. \_\_\_\_ . AUTHORITY TO TRANSFER UNUSED EDUCATION BENEFITS TO  
FAMILY MEMBERS FOR CAREER SERVICE MEMBERS.**

(a) AUTHORITY TO TRANSFER MONTGOMERY GI BILL BENEFITS TO A DEPENDENT.—

Section 3020 of title 38, United States Code, is amended—

(1) by striking the section heading and subsections (a) and (b) and inserting the following:

**"§ 3020. Authority to transfer unused education benefits to family members for career service members**

"(a) IN GENERAL.—Subject to the provisions of this section, the Secretary of Defense may authorize the Secretary concerned, to promote recruitment and retention of members of the Armed Forces, to permit an individual described in subsection (b) who is entitled to basic educational assistance under this subchapter to elect to transfer to one or more of the dependents specified in subsection (c) the unused portion of entitlement to such assistance, subject to the limitation under subsection (d).

"(b) ELIGIBLE INDIVIDUALS.—An individual referred to in subsection (a) is any member of the Armed Forces—

"(1) who, while serving on active duty or as a member of the Selected Reserve at the time of the approval by the Secretary concerned of the member's request to transfer entitlement to basic educational assistance under this section, has completed six years of service in the Armed Forces; or

"(2) as determined in regulations pursuant to subsection (j).";

(2) by amending subsection (d) to read as follows:

"(d) LIMITATION ON MONTHS OF TRANSFER.—(1) An individual approved to transfer an

1 entitlement to basic educational assistance under this section may transfer any unused  
2 entitlement to one or more of the dependents specified in subsection (c).

3 "(2) The total number of months of entitlement transferred by an individual under this  
4 section may not exceed 36 months. The Secretary of Defense may promulgate regulations that  
5 would limit the months of entitlement that may be transferred under this section to no less than  
6 18 months.";

7 (3) in subsection (f)—

8 (A) in paragraph (1), by striking "without regard to whether" and inserting  
9 "only while"; and

10 (B) in paragraph (2)—

11 (i) by striking "(A)";

12 (ii) by inserting "as long as the individual is serving on active duty  
13 or as a member of the Selected Reserve" after "so transferred"; and

14 (iii) by striking "(B)";

15 (4) in subsection (h)(5), by inserting "may use the benefit without regard to the  
16 10-year delimiting date, but" after "under this section"; and

17 (5) by amending subsection (k) to read as follows:

18 "(k) REGULATIONS.—The Secretary of Defense, in coordination with the Secretary of  
19 Veterans Affairs, shall prescribe regulations for purposes of this section. Such regulations shall  
20 specify—

21 "(1) the manner of authorizing the military departments to offer transfer of  
22 entitlements under this section;

23 "(2) the eligibility criteria in accordance with subsection (b);

1           "(3) the limitations on the amount of entitlement eligible to be transferred; and

2           "(4) the manner and effect of an election to modify or revoke a transfer of

3 entitlement under subsection (f)(2).".

4           (b) **AUTHORITY TO TRANSFER MONTGOMERY GI BILL FOR THE SELECTED RESERVE**

5 **BENEFITS TO A DEPENDENT.**—Chapter 1606 of title 10, United States Code, is amended by

6 inserting after section 16132 the following new section:

7 **"§ 16132a. Authority to transfer unused education benefits to family members**

8           "(a) **IN GENERAL.**—Subject to regulation prescribed by the Secretary of Defense, the

9 Secretary concerned may permit a member described in subsection (b) who is entitled to basic

10 educational assistance under this chapter to elect to transfer to one or more of the dependents

11 specified in subsection (c) a portion of such member's entitlement to such assistance, subject to

12 the limitation under subsection (d).

13           "(b) **ELIGIBLE MEMBERS.**—A member referred to in subsection (a) is a member of the

14 Selected Reserve of the Ready Reserve who, at the time of the approval of the member's request

15 to transfer entitlement to basic educational assistance under this section, has completed—

16           "(1) at least six years of service in the Selected Reserve; or

17           "(2) the years of service as determined in regulations pursuant to subsection (j).

18           "(c) **ELIGIBLE DEPENDENTS.**—A member approved to transfer an entitlement to basic

19 educational assistance under this section may transfer the member's entitlement as follows:

20           "(1) To the member's spouse.

21           "(2) To one or more of the member's children.

22           "(3) To a combination of the individuals referred to in paragraphs (1) and (2).

23           "(d) **LIMITATION ON MONTHS OF TRANSFER.**—The total number of months of entitlement

1 transferred by a member under this section may not exceed 36 months. The Secretary of  
2 Defense may promulgate regulations that would limit the months of entitlement that may be  
3 transferred under this section to no less than 18 months.

4 "(e) DESIGNATION OF TRANSFEREE.—A member transferring an entitlement to basic  
5 educational assistance under this section shall—

6 "(1) designate the dependent or dependents to whom such entitlement is being  
7 transferred;

8 "(2) designate the number of months of such entitlement to be transferred to each  
9 such dependent; and

10 "(3) specify the period for which the transfer shall be effective for each dependent  
11 designated under paragraph (1).

12 "(f) TIME FOR TRANSFER; REVOCATION AND MODIFICATION.—(1) Subject to the time  
13 limitation for use of entitlement under section 16133 of this title, a member approved to transfer  
14 entitlement to basic educational assistance under this section may transfer such entitlement at  
15 any time after the approval of the member's request to transfer such entitlement.

16 "(2) A member transferring entitlement under this section may modify or revoke at any  
17 time the transfer of any unused portion of the entitlement so transferred. The modification or  
18 revocation of the transfer of entitlement under this paragraph shall be made by the submittal of  
19 written notice of the action to both the Secretary concerned and the Secretary of Veterans  
20 Affairs.

21 "(g) COMMENCEMENT OF USE.—A dependent to whom entitlement to basic educational  
22 assistance is transferred under this section may not commence the use of the transferred  
23 entitlement until—

1           "(1) in the case of entitlement transferred to a spouse, the completion by the  
2 member making the transfer of at least—

3                   "(A) six years of service in the armed forces; or

4                   "(B) the years of service as determined in regulations pursuant to  
5 subsection (j); or

6           "(2) in the case of entitlement transferred to a child, both—

7                   "(A) the completion by the member making the transfer of at least—

8                           "(i) six years of service in the armed forces; or

9                           "(ii) the years of service as determined in regulations pursuant to  
10 subsection (j); and

11                   "(B) either—

12                           "(i) the completion by the child of the requirements of a secondary  
13 school diploma (or equivalency certificate); or

14                           "(ii) the attainment by the child of 18 years of age.

15           "(h) ADDITIONAL ADMINISTRATIVE MATTERS.—(1) The use of any entitlement to basic  
16 educational assistance transferred under this section shall be charged against the entitlement of  
17 the member making the transfer at the rate of one month for each month of transferred  
18 entitlement that is used.

19           "(2) Except as provided under subsection (e)(2) and subject to paragraphs (5) and (6), a  
20 dependent to whom entitlement is transferred under this section is entitled to basic educational  
21 assistance under this chapter in the same manner as the member from whom the entitlement was  
22 transferred.

23           "(3) The monthly rate of educational assistance payable to a dependent to whom

1 entitlement is transferred under this section shall be the monthly amount payable under sections  
2 16131 and 16131a of this title to the member making the transfer.

3 "(4) The death of a member transferring an entitlement under this section shall not affect  
4 the use of the entitlement by the dependent to whom the entitlement is transferred.

5 "(5) The involuntary separation or retirement of the member—

6 "(A) because of a non-discretionary provision of law for age or years of service;

7 "(B) because of a policy prescribed by the Secretary concerned mandating such  
8 separation or retirement based solely on age or years of service for the prescribed pay  
9 grade of an enlisted member;

10 "(C) under section 16133(b) of this title; or

11 "(D) because of medical disqualification which is not the result of gross  
12 negligence or misconduct of the member,

13 "shall not affect the use of entitlement by the dependent to whom the entitlement is transferred.

14 "(6) A child to whom entitlement is transferred under this section may not use any  
15 entitlement so transferred after attaining the age of 26 years.

16 "(7) The administrative provisions of this chapter shall apply to the use of entitlement  
17 transferred under this section, except that the dependent to whom the entitlement is transferred  
18 shall be treated as the eligible member for purposes of such provisions.

19 "(8) The purposes for which a dependent to whom entitlement is transferred under this  
20 section may use such entitlement shall include the pursuit and completion of the requirements of  
21 a secondary school diploma (or equivalency certificate).

22 "(i) OVERPAYMENT.—(1) In the event of an overpayment of basic educational assistance  
23 with respect to a dependent to whom entitlement is transferred under this section, the dependent



1 and the member making the transfer shall be jointly and severally liable to the United States for  
2 the amount of the overpayment for purposes of section 3685 of title 38.

3 "(2) Except as provided in paragraph (3), if a member's whose eligibility is terminated  
4 under section 16134(2), the amount of any transferred entitlement under this section that is used  
5 by a dependent of the member as of the date of such termination shall be treated as an  
6 overpayment of basic educational assistance under paragraph (1).

7 "(3) Paragraph (2) shall not apply in the case of a member who fails to complete service  
8 agreed to by the member—

9 "(A) by reason of the death of the member; or

10 "(B) for a reason referred to in section 16133(b) of this title.

11 "(j) REGULATIONS.—The Secretary of Defense, in consultation with the Secretary of  
12 Veterans Affairs, shall prescribe regulations for purposes of this section. Such regulations shall  
13 specify—

14 "(1) the manner of authorizing the military departments to offer transfer of  
15 entitlements under this section;

16 "(2) the eligibility criteria in accordance with subsection (b);

17 "(3) the manner and effect of an election to modify or revoke a transfer of  
18 entitlement under subsection (f)(2); and

19 "(4) the manner in which the provisions referred to in subsections (h)(4) and (5)  
20 shall be administered with respect to a dependent to whom entitlement is transferred  
21 under this section."

22 (c) AUTHORITY TO TRANSFER RESERVE EDUCATIONAL ASSISTANCE PROGRAM BENEFITS  
23 TO A DEPENDENT.—Chapter 1607 of such title is amended by inserting after section 16163 the

1 following new section:

2 **"§ 16163a. Authority to transfer unused education benefits to family members**

3 "(a) IN GENERAL.—Subject to the provisions of this section, the Secretary concerned  
4 may, at such Secretary's sole discretion, permit a member described in subsection (b) who is  
5 entitled to basic educational assistance under this chapter to elect to transfer to one or more of  
6 the dependents specified in subsection (c) a portion of such member's entitlement to such  
7 assistance, subject to the limitation under subsection (d).

8 "(b) ELIGIBLE MEMBERS—A member referred to in subsection (a) is a member of the  
9 armed forces who, at the time of the approval of the member's request to transfer entitlement to  
10 basic educational assistance under this section, has completed at least—

11 "(1) six years of service in the armed forces; or

12 "(2) the years of service as determined in regulations pursuant to section (j).

13 "(c) ELIGIBLE DEPENDENTS.—A member approved to transfer an entitlement to basic  
14 educational assistance under this section may transfer the member's entitlement as follows:

15 "(1) To the member's spouse.

16 "(2) To one or more of the member's children.

17 "(3) To a combination of the individuals referred to in paragraphs (1) and (2).

18 "(d) LIMITATION ON MONTHS OF TRANSFER.—The total number of months of entitlement  
19 transferred by a member under this section may not exceed 36 months. The Secretary of  
20 Defense may promulgate regulations that would limit the months of entitlement that may be  
21 transferred under this section to no less than 18 months.

22 "(e) DESIGNATION OF TRANSFEREE.—A member transferring an entitlement to basic  
23 educational assistance under this section shall—

1           "(1) designate the dependent or dependents to whom such entitlement is being  
2 transferred;

3           "(2) designate the number of months of such entitlement to be transferred to each  
4 such dependent; and

5           "(3) specify the period for which the transfer shall be effective for each dependent  
6 designated under paragraph (1).

7           "(f) TIME FOR TRANSFER; REVOCATION AND MODIFICATION.—(1) Subject to the time  
8 limitation for use of entitlement under section 16164 of this title, a member approved to transfer  
9 entitlement to basic educational assistance under this section may transfer such entitlement only  
10 while serving as a member of the armed forces when the transfer is executed.

11           "(2) A member transferring entitlement under this section may modify or revoke at any  
12 time the transfer of any unused portion of the entitlement so transferred. The modification or  
13 revocation of the transfer of entitlement under this paragraph shall be made by the submittal of  
14 written notice of the action to both the Secretary concerned and the Secretary of Veterans  
15 Affairs.

16           "(g) COMMENCEMENT OF USE.—A dependent to whom entitlement to basic educational  
17 assistance is transferred under this section may not commence the use of the transferred  
18 entitlement until—

19           "(1) in the case of entitlement transferred to a spouse, the completion by the  
20 member making the transfer of at least—

21                   "(A) six years of service in the armed forces; or

22                   "(B) the years of service as determined in regulations pursuant to

23                   subsection (j); or

1                   "(2) in the case of entitlement transferred to a child, both—

2                               "(A) the completion by the member making the transfer of at least—

3                                       "(i) ten years of service in the armed forces; or

4                                       "(ii) the years of service as determined in regulations pursuant to  
5                               subsection (j); and

6                               "(B) either—

7                                       "(i) the completion by the child of the requirements of a secondary  
8                               school diploma (or equivalency certificate); or

9                                       "(ii) the attainment by the child of 18 years of age.

10                   "(h) ADDITIONAL ADMINISTRATIVE MATTERS.—(1) The use of any entitlement to basic  
11                   educational assistance transferred under this section shall be charged against the entitlement of  
12                   the member making the transfer at the rate of one month for each month of transferred  
13                   entitlement that is used.

14                   "(2) Except as provided under subsection (e)(2) and subject to paragraphs (5) and (6), a  
15                   dependent to whom entitlement is transferred under this section is entitled to basic educational  
16                   assistance under this chapter in the same manner as the member from whom the entitlement was  
17                   transferred.

18                   "(3) The monthly rate of educational assistance payable to a dependent to whom  
19                   entitlement is transferred under this section shall be the monthly amount payable under sections  
20                   16162 and 16162a of this title to the member making the transfer.

21                   "(4) The death of a member transferring an entitlement under this section shall not affect  
22                   the use of the entitlement by the dependent to whom the entitlement is transferred.

23                   "(5) Notwithstanding section 16164(a)(2) of this title, a child to whom entitlement is

1 transferred under this section may use the benefit without regard to the 10-year delimiting date,  
2 but may not use any entitlement so transferred after attaining the age of 26 years.

3 "(6) The administrative provisions of this chapter shall apply to the use of entitlement  
4 transferred under this section, except that the dependent to whom the entitlement is transferred  
5 shall be treated as the eligible member for purposes of such provisions.

6 "(7) The purposes for which a dependent to whom entitlement is transferred under this  
7 section may use such entitlement shall include the pursuit and completion of the requirements of  
8 a secondary school diploma (or equivalency certificate).

9 "(i) OVERPAYMENT.—In the event of an overpayment of basic educational assistance with  
10 respect to a dependent to whom entitlement is transferred under this section, the dependent and  
11 the member making the transfer shall be jointly and severally liable to the United States for the  
12 amount of the overpayment for purposes of section 3685 of title 38.

13 "(j) REGULATIONS.—(1) The Secretary of Defense, in coordination with the Secretary of  
14 Veterans Affairs, shall prescribe regulations for purposes of this section.

15 "(2) Such regulations shall specify—

16 "(A) the manner of authorizing the transfer of entitlements under this section;

17 "(B) the eligibility criteria in accordance with subsection (b); and

18 "(C) the manner and effect of an election to modify or revoke a transfer of  
19 entitlement under subsection (f)(2).

20 "(k) SECRETARY CONCERNED DEFINED.—For purposes of this section, the term 'Secretary  
21 concerned' has the meaning given in section 101(a)(9) of this title in the case of a member of the  
22 armed forces."

23 (d) CONFORMING AMENDMENTS.—Section 16133(a) of such title is amended by striking

1 "(1)" and all that follows through the end of the subsection and inserting "on the date the person  
2 is separated from the Selected Reserve."

3 (e) CLERICAL AMENDMENTS.—(1) The table of section at the beginning of chapter 30 of  
4 title 38, United States Code, is amended by striking the item relating to section 3020 and  
5 inserting the following new item:

6 "3020. Authority to transfer unused education benefits to family members of career service members."

7 (2) The table of sections at the beginning of chapter 1606 of title 10, United States Code,  
8 is amended by inserting after the item relating to section 16132 the following new item:

9 "16132a. Authority to transfer unused education benefits to family members."

10 (3) The table of sections at the beginning of chapter 1607 of such title is amended by  
11 inserting after the item relating to section 16163 the following new item:

12 "16163a. Authority to transfer unused education benefits to family members."

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

This proposal would allow career active-duty Service members and certain Ready Reserve members to transfer a portion of their unused education benefits to an immediate family member.

There are three educational assistance programs that would be affected under this proposal: (1) the Montgomery GI Bill (MGIB) for active duty (chapter 30 of title 38); (2) the Montgomery GI Bill for Selected Reserve (MGIB-SR) (chapter 1606 of title 10); and (3) the Reserve Educational Assistance Program (REAP) (chapter 1607 of title 10). Each of these programs provides up to 36 months of education benefits to eligible members and veterans for college, technical or vocational courses, and other job training, and, when used in combination, can provide up to 48 months of benefits. One program -- the MGIB program -- already provides limited authority to transfer a portion of the education benefit to dependents.

This proposal would expand transferability to all three programs by allowing any member eligible for one of these programs, with more than six years of service (or as determined by regulation), to transfer any unused educational benefits (up to a maximum of 36 months) to any combination of immediate family members (*i.e.*, spouses and children). This proposal also would allow the Secretary of Defense to limit such transfer through regulation.

For the MGIB, this proposal would allow a spouse to use the benefit immediately upon

the Service member's election of transferability and subjects the spouse to the same delimiting period of 10 years after the separation of the member. A child who receives the benefit cannot begin to use it until the Service member who elected the transfer completes 10 years of service. The child would be able to use the benefit without regard to the Service member's delimiting date, but may not use it after attaining the age of 26 years.

For the MGIB-SR, a member who, at a minimum, completes the initial six-year service obligation would be allowed to transfer any remaining, unused month of educational assistance, up to the entire 36 months of benefits. A dependent could use the benefit provided that the member, except under specific circumstances, remained in the Selected Reserve. Currently, the member's MGIB-SR benefit terminates when the member reaches 14 years of service. This termination of eligibility could prevent dependents of some Selected Reserve members from using the benefit because the member's eligibility would expire before a child reaches the age at which he or she would be undertaking post-secondary education or training. Therefore, this proposal would repeal the 14-year delimiting period.

A dependent's eligibility for the MGIB-SR benefit would terminate when the member separates from the Selected Reserve unless the member dies while serving in the Selected Reserve after making the transfer election, or the member is involuntarily separated from the Selected Reserve: (1) under a mandatory provision of law for age or years of service; (2) because of Service policy for enlisted members mandating separation or retirement based solely because of age or years of service; (3) for a service-connected disability; (4) when determined to be not physically qualified for continued service for a condition that was not the result of misconduct or gross neglect; (5) because of force shaping; or (6) when authorized extension of eligibility as a result of service in support of a contingency operation. With the exception of the contingency service extension, the dependent would be allowed to use the benefit for up to 10 years following the death or involuntary separation of the member. In the case of continued eligibility as a result of contingency service by the member, eligibility terminates on the date the member's eligibility terminates based on that service (e.g., the period equal to the number of months served in support of the contingency operation plus four months).

For the REAP, a member who completes at least six years of service in the Armed Forces and is eligible for educational assistance under the REAP would be allowed to transfer any remaining, unused month of educational assistance, up to the entire 36 months of benefits. A dependent could use the benefit as long as the member continues to serve in the Selected Reserve (in the case of a member who was serving in the Selected Reserve when the member became entitled to the benefit) or continues to serve in the Ready Reserve (in the case of a member who was serving in the Ready Reserve when the member became entitled to the benefit) and for up to 10 years following the member's separation from the Selected Reserve or Ready Reserve, as appropriate.

This legislative proposal is consistent with the President's intent, as expressed in his recent State of the Union address, to develop initiatives for those service families (including single service members) whose personal needs (education, finances, child care, etc.) may be disadvantaged as a consequence of their or their sponsors' service.

**Cost Estimate:** The draft proposal will require the DoD to bear both a first-year cost to allow the current force to elect transferability and also a recurring annual cost to cover members of the force who reach their seventh year of service. Costs will vary based on DoD regulations which will govern the number of service members eligible to transfer benefits and the number of months they are able to transfer.



**SEC. \_\_\_\_ . PROVISION OF EDUCATION AND TRAINING OPPORTUNITIES FOR  
MILITARY SPOUSES.**

1           Section 1784 of title 10, United States Code, is amended by adding at the end the  
2 following new subsection:

3           "(h) EDUCATION AND TRAINING FOR MILITARY SPOUSES.—

4                   "(1) The Secretary of Defense may establish programs or provide tuition  
5 assistance to make education or training, and licenses or credentials available to eligible  
6 spouses of members of the armed forces who are pursuing education or training, and  
7 licenses or credentials toward the attainment of portable careers.

8                   "(2) The Secretary may prescribe regulations to govern the use of funds under this  
9 subsection.

10                   "(3) The Secretary, in consultation with the Secretary of Labor, shall prescribe  
11 regulations to define the term 'portable careers'.

12                   "(4) The Secretary shall consult biannually with the Secretary of Labor to identify  
13 the fields of study related to portable careers.

14                   "(5) The assistance provided under this subsection—

15                           "(A) may not be provided to an eligible spouse for more than one discrete  
16 career subject, including any necessary and associated licenses and credentials;

17                           "(B) may not extend beyond a total of two years for any eligible spouse;  
18 and

19                           "(C) may not exceed \$6,000 in total assistance for any eligible spouse.

20                   "(6) For purposes of this subsection:

1                   "(A) The term 'eligible spouse' is defined as a person married to a member  
2 of the armed forces who, at the time the spouse becomes eligible, is serving on  
3 active duty or full-time National Guard duty and deployed or mobilized in support  
4 of a contingency operation. The term does not include—

5                   "(i) persons who are married to, but legally separated from, a  
6 member of the armed forces under a court order or the statute of any state  
7 or territorial possession of the United States; or

8                   "(ii) spouses who are members of the armed forces.

9                   "(B) The term 'education or training, and licenses or credentials toward the  
10 attainment of portable careers' is defined as—

11                   "(i) education or training leading to a license or credential at an  
12 accredited college, university or technical school in the United States or  
13 training providers identified as eligible under section 122 of the  
14 Workforce Investment Act of 1998; or

15                   "(ii) the educational prerequisite and required examination for  
16 industry-recognized certifications, or for professional licensure or  
17 credential required for occupational practice by a government or  
18 government-sanctioned licensing body."

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

This section would allow the Department of Defense to establish programs and provide assistance with tuition, licenses and credentials to "eligible" spouses -- those who are married to a member of the Armed Forces on active duty or on full-time National Guard duty, excluding: (1) persons who are married to, but legally separated from, a member of the Armed Forces under a court order or the statute of any state or territorial possession of the United States; and (2) spouses who are also members of the Armed Forces.

Military spouses are a major contributor to the financial stability of military families; 77 percent say they want or need to work. Active duty military spouses are young (over half are under age 31) and more than 87 percent would like to further their education and develop a portable career. However, the overwhelming majority report that the cost of education is the reason why they do not enroll in school or training. In addition, the unemployment rate for military spouses is three times as high as the rate for civilian spouses and they earn about \$3 an hour less than their civilian counterparts. As a result, contributing to the education and training of military spouses would serve as a strong retention tool for the Department.

This section would address the urgent need to increase active-duty military spouse access to education and training opportunities and licenses and credentials leading to portable careers in high-growth occupations. This would result in increased financial stability of military families.

**Cost Implications:** The Department of Defense estimates that this section would cost \$40 million in fiscal year (FY) 2009 and \$605 million from FY 2009 through FY 2014. This section would be funded from Operation and Maintenance funds.

(in millions)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
DoD-Wide	\$40	\$64	\$84	\$120	\$147	\$150

The Department estimates that this program would provide assistance to 12 percent of military spouses (61,000 individuals) by FY 2014.

**SEC. \_\_\_\_ . EXPANDED OPPORTUNITIES TO PROVIDE CHILD CARE TO SERVICE  
MEMBERS AND DEPARTMENT OF DEFENSE CIVILIAN  
EMPLOYEES.**

1 Section 1798 of title 10, United States Code, is amended—

2 (1) by redesignating subsection (c) as subsection (e); and

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

4 "(c) CONSTRUCTION AND OPERATING AGREEMENTS.—The Secretary of Defense may  
5 enter into agreements with other Federal agencies, State and local governments, and with non-  
6 profit agencies and private businesses to construct and operate child care centers—

7 "(1) to the quality standards and staffing standards prescribed by the Department  
8 of Defense; and

9 "(2) that provide spaces to military dependents on a priority basis as a result of  
10 contractual or other agreements.

11 "(d) PUBLIC-PRIVATE VENTURES.—Public-private ventures operated by other Federal  
12 agencies, State and local governments, and non-profit agencies and private businesses as entered  
13 into and agreed upon by the Department of Defense may qualify as eligible providers under  
14 subsection (b). The Department of Defense will ensure that affordable fees are charged to  
15 parents for child care services."

**Section-by-Section Analysis**

This section would allow the Department of Defense (DoD) to enter into agreements with other Federal departments, State agencies, and local and city governments, as well as enter into contractual agreements with private corporations and non-profits, to increase the Department's ability to provide quality child care to service members and DoD civilian employees.

The Department needs this authority to respond to the President's State of the Union address, in which he called for an expansion of military families' access to child care. The

Department recognizes the importance of providing families with access to high-quality, affordable child care programs and is strongly committed to meeting the increased demand due to high deployments and operation tempo. Child care is a workforce issue that directly affects the efficiency, readiness, and retention of the total force. Although the Department currently serves over 200,000 children (ages 6 weeks to 12 years) daily, there is an unmet demand for an additional 58,000 spaces.

**Cost Implications:** The Department of Defense estimates that this section would cost \$120 million in fiscal year (FY) 2009, and \$888 million from FY 2009 through FY 2014. This section would be funded from Operation and Maintenance funds.

(in millions)	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>
DoD-Wide	\$120	\$150	\$180	\$210	\$228

This section would affect 38,000 children and their families.

**SEC. \_\_\_\_ . HIRING AUTHORITY FOR SPOUSES OF MILITARY PERSONNEL.**

1 (a) HIRING AUTHORITY.—Subchapter I of chapter 31 of title 5, United States Code, is  
2 amended by adding at the end the following new section:

3 **"§ 3115. Military spouses; noncompetitive appointment**

4 "(a) APPOINTMENT AUTHORITY.—Under such regulations as the Director of the Office of  
5 Personnel Management shall prescribe, the head of an agency may make a noncompetitive  
6 appointment to any position in the competitive service, for which qualified, of—

7 "(1) the spouse of a member of the armed forces who, as determined by the  
8 Secretary of Defense, is performing active duty pursuant to orders that authorize a  
9 permanent change of station move;

10 "(2) the spouse of a totally disabled member of the armed forces; or

11 "(3) the unremarried widow or widower of a member of the armed forces killed  
12 while performing active duty.

13 "(b) DEFINITIONS.—For purposes of this section:

14 "(1) The term 'active duty' means full-time duty in the active service of an armed  
15 force. For reserve component members, including members of the National Guard  
16 performing full-time National Guard duty, the term 'active duty' does not include training  
17 duties or attendance at service schools.

18 "(2) The term 'armed forces' means the Army, Navy, Air Force, Marine Corps and  
19 Coast Guard.

20 "(3) The term 'permanent change of station' has the same meaning as in Appendix  
21 A of Department of Defense Joint Federal Travel Regulations, Volume 1.

1           "(4) The term 'totally disabled military member' means a member who retired  
2           under chapter 61 of title 10 with a disability rating at the time of retirement of 100  
3           percent, or who has a disability rating of 100 percent from the Department of Veterans  
4           Affairs."

5           (b) CLERICAL AMENDMENT.—The table of sections for chapter 31 of such title is amended  
6           by inserting after the item relating to section 3114 the following new item:  
7           "3115. Military spouses; noncompetitive appointment."

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

This section would authorize Federal agencies to make noncompetitive appointments of a spouse of an active duty member of the Armed Forces or totally disabled member of the Armed Forces, or the unremarried widow or widower of a member of the Armed Forces, to competitive service. Such an appointment authority would optimize the entry of military spouses into the Federal civil service, directly helping those who had their non-Federal careers truncated by military reassignments, needed to find employment upon relocation with their spouse, or needed employment in light of their military spouse's incapacitation or death.

In his January 28, 2008 State of the Union Address, the President acknowledged the service and sacrifice of the families of our service members, and the responsibility of the Nation to provide for them. This appointing authority would fulfill the President's objective by providing spouses a facilitated means of entry into the Federal service.

Over half of the service members are married. Most military spouses are in the labor market, yet on average earn \$3 less per hour than their civilian counterparts and have an unemployment rate that is three times as high as civilian spouses. Contributing to this is the drastic difference in residence mobility between military and civilian spouses; only about 10 percent of military spouses stay in the same location for five years. For military spouses who frequently relocate, obtaining employment at new duty locations can be difficult.

The Federal Government employs 2.6 million personnel in the Executive Branch, of whom 2.27 million have full-time, permanent status. Approximately, 27,000 new individuals are hired into the Federal service on a monthly basis. Personnel status within the Federal Government, in many instances, is portable, *i.e.*, once employed on a permanent basis, personnel can seek and be employed in positions within the Federal service without jeopardizing their status or benefits. The Federal Government's worldwide presence, portability benefits and large number of job opportunities make it an ideal placement source for military spouses. To optimize this placement source, however, military spouses need an efficient method for initial entry into the Federal civil service.

**Cost Implications:** There are no costs associated with this appointing authority.

Approximately 509,000 spouses of active duty members want to work. Currently, 17 percent of military spouses work for the Federal Government. Approximately one-third of military spouses move each year due to active-duty assignments.