

Section-by-Section Analysis

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

Sections 101 through 105 would authorize appropriations for fiscal year 2021 for the procurement accounts of the Department of Defense in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2021.

Subtitle B—Defense-wide, Joint, and Multiservice Matters

Section 111. The Department requests authority for the use of Department funds to award F-35 contracts to procure material and equipment in economic order quantities for the fiscal year 2021 (Lot 15) through fiscal year 2023 (Lot 17). The Department budgeted this funding in FY2020 and FY2021, and the authority to obligate funds in FY2020 is expected to be in the FY2020 National Defense Authorization Act. This legislative proposal would provide authority for the FY2021 portion of funding.

The Department would continue to gain benefit from Economic Order Quantity independent of Multi-Year procurement. The Department has achieved significant savings during most recent application of economic order quantity in FY2018 which was applied towards annual procurements of FY2019 (Lot 13) and FY2020 (Lot 14)

Economic order quantity investment is estimated to contribute \$410M in savings for the Department and a total of \$718M in savings for the Department, International Partners, and Foreign Military Sales. Not funding this investment in this budget cycle would create a significant funding shortfall in FY2021 through FY2023 for the United States Services.

Budget Implications:

Appropriation From	Budget Activity	Dash-1 Line Item	Program Element	FY 2020 (\$M)	FY 2021 (\$M)	FY 2022 (\$M)	FY 2023 (\$M)
Aircraft Procurement, Air Force – ATA000 - F-35							
Aircraft Procurement, Air Force	01	ATA000 P-1: 1	0207142F	*5248.1	4567.0	4338.6	4263.7
Aircraft Procurement, Air Force – Advanced Procurement	01	ATA000 P-1: 2	0207142F	811.5	*610.8	392.2	634.0
Aircraft Procurement, Navy – BLI 0147 – Joint Strike Fighter CV							
Aircraft Procurement, Navy	01	0147 P-1: 3	0204146N	2114.3	2181.8	2215.7	2608.8

Aircraft Procurement, Navy – Advanced Procurement	01	0147 P-1: 4	0204146N	339.1	*330.4	261.9	246.5
Aircraft Procurement, Navy – BLI 0152 – JSF STOVL							
Aircraft Procurement, Navy	01	0152 P-1: 5	0204146M	1897.4	1109.4	1921.9	2240.8
Aircraft Procurement, Navy – Advanced Procurement	01	0152 P-1: 6	0204146M	291.8	*303.0	221.6	231.3

Budget Estimate Submission (BES21) was used as source data.

*Note: FY 2021 budget request is for Advance Procurement (AP) for FY 2022. The budget request includes AP for long lead material for airframes and engines as well as economic order quantity material.

Changes to Existing Law: None.

Section 112 would permit the Navy to enter into one contract for up to two COLUMBIA class submarines (SSBN 826 and SSBN 827), providing industrial base stability, production efficiencies, and cost savings when compared to an annual procurement with options cost estimate. This contract approach is aimed at minimizing the impact on the Department of the Navy’s Shipbuilding and Conversion, Navy (SCN) account through construction efficiencies and workforce stability. This contracting authority would provide the prime contractor and vendors with a reasonable advance assurance of authority to buy two ships and associated material, while also limiting the Government’s liability to the funds obligated to the contract in the event of termination. Providing such assurances to both the prime contractor and vendors will strengthen the industrial base, gives confidence to vendors to make long-term investments in both facilities and labor. Such assurances also, combined with various advanced construction and continuous production initiatives already underway, will further stabilize production lines, allowing for construction efficiencies and cost savings. Long-term investments in the labor force further de-risks schedule by reducing ramp-up/ramp-down costs related to hiring and training.

Subsection (a) of this proposal would permit the award of a contract in Fiscal Year (FY) 2021, enabling SSBN 826 ship construction and Advance Procurement/Advance Construction funding in FY 2021 through FY 2023 for SSBN 827. Full funding for construction of SSBN 827 starts in FY 2024 in accordance with the program’s Acquisition Strategy.

Subsection (b) of the proposal would permit the Secretary of the Navy to incrementally fund the contract using full funding for COLUMBIA Class SSBN 826 in FY 2021 and SSBN 827 in FY 2024. Instead of appropriating the entire amount needed to construct SSBN 826 FY 2021, incremental full funding allows the Navy to spread that cost out over three years, facilitating shipbuilding efforts to support the Navy the nation needs. Continuing this strategy to

support construction for SSBN 827 over two years (FY 2024 and FY 2025) would further reduce the pressure on the Navy’s shipbuilding account.

Subsection (c) of this proposal ensures that the Government’s liability for the procurement is limited to funding that is obligated to the contract at the time of termination.

Budget Implications: This proposal includes significant budgetary savings that are already incorporated into the requested budget profiles. Resources impacted are incidental in nature and amount, and are included within the FY 2021 President’s Budget Request.

Based on cost reductions seen for Virginia Class Submarine block buy contracts, the budget request assumes estimated savings of at least \$800 million resulting from material procurement through a clear demand signal to the industrial base and production efficiencies. This represents approximately an eight percent savings over an annual procurement with options. These savings are already part of the program budgets. In the event this legislative proposal is not enacted, increases in required funding within the FY 2021 President’s Budget Request will be necessary.

The resources reflected in the tables below show the funding requested in FY 2021 BES and a comparison of funding required for a contract for SSBN 826 with an option for SSBN 827 without incremental funding and funding required for a single two-ship contract for SSBN 826 and SSBN 827 with incremental funding.

RESOURCE REQUIREMENTS (\$M)										
	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Navy	\$1,821	\$1,123	\$1,229	\$1,644	\$2,211	\$2,760	Shipbuilding Conversion Navy (SCN)	1	1045C	0101221N
Navy	\$0	\$2,891	\$2,768	\$2,506	\$2,993	\$3,348	Shipbuilding Conversion Navy (SCN)	1	1045	0101221N
Total	\$1,821	\$4,015	\$3,997	\$4,150	\$5,204	\$6,108	Shipbuilding Conversion Navy (SCN)	1	1045 (Advanced Procurement and Shipbuilding Conversion Navy)	--

CLB Class SCN (\$M)	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	Total FY20-FY25
Quantity		1			1		2
Contract for SSBN 826 with option for SSBN 827 without incremental funding	\$1,821	\$9,689	\$1,229	\$1,644	\$8,952	\$2,760	\$26,094
Single contract for	\$1,821	\$4,015	\$3,997	\$4,150	\$5,204	\$6,108	\$25,294

SSBN 826 and SSBN 827 with incremental funding							
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Changes to Existing Law: None.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Section 201 would authorize appropriations for fiscal year 2021 for the research, development, test, and evaluation accounts of the Department of Defense in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2021.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

Section 301 would authorize appropriations for fiscal year 2021 for the Operation and Maintenance accounts of the Department of Defense in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2021.

Subtitle B—Energy and Environment

Section 311 would specify that, as is the case for non-military or non-recreational vessels, discharges incidental to the normal operation of vessels of the Armed Forces regulated under the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) are not to be regulated under the Solid Waste Disposal Act (SWDA) (42 U.S.C. 6901 et seq.) or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 et seq.). This would avoid potential confusion about whether such incidental discharges should be subject to duplicative regulation under the SWDA or CERCLA. As a matter of practice, this proposal reflects the views of the United States (U.S.) Environmental Protection Agency (EPA) and the Department of Defense (DoD) for how these three Acts should be interpreted and implemented.

Section 312(n) of the Clean Water Act (Uniform National Discharge Standards for Vessels of the Armed Forces) provides for regulation of any discharge that is incidental to the normal operation of a vessel of the Armed Forces. Section 312(n) provides for a regulatory program based on criteria that are intended to be as protective as the technology-based criteria used to develop the Vessel General Permit section 402 of the Clean Water Act, which applies to discharges incidental to the normal operation of non-military, non-recreational vessels. Both the SWDA and CERCLA include exclusions for discharges incidental to the normal operation of non-military, non-recreational vessels that are regulated under section 402 of the Clean Water Act. Neither statute, however, references the equivalent discharges from vessels of the Armed Forces which are regulated under 312(n) of the Clean Water Act. Both the SWDA and CERCLA were enacted prior to the CWA amendments establishing the Uniform National Discharge Standards (UNDS) for vessels of the Armed Forces, which did not include conforming amendments in the other statutes. Nonetheless, as the laws are currently written, it could appear

that Congress may have inadvertently treated Armed Forces vessels and non-military vessels differently under the SWDA and CERCLA. In practice, EPA has not sought to treat Armed Forces vessels differently with respect to CWA section 312(n) discharges. This proposal would align the statutes with the historic treatment of Armed Forces vessels in practice to make clear that discharges incidental to the normal operation of a military vessel, like those from a non-military, non-recreational vessel, are to be regulated under the Clean Water Act.

The Solid Waste Disposal Act does not regulate point source discharges which are already regulated under section 402 of the Clean Water Act via the National Pollutant Discharge Elimination System (NPDES) program. This is reflected by the fact that the definition of “solid waste” under section 1004(27) of the SWDA does not include these discharges:

The term “solid waste” . . . does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C.A. § 2011 et seq.].

The NPDES program requires municipal, industrial, and commercial facilities that discharge wastewater from a point source (discrete conveyance such as a pipe, ditch, or channel) to obtain a permit before discharging into the waters of the United States. The definition of “solid waste” under the SWDA recognizes that the most appropriate regulatory framework for regulating NPDES discharges is the Clean Water Act and that regulation under the SWDA of discharges subject to a NPDES permit would be duplicative and therefore unnecessary.

A point source discharge incidental to the normal operation of a non-military, non-recreational vessel that is regulated under a NPDES permit is therefore not subject to regulation under the SWDA. This proposal would specify that, as is the case for non-military, non-recreational vessels, the definition of “solid waste” under the SWDA similarly does not include any discharge incidental to the normal operation of a vessel of the Armed Forces, when these discharges are regulated under section 312(n) of the Clean Water Act.

Under CERCLA, section 103 (42 U.S.C. 9603) requires that the person in charge of a vessel or facility immediately notify the National Response Center whenever a reportable quantity or more of a CERCLA hazardous substance is released in any 24-hour period, unless the release is “federally permitted.” Section 103 imposes penalties for the failure to comply with this notice requirement. Section 101(10) of CERCLA currently excludes eleven “federally permitted releases” from the section 103 notification requirements, to include several discharges regulated under section 402 of the Clean Water Act.¹

¹ Discharges currently enumerated as Federally permitted releases under CERCLA which are regulated instead under the Clean Water Act are as follows: (1) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342); (2) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit; (3) continuous or anticipated

This proposal would modify section 312(n)(6)(B) of the FWPCA (33 U.S.C. 1322(n)(6)(B)), to specify that, when in compliance with section 312(n)(4), “discharges incidental to the normal operation of a vessel of the Armed Forces” are excluded from the definition of “solid waste” under subsection 1004(27) of the SWDA (42 U.S.C. 6903(27)) and “a discharge incidental to the normal operation of a vessel of the Armed Forces in compliance with the regulations” is added to the definition of “Federally permitted release” under section 101(10) of the CERCLA (42 U.S.C. 9601(10)), thereby treating such discharges comparably to the same or similar discharges from non-military, non-recreational vessels. This change is consistent with current practice and how DoD and EPA have historically implemented the FWPCA, SWDA, and CERCLA.

Budget Implications: No budget impact.

Changes to Existing Law: This proposal would make the following changes to section 312 of the Federal Water Pollution Control Act (U.S.C. 1322):

312. MARINE SANITATION DEVICES; DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF VESSELS.

(n) UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF ARMED FORCES.—

(6) EFFECT ON OTHER LAWS.—

(B) FEDERAL LAWS.—This subsection shall not affect the application of section 1321 of this title to discharges incidental to the normal operation of a vessel. When conducted in compliance with regulations promulgated pursuant to paragraph (4), any discharge incidental to the normal operation of a vessel of the Armed Forces is considered a federally permitted release within the meaning of section 101(10) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(10)), and is excluded from the definition of solid waste under section 1004(27) of the Solid Waste Disposal Act (42 U.S.C. 6903(27)).

Section 312 would update and clarify Section 330 of the National Defense Authorization Act for Fiscal Year 1993. It addresses three issues: 1) the duty to defend requirement, 2) funding for indemnification, and 3) cases extending Section 330’s requirements to cleanup costs. Since its passage over twenty five years ago, DoD has had a limited number of requests for DoD to “defend” a private party identified in subsection (a)(2). DoD, however, is not authorized to

intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems; and (4) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307(b) or (c) of the Clean Water Act (33 U.S.C. 1317(b), (c)) and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act (33 U.S.C. 1342).

represent these private or State parties, and lacks independent litigation authority in accordance with 5 U.S.C. §3106. The President’s signing statement for the FY1993 NDAA contained specific statements concerning Section 330’s duty to defend, including that “the Secretary of Defense will ‘settle or defend’ claims in litigation through attorneys provided by the Department of Justice.”² The Department of Justice conducts all litigation in which DoD has an interest or is a party in accordance with 28 U.S.C. § 516, and has determined that it is unable to defend the enumerated entities in Section 330 due to inherent conflicts of interest. For these reasons, DoD is proposing to delete the duty to defend requirement from subsections (a)(1) and (b)(4) in Section 330, as it cannot be practically implemented. The duty to “hold harmless and indemnify in full” remains in Section 330.

This proposal also provides a specific source of funding. Section 330 and its legislative history are silent as to the source of funds appropriate to cover indemnity requests. While the base closure laws were evaluated by DoD, funds appropriated in accordance with the applicable Base Closure and Realignment Act can only be used for specific purposes that do not extend to the indemnification requests received. The Judgment Fund is a permanent, indefinite appropriation which is generally available to pay amounts owed by the United States, under judgments, compromise settlements and certain administrative awards. 73 Comp. Gen. 46 (1993). Since Section 330’s enactment, DoD has certified that no DoD funds are available to settle claims brought pursuant to Section 330, and those claims and judgments were instead paid from the Judgment Fund. In accordance with this historical practice, and consistent with 10 U.S.C. §2733³, which established a similar structure for personal injury and property damage claims for DoD, DoD proposes to insert a new subsection (c)(3) into Section 330 which allows the use of DoD funds to settle meritorious Section 330 claims up to \$100,000, and the Judgment Fund for amounts over \$100,000. This limit is needed as DoD recently published regulations at 32 CFR 175.1-6 to provide for an administrative claims process for Section 330.

This proposal also addresses court cases that have extended Section 330 to cleanup costs, rather than recognizing that this provision is limited to “any claim for personal injury or property damage”. Additionally, these cases did not acknowledge that Section 330 already contained a provision concerning the federal cleanup law, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and CERCLA provides its own cost recovery process. Cases such as *Indian Harbor Ins. Co. v. U.S.*, 704 F.3d 949 (Fed. Cir. 2013), and *Richmond Am. Homes of Colo., Inc. v. U.S.*, 75 Fed. Cl. 376 (2007), allowed reimbursement for environmental cleanup costs under Section 330, by pointing to phrases such as “cost or other fee”, “economic loss”, “demand or action” or “threatened release.” In addition to deleting these phrases to clarify the intent of Section 330, subsection (e) of section 330 will

² Presidential signing statement accompanying the 1993 National Defense Authorization Act, Public Law 102-484 (“I also note that section 330, under which the Secretary of Defense may ‘settle or defend’ certain claims, should not be understood to detract from the Attorney General’s plenary litigating authority. Accordingly, to the extent provided in current law, the Secretary of Defense will ‘settle or defend’ claims in litigation through attorneys provided by the Department of Justice.”). See also, 83 Fed. Reg. 34471, 34472 (July 20, 2018) (stating that, for litigation under section 330, “it is understood that the DoD will act through the [DOJ] when appearing before the courts”).

³ 10 U.S.C. §2733(d) states that if the Secretary considers that a claim for personal injury or property damage “in excess of \$100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant \$100,000 and report any meritorious amount in excess of \$100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.”

clarify that claims for environmental remediation or cleanup costs, must be pursued under CERCLA and not under Section 330. The proposal also deletes “or petroleum or petroleum derivative” in order to make the provision consistent with CERCLA.

Budget Implications: No budget impact.

Changes to Existing Law: This proposal would make the following changes to section 330 of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 2687 note):

SEC. 330. INDEMNIFICATION OF TRANSFEREES OF CLOSING DEFENSE PROPERTY.

(a) IN GENERAL.—(1) Except as provided in paragraph (3) and subject to subsection (b), the Secretary of Defense shall hold harmless, ~~defend,~~ and indemnify in full the persons and entities described in paragraph (2) from ~~and against~~ any suit, ~~claim, demand or action,~~ liability, ~~or judgment, cost or other fee~~ arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property ~~or economic loss~~) that results from, ~~or is in any manner predicated upon,~~ the release ~~or threatened release~~ of any hazardous substance or pollutant or contaminant, ~~or petroleum or petroleum derivative~~ as a result of Department of Defense activities at any military installation (or portion thereof) that is closed pursuant to a base closure law.

(2) The persons and entities described in this paragraph are the following:

(A) Any State (including any officer, agent, or employee of the State) that acquires ownership or control of any facility at a military installation (or any portion thereof) described in paragraph (1).

(B) Any political subdivision of a State (including any officer, agent, or employee of the State) that acquires such ownership or control.

(C) Any other person or entity that acquires such ownership or control.

(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).

(3) To the extent the persons and entities described in paragraph (2) contributed to any such release ~~or threatened release~~, paragraph (1) shall not apply.

(b) CONDITIONS.—No indemnification may be afforded under this section unless the person or entity making a claim for indemnification—

(1) notifies the Department of Defense in writing within two years after such claim accrues or begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Department of Defense;

(2) furnishes to the Department of Defense copies of pertinent papers the entity receives;

(3) furnishes evidence or proof of any claim, loss, or damage covered by this section; and

(4) provides, upon request by the Department of Defense, access to the records and personnel of the entity for purposes of ~~defending or settling~~ the claim or action.

(c) AUTHORITY OF SECRETARY OF DEFENSE.—(1) In any case in which the Secretary of Defense determines that the Department of Defense may be required to make indemnification payments to a person under this section for any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage referred to in subsection (a)(1), the Secretary may settle or defend, on behalf of that person, the claim for personal injury or property damage.

(2) In any case described in paragraph (1), if the person to whom the Department of Defense may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this section.

(3) Notwithstanding any other provision of law, funds made available under section 1304 of title 31, United States Code, shall be available to pay claims in excess of \$100,000 that are otherwise payable under this section.

(d) ACCRUAL OF ACTION.—For purposes of subsection (b)(1), the date on which a claim accrues is the date on which the plaintiff knew (or reasonably should have known) that the personal injury or property damage referred to in subsection (a) was caused or contributed to by the release or threatened release of a hazardous substance or pollutant or contaminant or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) described in subsection (a)(1).

(e) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed as affecting or modifying in any way ~~section 120(h)~~ any provision of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et. seq. ~~9620(h)~~). Any claim for environmental remediation or cleanup costs or natural resource damages may not be pursued under this section.

(f) DEFINITIONS.—In this section:

(1) The terms “facility”, “hazardous substance”, “release”, and “pollutant or contaminant” have the meanings given such terms under paragraphs (9), (14), (22), and (33) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, respectively (42 U.S.C. 9601 (9), (14), (22), and (33)).

(2) The term “military installation” has the meaning given such term under section 2687(e)(1) of title 10, United States Code.

(3) The term “base closure law” means the following:

(A) The Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note).

(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note).

(C) Section 2687 of title 10, United States Code.

(D) Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of the enactment of this Act.

Subtitle C—[Reserved]

Subtitle D—Reports

Section 331 would repeal subsection (a) of section 356 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY19 NDAA), which requires three-year advance notice to the Defense Logistics Agency (DLA) before implementing a change to any uniform or uniform component.

The proposal leaves in place a requirement providing for 12-month advance notice to a contractor when one of the uniformed services plans to make a change to a uniform component that is provided by that contractor. The proposal allows for waiver of this requirement if the notification would “adversely affect operational safety, force protection, or the national security interests of the United States.”

Finally, the proposal would correct the title of the head of DLA from “Commander” to “Director”.

It is essential for subsection (a) of section 356 of the FY19 NDAA to be repealed in FY 2021. DLA’s Supply Request Package (SRP) requirement provides that “the introduction of new clothing and textile items into the Department of Defense (DoD) supply system shall be planned and coordinated with the Troop Support Clothing and Textiles to ensure optimal economic use of all existing stocks of affected items.” The FY19 NDAA language relating to the three-year notification to DLA of uniform changes is not necessary, as the military departments comply with DLA requirements for notification.

The requirement for the military departments to notify DLA three years in advance of any uniform change delays Service members in receiving improved uniforms. The military departments continually evaluate new technologies in uniform fabric and design. The requirements of subsection (a) of section 356 of the FY19 NDAA impede the ability of the military departments to rapidly provide improved uniforms to Service members.

Budget Implications: There are no budgetary implications.

Changes to Existing Law: This proposal would make the following changes to section 356 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 132 Stat. 1636):

SEC. 356. NOTIFICATION REQUIREMENTS RELATING TO CHANGES TO UNIFORM OF MEMBERS OF THE UNIFORMED SERVICES.

~~(a) DLA NOTIFICATION.—The Secretary of a military department shall notify the Commander of the Defense Logistics Agency of any plan to implement a change to any uniform or uniform component of a member of the uniformed services. Such notification shall be made not less than three years prior to the implementation of such change.~~

~~(b)~~**(a) CONTRACTOR NOTIFICATION.—The ~~Commander~~Director of the Defense Logistics Agency shall notify a contractor when one of the uniformed services plans to make a**

change to a uniform component that is provided by that contractor. Such a notification shall be made not less than 12 months prior to any announcement of a public solicitation for the manufacture of the new uniform component.

(e)(b) WAIVER.—If the Secretary of a military department or the ~~Commander~~ Director of the Defense Logistics Agency determines that the notification requirement under subsection (a) would adversely affect operational safety, force protection, or the national security interests of the United States, the Secretary or the ~~Commander~~ Director may waive such requirement.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Section 401 would prescribe the personnel strengths for the active forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's Budget for fiscal year 2021.

Section 402 would repeal paragraph (3) of section 115(e) of title 10, United States Code, to remove the requirement for the Secretary of Defense to notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives whenever the Secretary establishes an end-of-quarter (EOQ) strength level pursuant to section 115(e)(2)(A) or modifies a strength level pursuant to section 115(e)(2)(B). In recent years, the DoD has proposed reductions to mandatory reports to realize resource savings. Reports to Congress similar to this EOQ strength level report have been eliminated. The Office of the Secretary of Defense would continue to ensure the Services remain in compliance with their authorized strength levels and within the statutory variances for active-duty and Selected Reserve strengths. Cost savings can be realized by eliminating the significant time and resource investment of coordinating and producing a Congressional level report.

The quarterly report to Congress outlines the first, second and third EOQ personnel strengths prescribed by the Secretary for the four Active and six Selected Reserve components and, in accordance with the section 115(f) of title 10, allocates the Secretary's three percent variance for each prescribed EOQ strength level.

Since FY 2006, this statutorily-required report has been submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives each year. In the 13 previous reports submitted to Congress, there have been no follow-up inquiries from Congress pertaining to the report's EOQ personnel strength variances nor has any Active or Selected Reserve component ended a quarter outside the three percent variance for that quarter.

In light of the Secretary of Defense's 2009 initiative to reduce the number of reports generated within the Department, coupled with the Services' universal compliance with statutorily authorized EOQ strength levels and variance strength, the Department believes this

statutory report to be unnecessary and can be eliminated with no impact to either the Department or the Congress.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2021 President's Budget. By repealing this paragraph and removing the requirement for the Secretary of Defense to notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives whenever the Secretary establishes an end-of-quarter strength level pursuant to section 115(e)(2)(A) or modifies a strength level pursuant to section 115(e)(2)(B), the Department will save approximately \$17,000 annually according to a cost estimate from Cost Assessment and Program Evaluation (CAPE) for generating the FY19 report.

Changes to Existing Law: This proposal would make the following changes to section 115(e) of title 10, United States Code:

§ 115. Personnel strengths: requirement for annual authorization

(a) ACTIVE-DUTY AND SELECTED RESERVE END STRENGTHS TO BE AUTHORIZED BY LAW.—Congress shall authorize personnel strength levels for each fiscal year for each of the following:

(1) The end strength for each of the armed forces (other than the Coast Guard) for (A) active-duty personnel who are to be paid from funds appropriated for active-duty personnel unless on active duty pursuant to subsection (b), and (B) active-duty personnel and full-time National Guard duty personnel who are to be paid from funds appropriated for reserve personnel unless on active duty or full-time National Guard duty pursuant to subsection (b).

(2) The end strength for the Selected Reserve of each reserve component of the armed forces.

* * * * *

(e) END-OF-QUARTER STRENGTH LEVELS.—(1) The Secretary of Defense shall prescribe and include in the budget justification documents submitted to Congress in support of the President's budget for the Department of Defense for any fiscal year the Secretary's proposed end-of-quarter strengths for each of the first three quarters of the fiscal year for which the budget is submitted, in addition to the Secretary's proposed fiscal-year end-strengths for that fiscal year. Such end-of-quarter strengths shall be submitted for each category of personnel for which end strengths are required to be authorized by law under subsection (a) or (d). The Secretary shall ensure that resources are provided in the budget at a level sufficient to support the end-of-quarter and fiscal-year end-strengths as submitted.

(2)(A) After annual end-strength levels required by subsections (a) and (d) are authorized by law for a fiscal year, the Secretary of Defense shall promptly prescribe end-of-quarter strength levels for the first three quarters of that fiscal year applicable to each such end-strength level. Such end-of-quarter strength levels shall be established for any fiscal year as levels to be achieved in meeting each of those annual end-strength levels authorized by law in accordance with subsection (a) (as such levels may be adjusted pursuant to subsection (f)) and subsection

(d).

(B) At least annually, the Secretary of Defense shall establish for each of the armed forces (other than the Coast Guard) the maximum permissible variance of actual strength for an armed force at the end of any given quarter from the end-of-quarter strength established pursuant to subparagraph (A). Such variance shall be such that it promotes the maintaining of the strength necessary to achieve the end-strength levels authorized in accordance with subsection (a) (as adjusted pursuant to subsection (f)) and subsection (d).

~~(3) Whenever the Secretary establishes an end of quarter strength level under subparagraph (A) of paragraph (2), or modifies a strength level under the authority provided in subparagraph (B) of paragraph (2), the Secretary shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of that strength level or of that modification, as the case may be.~~

* * * * *

Section 403 would change the method of calculating the authorized number of senior enlisted members in the grades of E-8 and E-9 from the daily average to an authorized end strength and would increase the authorized number of members in the grade of E-8 from 2.5 percent to 3.0 percent of the total number of enlisted members. Additionally, this proposal would authorize a Secretary of a military department to increase the authorized end strength of E-8s and E-9s by 0.25 percent when the Secretary of a military department determines that such an increase would enhance manning and readiness in essential units or in critical specialties or ratings.

Currently, section 517 limits the average daily strength of E-8s to 2.5 percent and E-9s to 1.25 percent of the total enlisted strength at the beginning of the fiscal year. The current metric (percent daily average number of enlisted members of the specified grade divided by the total enlisted strength at the first day of the fiscal year) is less flexible. By changing the method of calculating the authorized number of senior enlisted members, the military departments will have greater flexibility in determining the appropriate force structure.

Section 517 also limits the authorized number of members in the grade of E-8 to 2.5 percent of the total enlisted strength in a given armed force who are on active duty on the first day of a fiscal year. This limit is becoming too restrictive in today's modern high-tech Army, as the types of capabilities required for future conflicts are different from the past. The Army has seen a rise in the need for E-8s (as a proportion of the total enlisted force) from 2012 to 2018 for several reasons.

The leading factor was the drawdown from fiscal year 2012 (FY12) to FY16 where operational line units and support (mostly lower enlisted) were reduced. For example, a brigade combat team (BCT) has 52 E-8s, or 1.4 percent of the enlisted force. During the drawdown, the Army deactivated 14 BCTs, affecting over 50,000 enlisted authorizations. The reduction of BCTs disproportionately lowered the number of enlisted members in the Army, causing the active component Army E-8 percentage to increase by 0.2 percent.

Additionally, the types of units added were grade heavy (such as Special Forces, Cyber, and security force assistance brigades (SFABs)). For example, each SFAB has 31 E-8s, comprising 4.8 percent of enlisted members in the brigade. Over the Future Years Defense Program, the Army added six SFABs, increasing the E-8 rate by 0.11 percent. Additionally, the Army judiciously under-filled noncommissioned officer (NCO) ranks during the drawdown. The current growth and focus on readiness has reversed this practice, requiring an additional 500 E-8s and 100 E-9s. Promoting to required levels further increases the E-8 rate by 0.13 percent and E-9s by 0.03 percent. Finally, the calculation of the E-8 limit using beginning year strength is 0.08 percent higher than an end of year calculation.

The current limit of 2.5 percent for E-8s prevents the Army from fully manning the necessary formations, as determined by the deliberate and rigorous Total Army Analysis process, to support the current National Defense Policy.

Finally, this proposal would give the Secretaries of the military departments greater flexibility to enhance manning and readiness in essential units, like SFABs, or in critical specialties or ratings, like Cyber. Under section 517, the Secretaries of the military departments concerned lack the authority to exceed temporarily the authorized percentages of senior enlisted members. Furthermore, the Secretary of Defense may only suspend the limitations of section 517 when the President has suspended the operation of section 523, 525, or 526 of title 10, United States Code, in time of war or national emergency. This proposal would give flexibility to the Secretaries of the military departments when force structure changes, or unit missions require a greater number of senior enlisted members.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request. The amounts in the tables below represent the maximum possible cost and manning differential as a result of the proposed authority.

RESOURCE IMPACT (\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/ SAG	Program Element
Army	53.7	55.3	57.0	58.2	59.4	Military Personnel, Army	02		
Navy	Navy does not intend to use this authority.								
Air Force	54.6	57.6	57.5	58.7	59.9	Military Personnel, Air Force	02		
Marines	Marines do not intend to use this authority.								
Total	87.7	90.4	93.0	95.2	97.4				

NUMBER OF PERSONNEL AFFECTED						
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation From
Army	1968	1979	1997	1996	1996	Military Personnel, Army

Navy	Navy does not intend to use this authority.					
Air Force	2001	2061	2014	2014	2014	Military Personnel, Air Force
Marines	Marines do not intend to use this authority.					
Total	3969	4040	4011	4010	4010	

Changes to Existing Law: This proposal would amend section 517 of title 10, United States Code, as follows:

§ 517. Authorized ~~daily average~~ enlisted end strength: members in pay grades E-8 and E-9

(a) The authorized ~~daily average number of end strength~~ for enlisted members on active duty (other than for training) in an armed force in pay grades E-8 and E-9 in a fiscal year as of the last day of a fiscal year may not be more than ~~2.5~~ 3.0 percent and 1.25 percent, respectively, of the number of enlisted members of that armed force who are on active duty (other than for training) ~~on the first day of that fiscal year~~. In computing the limitations prescribed in the preceding sentence, there shall be excluded enlisted members of an armed force on active duty as authorized under section 115(a)(1)(B) or 115(b) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title.

(b) Whenever the number of members serving in pay grade E-9 is less than the number authorized for that grade under subsection (a), the difference between the two numbers may be applied to increase the number authorized under such subsection for pay grade E-8.

(c) Whenever under section 527 of this title the President may suspend the operation of any provision of section 523, 525, or 526 of this title, the Secretary of Defense may suspend the operation of any provision of this section. Any such suspension shall, if not sooner ended, end in the manner specified in section 527 for a suspension under that section.

(d) Notwithstanding the limitations of subsection (a), the Secretary of a military department may increase the authorized end strength of enlisted members on active duty (other than for training) in an armed force in pay grade E-8 or E-9 by a number equal to not more than 0.25 percent of such end strength when such Secretary determines that an increase in that end strength would enhance manning and readiness in essential units or in critical specialties or ratings.

Subtitle B—Reserve Forces

Section 411 would prescribe the end strengths for the Selected Reserve of each reserve component of the Armed Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense, and the Department of Homeland Security for the Coast Guard Reserve, in the President’s Budget for fiscal year 2021.

Section 412 would prescribe the end strengths for reserve component members on full-time active duty or full-time National Guard duty for the purpose of administering the reserve forces for fiscal year 2021.

Section 413 would prescribe the end strengths for dual-status technicians of the reserve components of the Army and Air Force for fiscal year 2021.

Section 414 would prescribe the maximum number of reserve personnel authorized to be on active duty for operational support.

Section 415. Pursuant to the Declaration of National Emergency, the Secretary of Defense (SecDef) delegated certain authorities to the Secretaries of the Military Departments, including the authority to waive end strength requirements outside the parameters of 10 U.S.C. 115. Upon the lifting of the Declaration of National Emergency, the SecDef and the Secretaries of the Military Departments must satisfy the provisions of 10 U.S.C. 115, regarding end strengths. By law, personnel within the Active Guard and Reserve category serve on active duty in full-time support of the Reserve Components. Currently, the SecDef can only increase actual Active Guard and Reserve end strength by 2 percent above congressionally authorized end strength. This proposal amends 10 U.S.C. 115 to enable the SecDef the flexibility to vary actual Active Guard and Reserve end strength either 2 percent above or 2 percent below authorized Active Guard and Reserve end strength, which is consistent with the Secretary of Defense authority to vary other elements of the Selected Reserve, by a prescribed percentage.

This proposal further amends 10 U.S.C. 115 in order to authorize the Secretaries of the Military Departments to vary their respective Active Guard and Reserve end strengths by not more than 1 percent. Current law only authorizes the Secretary of Defense to increase Active Guard and Reserve end strength up to not more than 2 percent, while the Secretaries of the Military Departments do not have any authority to vary that end strength. Giving the Secretaries of the Military Departments the authority to vary their respective Active Guard and Reserve end strengths by not more than 1 percent would reduce the administrative burden of pursuing such a variance.

Budget Implications: This proposal is non-budgetary. 10 U.S.C. 115 subsection (f)(2) authorizes the Secretary of Defense to increase the end strength pursuant to subsection (a)(1)(B) for a fiscal year for any of the armed forces by a number equal to not more than 2 percent of that end strength. This proposal gives the Secretary of Defense and the Secretaries of the Military Departments more flexibility to vary end strength within current title 10 limits.

Changes to Existing Law: This proposal would make the following changes to section 115 of title 10, United States Code:

§115. Personnel strengths: requirement for annual authorization

(a) ACTIVE-DUTY AND SELECTED RESERVE END STRENGTHS TO BE AUTHORIZED BY LAW.—Congress shall authorize personnel strength levels for each fiscal year for each of the following:

- (1) The end strength for each of the armed forces (other than the Coast Guard) for (A) active-duty personnel who are to be paid from funds appropriated for active-duty personnel unless on active duty pursuant to subsection (b), and (B) active-duty personnel and full-time National Guard duty personnel who are to be paid from funds appropriated

for reserve personnel unless on active duty or full-time National Guard duty pursuant to subsection (b).

(2) The end strength for the Selected Reserve of each reserve component of the armed forces.

(b) CERTAIN RESERVES ON ACTIVE DUTY TO BE AUTHORIZED BY LAW. —(1) Congress shall annually authorize the maximum number of members of a reserve component permitted to be on active duty or full-time National Guard duty at any given time who are called or ordered to—

(A) active duty under section 12301(d) of this title for the purpose of providing operational support, as prescribed in regulation issued by the Secretary of Defense;

(B) full-time National Guard duty under section 502(f)(1)(B) of title 32 for the purpose of providing operational support when authorized by the Secretary of Defense;

(C) active duty under section 12301(d) of this title or full-time National Guard duty under section 502(f)(1)(B) of title 32 for the purpose of preparing for and performing funeral honors functions for funerals of veterans under section 1491 of this title;

(D) active duty or retained on active duty under sections 12301(g) of this title while in a captive status; or

(E) active duty or retained on active duty under 12301(h) or 12322 of this title for the purpose of medical evaluation or treatment.

(2) A member of a reserve component who exceeds either of the following limits shall be included in the strength authorized under subparagraph (A) or subparagraph (B), as appropriate, of subsection (a)(1):

(A) A call or order to active duty or full-time National Guard duty that specifies a period greater than three years.

(B) The cumulative periods of active duty and full-time National Guard duty performed by the member exceed 1095 days in the previous 1460 days.

(3) In determining the period of active service under paragraph (2), the following periods of active service performed by a member shall not be included:

(A) All periods of active duty performed by a member who has not previously served in the Selected Reserve of the Ready Reserve.

(B) All periods of active duty or full-time National Guard duty for which the member is exempt from strength accounting under paragraphs (1) through (8) of subsection (i).

(4) As part of the budget justification materials submitted by the Secretary of Defense to Congress in support of the end strength authorizations required under subparagraphs (A) and (B) of subsection (a)(1) for fiscal year 2009 and each fiscal year thereafter, the Secretary shall provide the following:

(A) The number of members, specified by reserve component, authorized under subparagraphs (A) and (B) of paragraph (1) who were serving on active duty or full-time National Guard duty for operational support beyond each of the limits specified under subparagraphs (A) and (B) of paragraph (2) at the end of the fiscal year preceding the fiscal year for which the budget justification materials are submitted.

(B) The number of members, specified by reserve component, on active duty for operational support who, at the end of the fiscal year for which the budget justification

materials are submitted, are projected to be serving on active duty or full-time National Guard duty for operational support beyond such limits.

(C) The number of members, specified by reserve component, on active duty or full-time National Guard duty for operational support who are included in, and counted against, the end strength authorizations requested under subparagraphs (A) and (B) of subsection (a)(1).

(D) A summary of the missions being performed by members identified under subparagraphs (A) and (B).

(c) LIMITATION ON APPROPRIATIONS FOR MILITARY PERSONNEL.—No funds may be appropriated for any fiscal year to or for—

(1) the use of active-duty personnel or full-time National Guard duty personnel of any of the armed forces (other than the Coast Guard) unless the end strength for such personnel of that armed force for that fiscal year has been authorized by law;

(2) the use of the Selected Reserve of any reserve component of the armed forces unless the end strength for the Selected Reserve of that component for that fiscal year has been authorized by law; or

(3) the use of reserve component personnel to perform active duty or full-time National Guard duty under subsection (b) unless the strength for such personnel for that reserve component for that fiscal year has been authorized by law.

(d) MILITARY TECHNICIAN (DUAL STATUS) END STRENGTHS TO BE AUTHORIZED BY LAW.—Congress shall authorize for each fiscal year the end strength for military technicians (dual status) for each reserve component of the Army and Air Force. Funds available to the Department of Defense for any fiscal year may not be used for the pay of a military technician (dual status) during that fiscal year unless the technician fills a position that is within the number of such positions authorized by law for that fiscal year for the reserve component of that technician. This subsection applies without regard to section 129 of this title. In each budget submitted by the President to Congress under section 1105 of title 31, the end strength requested for military technicians (dual status) for each reserve component of the Army and Air Force shall be specifically set forth.

(e) END-OF-QUARTER STRENGTH LEVELS.—(1) The Secretary of Defense shall prescribe and include in the budget justification documents submitted to Congress in support of the President's budget for the Department of Defense for any fiscal year the Secretary's proposed end-of-quarter strengths for each of the first three quarters of the fiscal year for which the budget is submitted, in addition to the Secretary's proposed fiscal-year end-strengths for that fiscal year. Such end-of-quarter strengths shall be submitted for each category of personnel for which end strengths are required to be authorized by law under subsection (a) or (d). The Secretary shall ensure that resources are provided in the budget at a level sufficient to support the end-of-quarter and fiscal-year end-strengths as submitted.

(2)(A) After annual end-strength levels required by subsections (a) and (d) are authorized by law for a fiscal year, the Secretary of Defense shall promptly prescribe end-of-quarter strength levels for the first three quarters of that fiscal year applicable to each such end-strength level. Such end-of-quarter strength levels shall be established for any fiscal year as levels to be achieved in meeting each of those annual end-strength levels authorized by law in accordance

with subsection (a) (as such levels may be adjusted pursuant to subsection (f)) and subsection (d).

(B) At least annually, the Secretary of Defense shall establish for each of the armed forces (other than the Coast Guard) the maximum permissible variance of actual strength for an armed force at the end of any given quarter from the end-of-quarter strength established pursuant to subparagraph (A). Such variance shall be such that it promotes the maintaining of the strength necessary to achieve the end-strength levels authorized in accordance with subsection (a) (as adjusted pursuant to subsection (f)) and subsection (d).

(3) Whenever the Secretary establishes an end-of-quarter strength level under subparagraph (A) of paragraph (2), or modifies a strength level under the authority provided in subparagraph (B) of paragraph (2), the Secretary shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of that strength level or of that modification, as the case may be.

(f) **AUTHORITY FOR SECRETARY OF DEFENSE VARIANCES FOR ACTIVE-DUTY AND SELECTED RESERVE STRENGTHS.**—Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may—

(1) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for any of the armed forces by a number equal to not more than 3 percent of that end strength;

(2) ~~increase~~ vary the end strength authorized pursuant to subsection (a)(1)(B) for a fiscal year for any of the armed forces by a number equal to not more than 2 percent of that end strength;

(3) vary the end strength authorized pursuant to subsection (a)(2) for a fiscal year for the Selected Reserve of any of the reserve components by a number equal to not more than 3 percent of that end strength; and

(4) increase the maximum strength authorized pursuant to subsection (b)(1) for a fiscal year for certain reserves on active duty for any of the reserve components by a number equal to not more than 10 percent of that strength.

(g) **AUTHORITY FOR SERVICE SECRETARY VARIANCES FOR ACTIVE-DUTY AND SELECTED RESERVE END STRENGTHS.**—(1) Upon determination by the Secretary of a military department that such action would enhance manning and readiness in essential units or in critical specialties or ratings, the Secretary may—

(A) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for any of the armed forces under the jurisdiction of that Secretary, by a number equal to not more than 2 percent of such authorized end strength; ~~and~~

(B) ~~increase~~ vary the end strength authorized pursuant to subsection (a)(2) for a fiscal year for the Selected Reserve of the reserve component of the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for the Selected Reserve of the reserve component of any of the armed forces under the jurisdiction of that Secretary, by a number equal to not more than 2 percent of such authorized end strength; and

(C) vary the end strength authorized pursuant to subsection (a)(1)(B) for a fiscal year for the Active Guard and Reserve category of the Selected Reserve of the reserve component of the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for the Active Guard and Reserve category of the Selected Reserve of the reserve component of any armed force under the jurisdiction of that Secretary, by a number equal to not more than 1 percent of such authorized end strength.

(2) Any increase under paragraph (1)(A) of the end strength for an armed force for a fiscal year shall be counted as part of the increase for that armed force for that fiscal year authorized under subsection (f)(1). Any ~~increase variance~~ under paragraph (1)(B) of the end strength for the Selected Reserve of a reserve component of an armed force for a fiscal year shall be counted as part of the ~~increase variance~~ for that Selected Reserve for that fiscal year authorized under subsection (f)(3). Any variance under paragraph (1)(C) of the end strength for the Active Guard and Reserve category of the Selected Reserve of an armed force for a fiscal year shall be counted as part of the variance for that Selected Reserve for that fiscal year authorized under subsection (f)(2).

(h) ADJUSTMENT WHEN COAST GUARD IS OPERATING AS A SERVICE IN THE NAVY.—The authorized strength of the Navy under subsection (a)(1) is increased by the authorized strength of the Coast Guard during any period when the Coast Guard is operating as a service in the Navy.

(i) CERTAIN PERSONNEL EXCLUDED FROM COUNTING FOR ACTIVE-DUTY END STRENGTHS.—In counting personnel for the purpose of the end strengths authorized pursuant to subsection (a)(1), persons in the following categories shall be excluded:

(1) Members of a reserve component ordered to active duty under section 12301(a) of this title.

(2) Members of a reserve component in an active status ordered to active duty under section 12301(b) of this title.

(3) Members of the Ready Reserve ordered to active duty under section 12302 of this title.

(4) Members of the Selected Reserve of the Ready Reserve or members of the Individual Ready Reserve mobilization category described in section 10144(b) of this title ordered to active duty under section 12304 of this title.

(5) Members of the National Guard called into Federal service under section 12406 of this title.

(6) Members of the militia called into Federal service under chapter 13 of this title.

(7) Members of the National Guard on full-time National Guard duty under section 502(f)(1)(A) of title 32.

(8) Members of reserve components on active duty for training or full-time National Guard duty for training.

(9) Members of the Selected Reserve of the Ready Reserve on active duty to support programs described in section 1321(a) of the Department of Defense Cooperative Threat Reduction Act (50 U.S.C. 3711(a)).

(10) Members of the National Guard on active duty or full-time National Guard duty for the purpose of carrying out drug interdiction and counter-drug activities under section 112 of title 32.

(11) Members of a reserve component on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) 1 for the administration of the Selective Service System.

(12) Members of the National Guard on full-time National Guard duty for the purpose of providing command, administrative, training, or support services for the National Guard Challenge Program authorized by section 509 of title 32.

(13) Members of the National Guard on full-time National Guard duty involuntarily and performing homeland defense activities under chapter 9 of title 32.

Subtitle C—Authorization of Appropriations

Section 421 would authorize appropriations for fiscal year 2021 for military personnel.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—[Reserved]

Subtitle B—Reserve Component Management

Section 511. The National Defense Authorization Act for Fiscal Year 2017 established new authorized strengths for general and flag officers in section 526a of title 10, United States Code (U.S.C.) and sunset the existing authorized strengths under 10 U.S.C. 526 effective on December 31, 2022. In doing so, existing Reserve Component exemptions to authorized general and flag officer (GO/FO) strength on active duty were removed leading to any time a Reserve Component GO/FO is ordered to active duty, whether for training or in response to a national disaster, they will be counted against active component headspace. This proposal revises 10 U.S.C. 526a by re-incorporating the Reserve Component authorized GO/FO strength exemptions from 10 U.S.C. 526.

This proposal amends section 526a(b) to add a new paragraph (3) to reinstate the exemptions for 18 Chairman Reserve Positions (CRPs). This would allow the Chairman of the Joint Chiefs to allocate an additional 15 GO/FO billets in the COCOMs and 3 GO/FO billets on the Joint Staff exclusively filled by reserve component officers, below the grade of O-9, that are exempt from joint-pool headspace. This ensures the active component will have the advice from reserve component leadership on their capabilities and other reserve matters; and also directly affects joint experience for the reserve component on the Joint Staff and in Combatant Commands.

The proposal also inserts a new subsection (c) in section 526a. Paragraph (1) of subsection (c) reinstates the exclusion for a reserve component GO/FO who is on active duty for training or who is on active duty under a call or order specifying a period of less than 180 days. Reserve component GO/FOs are on active duty to enhance or refresh existing skills and allow for full-time attendance at organized and specialized skill, professional development, refresher, and proficiency training. The impact of not including this exemption in 10 U.S.C. 526a is that anytime a reserve component GO/FO is on active duty for any period of time and for any purpose, the GO/FO will be counted against the Service's active duty headspace.

Paragraph (2) of subsection (c) as added by this proposal reinstates the exclusion for reserve component GO/FOs who are authorized to serve on active duty for a period of not more than 365 days, as authorized by the Service secretary, and that number shall not exceed 10% of the authorized number of general or flag officers, as the case may be, of that armed force under section 12004 of title 10. The reserve component provides unique capabilities that the active component does not possess. This provision allows a limited amount of reserve component GO/FOs to assist the active component in providing a unique capability, provide fulltime leadership to their respective component, and to meet a temporary requirement.

Paragraph (3) of subsection (c) as added by this proposal reinstates the exclusion for certain reserve component GO/FOs who are on active duty for a period in excess of 365 days but not to exceed three years, except that the number of such officers from each reserve component who are covered by this paragraph and not serving in a position that is a joint duty assignment for purposes of chapter 38 of title 10 may not exceed 5 per component. This exclusion helps the reserve component to fulfill its statutory requirement to man, train, and equip its force. Full-time leadership of each reserve component will be diminished, unless they are accounted for under active duty headspace, affecting resourcing requirements and representation at the strategic level.

The RC makes up well over 46% of the total force which includes the majority of sustainment force structure necessary to support global warfighting, peacekeeping, and military support to civil authority. The changes made to section 526a in removing the reserve component GO/FO exemptions, have the potential to eliminate capacity and incentive for total force integration. Total force integration helps the active component be more aware of reserve capabilities and how to best utilize and employ these capabilities with insight from senior leadership of the reserve component at the strategic and operational levels. Enacting this proposal will remove barriers to full integration of the reserve component into the Joint Force, allow reserve component leadership to represent their interests and equities in all matters within DOD, and will develop GO/FOs at the strategic level with regard to statutory requirements to man, train, and equip the total force.

The Chairman of the Joint Chiefs of Staff is responsible for the overall administration and execution of joint pool. Integrating the above proposals into section 526a will improve the readiness and lethality of the total force and provides the Chairman and the Secretary of Defense the decision space needed to identify current and future requirements and to fill requirements with an experienced and ready reserve component GO/FO. As the joint pool reduces from 310 to 232, opportunities for both reserve and active component GO/FOs are significantly reduced. If we do not preserve some reserve component participation in the joint force we will impede progress toward total force integration.

Budgetary Implications: No budget impact. This proposal is budget neutral as it will keep the status quo, involve no new growth of personnel, and used to meet total force requirements.

Changes to Existing Law: This proposal would make the following changes to section 526a of title 10, United States Code:

§ 526a. Authorized strength after December 31, 2022: general officers and flag officers on active duty

(a) LIMITATIONS.—The number of general officers on active duty in the Army, Air Force, and Marine Corps, and the number of flag officers on active duty in the Navy, after December 31, 2022, may not exceed the number specified for the armed force concerned as follows:

- (1) For the Army, 220.
- (2) For the Navy, 151.
- (3) For the Air Force, 187.
- (4) For the Marine Corps, 62.

(b) LIMITED EXCLUSION FOR JOINT DUTY REQUIREMENTS.—

(1) IN GENERAL.—The Secretary of Defense may designate up to 232 general officer and flag officer positions that are joint duty assignments for purposes of chapter 38 of this title for exclusion from the limitations in subsection (a).

(2) MINIMUM NUMBER.—Unless the Secretary of Defense determines that a lower number is in the best interest of the Department of Defense, the minimum number of officers serving in positions designated under paragraph (1) for each armed force shall be as follows:

- (A) For the Army, 75.
- (B) For the Navy, 53.
- (C) For the Air Force, 68.
- (D) For the Marine Corps, 17.

(3) CERTAIN RESERVE COMPONENT GENERAL AND FLAG OFFICERS ON ACTIVE DUTY.—(A) The Chairman of the Joint Chiefs of Staff may designate up to 15 general and flag officer positions in the unified and specified combatant commands, and up to three general and flag officer positions on the Joint Staff, as positions to be held only by reserve component officers who are in a general or flag officer grade below lieutenant general or vice admiral. Each position so designated shall be considered to be a joint duty assignment position for purposes of chapter 38 of this title.

(B) A reserve component officer serving in a position designated under this section while on active duty under a call or order to active duty that does not specify a period of 180 days or less shall not be counted for purposes of the limitations under this section and under section 525 of this title.

(c) EXCLUSION OF CERTAIN RESERVE OFFICERS.—

(1) GENERAL OR FLAG OFFICERS SERVING LESS THAN 180 DAYS.—The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for training or who is on active duty under a call or order specifying a period of less than 180 days.

(2) GENERAL OR FLAG OFFICERS SERVING 365 DAYS OR LESS.—The limitations of this section also do not apply to a number, as specified by the Secretary of the military department concerned, of reserve component general or flag officers authorized to serve on active duty for a period of not more than 365 days. The number so specified for an armed force may not exceed the number equal to 10 percent of the authorized number of general or flag officers, as the case may be, of that armed force under section 12004 of

this title. In determining such number, any fraction shall be rounded down to the next whole number, except that such number shall be at least one.

(3) GENERAL OR FLAG OFFICERS SERVING MORE THAN 365 DAYS.—The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for a period in excess of 365 days but not to exceed three years, except that the number of such officers from each reserve component who are covered by this paragraph and not serving in a position that is a joint duty assignment for purposes of chapter 38 of this title may not exceed 5 per component, unless authorized by the Secretary of Defense.

(ed) EXCLUSION OF CERTAIN OFFICERS PENDING SEPARATION OR RETIREMENT OR BETWEEN SENIOR POSITIONS.—The limitations of this section do not apply to—

(1) an officer of an armed force in the grade of brigadier general or above or, in the case of the Navy, in the grade of rear admiral (lower half) or above, who is on leave pending the retirement, separation, or release of that officer from active duty, but only during the 60-day period beginning on the date of the commencement of such leave of such officer; or

(2) an officer of an armed force who has been relieved from a position designated under section 601(a) of this title or by law to carry one of the grades specified in such section, but only during the 60-day period beginning on the date on which the assignment of the officer to the first position is terminated or until the officer is assigned to a second such position, whichever occurs first.

(de) TEMPORARY EXCLUSION FOR ASSIGNMENT TO CERTAIN TEMPORARY BILLETS.—

(1) IN GENERAL.—The limitations in subsection (a) do not apply to a general officer or flag officer assigned to a temporary joint duty assignment designated by the Secretary of Defense.

(2) DURATION OF EXCLUSION.—A general officer or flag officer assigned to a temporary joint duty assignment as described in paragraph (1) may not be excluded under this subsection from the limitations in subsection (a) for a period of longer than one year.

(ef) EXCLUSION OF OFFICERS DEPARTING FROM JOINT DUTY ASSIGNMENTS.—The limitations in subsection (a) do not apply to an officer released from a joint duty assignment, but only during the 60-day period beginning on the date the officer departs the joint duty assignment. The Secretary of Defense may authorize the Secretary of a military department to extend the 60-day period by an additional 120 days, except that not more than three officers on active duty from each armed force may be covered by the additional extension at the same time.

(fg) ACTIVE-DUTY BASELINE.—

(1) NOTICE AND WAIT REQUIREMENTS.—If the Secretary of a military department proposes an action that would increase above the baseline the number of general officers or flag officers of an armed force under the jurisdiction of that Secretary who would be on active duty and would count against the statutory limit applicable to that armed force under subsection (a), the action shall not take effect until after the end of the 60-calendar day period beginning on the date on which the Secretary provides notice of the proposed

action, including the rationale for the action, to the Committees on Armed Services of the Senate and the House of Representatives.

(2) BASELINE DEFINED.—In paragraph (1), the term "baseline" for an armed force means the lower of—

(A) the statutory limit of general officers or flag officers of that armed force under subsection (a); or

(B) the actual number of general officers or flag officers of that armed force who, as of January 1, 2023, counted toward the statutory limit of general officers or flag officers of that armed force under subsection (a).

(gh) JOINT DUTY ASSIGNMENT BASELINE.—

(1) NOTICE AND WAIT REQUIREMENT.—If the Secretary of Defense, the Secretary of a military department, or the Chairman of the Joint Chiefs of Staff proposes an action that would increase above the baseline the number of general officers and flag officers of the armed forces in joint duty assignments who count against the statutory limit under subsection (b)(1), the action shall not take effect until after the end of the 60-calendar day period beginning on the date on which such Secretary or the Chairman, as the case may be, provides notice of the proposed action, including the rationale for the action, to the Committees on Armed Services of the Senate and the House of Representatives.

(2) BASELINE DEFINED.—In paragraph (1), the term "baseline" means the lower of—

(A) the statutory limit on general officer and flag officer positions that are joint duty assignments under subsection (b)(1); or

(B) the actual number of general officers and flag officers who, as of January 1, 2023, were in joint duty assignments counted toward the statutory limit under subsection (b)(1).

(hi) ANNUAL REPORT.—Not later than March 1 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report specifying the following:

(1) The numbers of general officers and flag officers who, as of January 1 of the calendar year in which the report is submitted, counted toward the service-specific limits of subsection (a).

(2) The number of general officers and flag officers in joint duty assignments who, as of such January 1, counted toward the statutory limit under subsection (b)(1).

Section 512 would modify the pay and compensation waiver order provisions of 10 U.S.C. § 12316. Specifically, it would modify the existing priority of payments so that a Reservist of the Army, Navy, Air Force, Marine Corps, or Coast Guard who is entitled to retired or retainer pay and who performs paid reserve duty, would be paid (receive compensation) for their reserve duty unless the reservist elects to waive that compensation to receive the retired or retainer pay. This proposal would also make clear that a Reservist in the circumstances described above may receive either (1) the pension or disability compensation to which they are entitled because of his or her earlier military service; or (2) the pay and allowances authorized by law for the duty the reservist is performing, but not both.

Approximately 500 military retirees perform active or inactive duty with reserve units. When a military retiree performs paid reserve duty, per the existing statute, they are only entitled to receive either (1) the payments to which he or she is entitled because of their earlier military service (such as military retired pay and VA disability compensation); or (2) if he or she specifically waives those payments, the pay and allowances authorized by law for the duty that they are performing. A retired service member receiving compensation due to earlier military service who performs paid reserve duty who wishes to receive the pay for the reserve duty must waive the compensation due from earlier military service for each calendar day on which the reserve duty is performed. In the vast majority of cases (96% based on analysis of CY2019 cases) for these retiree-reservists, the compensation associated with their reserve duty is greater. However, 10 U.S.C. § 12316 requires that unless the service member specifically elects to waive the compensation due from earlier military service in order to receive their reserve duty pay, a retiree is not entitled to pay for reserve duty, which is not usually financially beneficial to the service member. Furthermore, without a timely, affirmative written election by the military retiree in advance of the reserve duty waiving the compensation due from earlier military service, both forms of compensation are often paid, in error, which results in an overpayment that must later be recouped as a debt.

The current process is burdensome to both the military services and military retirees, and at times can financially disadvantage retiree-reservists. There are several reasons why members neglect or affirmatively choose not to make a pay waiver election or pay waiver elections are not processed timely, such as the dynamic and decentralized nature of reserve units, and the reserve member's pay can fluctuate from month to month or day to day making the best election extremely difficult to determine or update in advance. This proposal would simplify the election process, remove the burden of debt at the end of the fiscal periods by military retirees who continue to serve their country, and reduce the administrative burden associated with these processes for the military services. This is achieved by removing the requirement for an affirmative election to receive the the pay for the reserve duty. Under this proposal, a waiver request would only be required when the retiree prefers to receive the compensation due from earlier military service. In all other cases, the compensation associated with the reserve duty will be paid.

The drafters of this proposal understand that it will impact the Department of Veteran's Affairs. Coordination with VA will occur after DFAS/DoD coordination is complete.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President's Budget Request. The yearly cost to process debts for the roughly 500 retiree-reservist is estimated at \$3,500 based on an analysis by DFAS Retired and Annuitant pay of the number of debts processed from Dec 2018 – Mar 2019. In total, 360 debts were processed during this period with an average cost of \$3.23 per instance.

Changes to Existing Law: This proposal would make the following changes to section 12316 of title 10, United States Code:

§12316. Payment of certain Reserves while on duty

(a) Except as provided by subsection ~~(b)~~(c), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a ~~pension~~, retired or retainer pay, ~~or disability compensation~~, and who performs duty for which he is entitled to compensation, may elect to receive for that duty either-

(1) ~~the payments to which he is entitled because of his earlier military service;~~the pay and allowances authorized by law for the duty he is performing; or

(2) if he specifically waives those payments, ~~the pay and allowances authorized by law for the duty that he is performing;~~ the retired or retainer pay to which he is entitled because of his earlier military service.

(b) Except as provided by subsection (c), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension or disability compensation, and who performs duty for which he is entitled to compensation, may elect to receive for that duty either-

(1) the pension or disability compensation to which he is entitled because of his earlier military service; or

(2) if he specifically waives those payments, the pay and allowances authorized by law for the duty that he is performing.

~~(b)~~(c) Unless the payments because of his earlier military service are greater than the compensation prescribed by subsection (a)(~~2~~1), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension, retired or retainer pay, or disability compensation, and who upon being ordered to active duty for a period of more than 30 days in time of war or national emergency is found physically qualified to perform that duty, ceases to be entitled to the payments because of his earlier military service until the period of active duty ends. While on that active duty, he is entitled to the compensation prescribed by subsection (a)(~~2~~1). Other rights and benefits of the member or his dependents are unaffected by this subsection.

(d) The Secretary of Defense shall prescribe regulations under which a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard may waive the pay and allowances authorized by law for the duty he is performing under subsection (a)(2).

Subtitle C—[RESERVED]

Subtitle D—[RESERVED]

Subtitle E—Member Education, Training, Resilience, and Transition

Section 541 would allow the Secretary of Defense and the Secretaries of the military departments to accept grants for faculty research for scientific, literary, and educational purposes. The ability to accept research grants would enable the Department and Services' civilian and military faculty to develop more advanced research skills, conduct analysis in areas as directed by the institutions, and produce intellectual advances relevant to the military departments' current and future needs.

To effect these changes, the proposal would amend sections 7487, 8593, 8594, and 9487 of title 10, United States Code, for the Army, Navy, Marine Corps, and Air Force, respectively and establish a new section under chapter 108 for the Department of Defense (DoD). To the extent possible, the language and authorities for the DoD and each military department under this proposal are the same.

Under current law, the Secretaries of the military departments may authorize only the Commandants of the Army War College and the Air War College and the Presidents of the Naval War College and Marine Corps University to accept qualifying research grants. Faculty of accredited military education institutions beyond those enumerated have no mechanism available to them to accept research grant monies.

This proposal expands the list of these institutions generally for each military department as the authority remains vested in each Service Secretary. The addition of the Secretary of Defense provides an additional mechanism for all accredited military education institutions within the Department to accept grant monies, particularly those organizationally located in a DoD component. Establishing such a DoD-wide authority places component institutions, such as National Defense University or the Joint Special Operations University, on par with the Service war colleges in their ability to accept research grants.

Failure to adopt this proposal would constrain the ability of the Department and its components to meet several directed tasks and end-state conditions, including the recruitment and retention of highly qualified faculty that can more easily remain professionally active and viable in their disciplines, improve the professional research and publication output of DoD military education institutions, and ultimately improve the quality of solutions to contemporary and future challenges facing the Department and Nation.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2021 President's Budget.

Changes to Existing Law: This proposal would add a new section to chapter 108 of title 10, United States Code, as set forth in full in the legislative text above. In addition, this proposal would make the following changes to sections 7487, 8593, 8594, and 9487 of such title:

§ 7487. United States Army War College and other accredited military education institutions of the Army: acceptance of grants for faculty research for scientific, literary, and educational purposes

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Army may authorize the Commandant of the United States Army War College or the head of any other accredited military education institution of the Army to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a ~~professor or instructor~~ faculty member of the College or institution for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Commandant or the head of any other accredited military education institution of the Army shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Army War College or any other accredited military education institution of the Army may be used to pay expenses incurred by the College or institution in applying for, and otherwise pursuing, the award of qualifying research grants.

(f) REGULATIONS.—The Secretary shall prescribe regulations for the administration of this section.

* * * * *

§ 8593. Naval War College and other accredited military education institutions of the Navy: acceptance of grants for faculty research for scientific, literary, and educational purposes

(a) ACCEPTANCE OF RESEARCH GRANTS.—(1) The Secretary of the Navy may authorize the President of the Naval War College or the head of any other accredited military education institution of the Navy to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a ~~professor or instructor~~ faculty member of the College or institution for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The President of the Naval War College or the head of any other accredited military education institution of the Navy shall

use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Naval War College or any other accredited military institution of the Navy may be used to pay expenses incurred by the College or institution in applying for, and otherwise pursuing, the award of qualifying research grants.

(f) REGULATIONS.—The Secretary shall prescribe regulations for the administration of this section.

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§ 8594. Marine Corps University and other accredited military education institutions of the Marine Corps: acceptance of grants for faculty research for scientific, literary, and educational purposes

(a) ACCEPTANCE OF RESEARCH GRANTS.—(1) The Secretary of the Navy may authorize the President of the Marine Corps University or the head of any other accredited military education institution of the Marine Corps to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a ~~professor or instructor~~ faculty member of one of the institutions comprising the University or by a faculty member of any other accredited education military institution of the Marine Corps for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The President of the Marine Corps University or the head of any other accredited military education institution of the Marine Corps shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Marine Corps University or any other accredited military education institution of the Marine Corps may be used to pay expenses incurred by the University or institution in applying for, and otherwise pursuing, the award of qualifying

(f) REGULATIONS.—The Secretary shall prescribe regulations for the administration of this section.

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§ 9487. Air War College and other accredited military education institutions of the Air Force: acceptance of grants for faculty research for scientific, literary, and educational purposes

(a) ACCEPTANCE OF RESEARCH GRANTS.—(1) The Secretary of the Air Force may authorize the Commandant of the Air War College or the head of any other accredited military education institution of the Air Force to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a ~~professor or instructor~~ the faculty member of the College or institution for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Commandant or the head of any other accredited military education institution of the Air Force shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Air War College or any other accredited military education institution of the Air Force may be used to pay expenses incurred by the College or institution in applying for, and otherwise pursuing, the award of qualifying research grants.

(f) REGULATIONS.—The Secretary shall prescribe regulations for the administration of this section.

Section 542 would give the Army War College, the Army Command and General Staff College, Army University, Air University, the Naval War College, and Marine Corps University the authority to hire Administratively Determined (AD) professional academic positions across all sectors of the university, regardless the duration of the school term. Additionally, this proposal would add Army University to section 7371 of title 10, United States Code.

Currently, section 7371 of title 10 authorizes the Secretary of the Army to hire AD faculty only at schools and colleges whose school terms are at least ten months in duration; these schools and colleges are the Army War College and the Army Command and Staff College. The proposed language would include Army University. Similar to Marine Corps University and Air University, Army University supports the United States Army Training and Doctrine Command schools and Centers of Excellence for training, education, and leader development as the functional representative for Army learning requirements, by integrating all professional military

education institutions with the Army into a single education structure modeled after many university systems across the country.

The same analysis applies to Air Force hiring under section 9371 of title 10, which authorizes the Secretary of the Air Force to hire AD faculty only at the Air War College, the Air Command and Staff College, and the School of Advanced Air and Space Studies. Currently, section 8748 of title 10 authorizes the Secretary of the Navy to hire AD faculty only at the Naval War College, the Marine Corps War College, the Marine Corps Command and Staff College, the School of Advanced Warfighting, and the Expeditionary Warfare School.

There are additional academic areas at Army, Navy, Marine Corps, and Air Force schools where the ability to hire AD faculty is important to sustaining the quality of force development programs through teaching, lecturing, instructing, facilitating discussions in seminars, conducting scholarly research and writing, and designing or developing curricula and learning support systems. In other words, instructors at these other schools perform duties that are commonly understood to be duties appropriate for a member of the faculty of a fully accredited post-secondary academic institution in the United States. Schools and colleges where the Secretary concerned lacks the authority to hire AD faculty include the full spectrum of enlisted professional military education, officer professional military education less than 10 months in duration (Senior Planners Course, Reserve Senior Staff Course, etc.), officer accessions (e.g., Reserve Officer Training Corps and Officer Training School, which fall under Air University), and civilian professional development programs.

The AD faculty hiring process allows the Secretary concerned to fill faculty vacancies on renewable contracts. This allows the Secretary concerned to replace faculty and to search for individuals with special talents and qualifications needed for the development of curricula and other academic functions in specific areas in a timely fashion. Hiring a typical Government Service (GS) civil servant assumes that the person will remain in the position for a long time, perhaps a career, and maintaining academic currency is difficult. Additionally, the constraints of the GS system preclude specifying degree and skill levels required in favor of general-purpose duty descriptions that are broadly applicable. Academia requires a different approach.

Unlike the GS personnel system, the AD authority is designed specifically to authorize the Secretary concerned to recruit and hire personnel with sufficient professional academic credentials, credentials necessary to ensure success at selected institutions such as the Army War College, the Marine Corps War College, the Naval War College, and the Air War College. The rationale for authorizing Service Secretaries to hire AD faculty at these schools and colleges should also apply to extending the AD hiring authority at those previously mentioned military schools and colleges where AD hiring authority does not exist, e.g., enlisted professional military education programs, officer professional military education programs, officer accession programs, and civilian professional development programs—all such programs whose terms are less than 10 months in duration. Granting the Service Secretaries the authority to hire AD faculty at these institutions, authority Service secretaries urgently need, would allow Service Secretaries to recruit, develop, and retain personnel best suited to support Service educational and force development requirements.

This proposed change is especially important for the United States Army Sergeants Major Academy, the Air Force Barnes Center for Enlisted Education and the Marine Corps College of Enlisted Military Education. The Army, Air Force, and Marine Corps enlisted force requires educational programs that are built on a foundation of leadership and relevant military theory. This requires the same standards of academic excellence that the Services have come to expect in officer education. Under the current authority, the Service secretaries cannot leverage the flexibility of the title 10 AD system for enlisted education because none of its programs are 10 months long.

The efficiencies made possible by the Services' consolidation of its educational activities under a single university system are sub-optimized by restricting AD faculty hiring authority only to schools and colleges whose terms are ten months or more in duration.

This proposal supports the Air Force's Human Capital strategy to ensure fully qualified, ready Airmen to execute Air Force missions. That strategy is operationalized through Air Force Instruction 36-2301, *Developmental Education*, which requires officer and enlisted education programs to "*prepare Air Force personnel to anticipate and successfully meet challenges across the range of military operations and build a professional corps.*" The intended outcome of this legislative change would be to provide Air University the flexibility to hire the most appropriate academic personnel to meet the Air Force's force development education requirements.

This proposal similarly supports the Army Learning Model and Army Concept for Training and Education to support sequential and progressive education along a Soldier's career and learning continuum. The intended outcome of this legislative change would also provide Army University the flexibility to hire the most appropriate academic personnel to meet the Army's force development education requirements.

Moreover, this proposal supports the Marine Corps approach to professional military education throughout a Marine's career. Additionally, it supports the mandate in 2018 National Defense Strategy for a force that is more lethal, resilient, and agile. Furthermore, it supports Marine Corps Operating Concept education requirement to ensure the Marine Corps is developing Marines with the agility and perspectives to manage uncertainty, think critically, and solve complex problems. The intended outcome of this legislative change would also provide Marine Corps University the flexibility to hire the most appropriate academic personnel to meet the Marine Corps' force development education requirements.

The focus of this initiative is on developing military students, *the people* who are the essence of the warfighting capabilities, and on continuing to transform the force by providing the best and most up-to-date education possible. To do this effectively, DoD schools must have the capability to *re-tool themselves academically* by adapting to the current needs of the force. With educational institutions, as with military operations, it is neither effective nor efficient to allow the institution's academic human capital to become rigid and stagnant. The current and emerging security challenges require Air University, Army University, Naval War College, and Marine Corps University programs to field faculty and staff who have solid academic credentials and who have knowledge and skills that can be applied to preparing those Services' future leaders. The AD faculty system affords flexibility in managing the university's human capital

through 3 to 6-year renewable term appointment as opposed to the permanent structure of the career civil service system. This flexibility in faculty recruiting and development facilitates the re-tooling the university system the Air Force, Army, and Marine Corps require for their educational programs.

It is critical that military education programs be on the cutting edge and that the universities are able to hire, and remove if necessary, academic faculty with appropriate degrees to maintain the currency and effectiveness of their programs. This capability is found best in the authority embodied in the title 10 AD academic faculty hiring practices.

The majority of the force development educational programs at Air University, Army University, and Marine Corps University are denied the crucial opportunity to field a faculty with a blend of military experts and highly qualified, credentialed civilian academic professionals.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year 2021 President's Budget request.

Changes to Existing Law: This proposal would make the following changes to sections 7371, 8748, and 9371 of title 10, United States Code:

§ 7371. Army War College and, United States Army Command and General Staff College, and Army University: civilian faculty members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Army may employ as many civilians as professors, instructors, and lecturers at the Army War College, ~~or the United States Army Command and General Staff College, and the Army University~~ as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

~~(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—(1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at the Army War College or the United States Army Command and General Staff College after the end of the 90-day period beginning on November 29, 1989.~~

~~(2) This section shall not apply with respect to professors, instructors, and lecturers employed at the Army War College or the United States Army Command and General Staff College if the duration of the principal course of instruction offered at the college involved is less than 10 months.~~

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§8748. Naval War College and Marine Corps University: civilian faculty members

(a) Authority of Secretary. -The Secretary of the Navy may employ as many civilians as professors, instructors, and lecturers at a school of the Naval War College or of the Marine Corps University as the Secretary considers necessary.

(b) Compensation of Faculty Members. -The compensation of persons employed under this section shall be as prescribed by the Secretary.

~~(c) Application to Certain Faculty Members.—This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Naval War College or of the Marine Corps University if the duration of the principal course of instruction offered at the school or college involved is less than 10 months.~~

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§9371. Air University: Civilian Faculty Members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Air Force may employ as many civilians as professors, instructors, and lecturers at the Air University as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

~~(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—~~

~~(1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at a school of the Air University after February 27, 1990.~~

~~(2) This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Air University if the duration of the principal course of instruction offered at that school is less than 10 months.~~

Section 543 would amend title 10, United States Code, section 663 to (1) ensure that a sufficient number of joint qualified officers are available to the joint force to meet mission requirements, (2) preserve flexibility for the military services to assign officers with Joint Professional Military Education – Level II (JPME II) credit to joint duty and other billets in a manner and timing that supports the joint force and does not conflict with critical career or service requirements, and (3) standardize the assignment requirements across the Department of Defense for officers completing JPME II programs.

JPME II is a career milestone for joint warfighters and future senior military leaders which is mandated by the Department of Defense (DoD) Joint Officer Management Program for an officer to be designated as a Level III Joint Qualified Officer (JQO) and to be eligible for promotion to O7. Currently, 10 USC §663(a) requires that “each officer designated as a joint qualified officer who graduates from a school within the National Defense University specified in subsection (c) shall be assigned to a joint duty assignment for that officer's next duty assignment after such graduation (unless the officer receives a waiver of that requirement by the Secretary in an individual case)” and (b)(1) that “greater than 50 percent” of non-JQO JPME II graduates from the National Defense University’s (NDU) National War College, Joint Forces Staff College, and Dwight D. Eisenhower School for National Security and Resource Strategy are to be detailed to a joint duty assignment on the next or second duty assignment following graduation. This requirement was put in place when NDU was the only institution authorized to

award JPME II credit in order to ensure the joint force was adequately manned with JQO and JPME II-qualified officers. Since 2007, however, the U.S. Army War College, the College of Naval Warfare of the Naval War College, the Marine Corps War College, and the Air War College have all been authorized to award JPME II credit. Thus, the JPME enterprise, comprising all of the schools named above, produces approximately 1,800 JPME II graduates annually to fill O-5 and O-6 joint duty billets. As a result, the problem that 10 USC §663 was designed to solve no longer exists because production capacity across the JPME enterprise has greatly expanded.

10 USC §663 serves as a legal requirement for the military services to supply JQO and JPME-II qualified officers to the joint force as follow-on to in-residence education at NDU. However, this assignment requirement restricts assignment flexibility following graduation only from NDU and no other JPME-II granting schools. This creates an incentive for military services to preferentially assign officers as students to alternative institutions, knowing that more than half the graduates of an NDU program will be subject to a mandatory joint duty assignment following graduation. Additionally, top-performing officers who are already serving in a joint billet will not be assigned to a JPME II program at NDU because 10 USC §663 would subject them to a follow-on joint assignment needed by a different JPME II graduate. To retain flexibility to assign JPME II officers as needed for service and professional development needs, it is to the services' advantage to send them to school at any of the JPME II granting schools other than NDU.

This legislative proposal would standardize the requirement for post-education joint duty assignments without regard for the JPME-II granting school attended.

Budget Implications: No budget impact.

Changes to Existing Law: This proposal would make the following changes to section 663 of title 10, United States Code:

§663. Joint duty assignments after completion of joint professional military education

(a) JOINT QUALIFIED OFFICERS.—The Secretary of Defense shall ensure that each officer designated as a joint qualified officer who graduates from ~~a school within the National Defense University~~ an in-residence program of instruction designated by the Secretary of Defense as joint professional military education Phase II at a school specified in subsection (c) shall be assigned to a joint duty assignment for that officer's next duty assignment after such graduation (unless the officer receives a waiver of that requirement by the Secretary in an individual case).

(b) OTHER OFFICERS.—(1) The Secretary of Defense shall ensure that a ~~high~~ high proportion ~~(which shall be greater than 50 percent)~~ of the officers graduating from ~~a school within the National Defense University~~ the schools specified in subsection (c) who are not designated as a joint qualified officer shall receive assignments to a joint duty assignment (or, as authorized by the Secretary in an individual case, to a joint assignment other than a joint duty assignment) as their next duty assignment after such graduation or, ~~to the extent authorized in paragraph (2),~~ as their second duty assignment after such graduation.

~~(2) The Secretary may, if the Secretary determines that it is necessary to do so for the efficient management of officer personnel, establish procedures to allow up to one half of the officers subject to the assignment requirement in paragraph (1) to be assigned to such an assignment as their second (rather than first) assignment after such graduation from a school referred to in paragraph (1).~~

(2) The Secretary shall ensure the proportion of officers receiving assignments described in paragraph (1) is adequate to satisfy the needs of the joint force, as determined by the Secretary.

(c) COVERED SCHOOLS ~~WITHIN THE NATIONAL DEFENSE UNIVERSITY.~~—For purposes of this section, a school ~~within the National Defense University~~ specified in this subsection is one of the following:

- (1) The National War College.
- (2) The Dwight D. Eisenhower School for National Security and Resource Strategy.
- (3) The Joint Forces Staff College.
- (4) The United States Army War College.
- (5) The College of Naval Warfare of the Naval War College.
- (6) The Marine Corps War College.
- (7) The Air War College.

(d) EXCEPTION FOR OFFICERS GRADUATING FROM OTHER-THAN-IN-RESIDENCE PROGRAMS.—~~(1) Subsection (a) and (b) do~~ does not apply to an officer graduating from a school ~~within the National Defense University~~ specified in subsection (c) following pursuit of a program on an other-than-in-residence basis.

~~(2) Subsection (b) does not apply with respect to any group of officers graduating from a school within the National Defense University specified in subsection (c) following pursuit of a program on an other than in residence basis.~~

Section 544 would allow the Secretaries of the military departments to expand participation in the Armed Forces Health Professions Financial Assistance Programs (AFHPSP) to members of the Selected Reserve. Currently, chapter 105 of title 10, United States Code (U.S.C.), requires participants in the Armed Forces Health Professions Scholarship Programs (AFHPSP) to fulfill their service obligations on active duty.

The Total Force requires each component to have the right number and specialty mix of medical professionals to support the National Defense Strategy. The Selected Reserve cannot effectively recruit and retain health professionals in specialties critical to sustaining the Nation's wartime missions. Currently, the Selected Reserve has 36.8% of authorized physicians, despite offering \$25,000 to \$50,000 yearly bonuses and up to \$250,000 in loan repayment. In specific medical fields the situation is worse: the Selected Reserve has 32% of its authorized end-strength in general surgery; 10% in orthopedic surgery; 33% in emergency medicine; and 57% in family medicine. The continuing shortfall degrades the Selected Reserve's readiness and capability, draws active duty medical corps officers from their units and responsibilities to fill gaps created by missing reserve component physicians, and downgrades the ability of the Total

Medical Force to support operations across the spectrum of contingencies, including potential conflicts with near-peer adversaries.

This proposal would allow the Secretaries of the military departments to allow individuals to participate in AFHPSP and, upon completion of training, would complete their service obligation in the Selected Reserve. This proposal is consistent with the regulatory guidance promulgated by the Secretary of Defense for those individuals participating in the Health Professions Stipend Program for the reserve components under chapter 1608 of title 10, U.S.C. The proposal would not increase the number of AFHPSP participants beyond those currently authorized under section 2124 of title 10, U.S.C., as the scholarships awarded for Selected Reserve service would be offset by proportionally lower Active Duty scholarships.

This proposal would allow Secretaries to determine the length of Selected Reserve Duty at the time at which participants contract with the Services and the program. Participants choosing the Selected Reserve program would be expected to serve a longer obligation than those selecting the Active Duty program.

This proposal would also allow each Secretary to specify which critical war specialties a student may choose for graduate medical education. Students would acknowledge this at the time of contracting with the Service and program. Students who fail to complete the program or match into one of the pre-specified critical war specialties will be subject to potential recoupment, Selected Reserve service, or civilian service similar to that required of Active Duty program participants (10 U.S.C. 2123).

This proposal would significantly increase the number of physicians with critical wartime specialties in the Selected Reserve.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request. The only impact would be the administrative costs associated with implementing the change. This program would be cost neutral with respect to the cost of students in medical school (bonus, stipend, tuition, fees, books, equipment). The amount each recipient/participant receives (~86K annually) is the same regardless of whether they will fulfill their service obligations on Active Duty or in the Selected Reserves. The full complement of 6,300 authorized positions are not filled every year. This proposal would allow each Service Secretary to dedicate a pre-determined number of AFHPSP scholarships to be awarded to medical students willing to contract for Selected Reserve service, based on the quality and number of applications received. The number of scholarships awarded for Selected Reserve service would be offset by proportionately fewer scholarships awarded for Active Duty service. Upon program completion, Selected Reserve AFHPSP recipients must agree to train in critical wartime specialties designated by the Service Secretary. The Service Secretary will provide Selected Reserve AFHPSP participants with that Service’s list of critical wartime specialties at the time they contract for the program, and will require the participants to pursue training in one of those specialties or a specialty subsequently added to the critical wartime specialty list.

RESOURCE IMPACT (\$MILLIONS)

Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
AFHPSP Administration	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2	Operation and Maintenance, Defense Health Program	OA74	A74VV	N/A
Total	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2				

Changes to Existing Law: This proposal would make the following changes to subchapter I of chapter 105 of title 10, United States Code:

SUBCHAPTER I — HEALTH PROFESSIONS SCHOLARSHIP AND FINANCIAL ASSISTANCE PROGRAM FOR ACTIVE SERVICE

* * * * *

§ 2121. Establishment

(a)(1) For the purpose of obtaining adequate numbers of commissioned officers ~~on active duty~~ who are qualified (A) in the various health professions or (B) as a health professional with specific skills to assist in providing mental health care to members of the armed forces, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, may establish and maintain a health professions scholarship and financial assistance program for his department.

(2) Under the program of a military department, the Secretary of that military department shall allocate a portion of the total number of scholarships to members of the program described in paragraph (1)(B) for the purpose of assisting such members to pursue a degree at the masters and doctoral level in any of the following disciplines:

- (A) Social work.
- (B) Clinical psychology.
- (C) Psychiatry.
- (D) Other disciplines that contribute to mental health care programs in that military department.

(b) The program shall consist of courses of study and specialized training in designated health professions, with obligatory periods of military training.

(c)(1) Persons participating in the program shall be commissioned officers in reserve components of the armed forces. Members pursuing a course of study shall serve on active duty in pay grade O-1 with full pay and allowances of that grade for a period of 45 days during each year of participation in the program. Members pursuing specialized training shall serve on active duty in a pay grade commensurate with their educational level, as determined by appointment under section 12207 of this title, with full pay and allowances of that grade for a period of 14

days during each year of participation in the program. They shall be detailed as students at accredited civilian institutions, located in the United States or Puerto Rico, for the purpose of acquiring knowledge or training in a designated health profession. In addition, members of the program shall, under regulations prescribed by the Secretary of Defense, receive military and professional training and instruction.

(2) If a member of the uniformed services selected to participate in the program as a medical student has prior active or selected reserve service in a pay grade and with years of service credited for pay that would entitle the member, if the member remained in the former grade, to a rate of basic pay in excess of the rate of basic pay for regular officers in the grade of second lieutenant or ensign, the member shall be paid basic pay based on the former grade and years of service credited for pay. The amount of such basic pay for the member shall be increased on January 1 of each year by the percentage by which basic pay is increased on average on that date for that year, and the member shall continue to receive basic pay based on the former grade and years of service until the date, whether occurring before or after the conclusion of such participation, on which the basic pay for the member in the member's actual grade and years of service credited for pay exceeds the amount of basic pay to which the member is entitled based on the member's former grade and years of service.

(d) Except when serving on active duty pursuant to subsection (c), a member of the program shall be entitled to a stipend at a monthly rate established by the Secretary of Defense, but not to exceed a total of \$30,000 per year. The maximum annual amount of the stipend shall be increased annually by the Secretary of Defense effective on July 1 of each year by an amount (rounded to the next highest multiple of \$1) equal to—

(1) the amount of such stipend (as previously adjusted (if at all)), multiplied by

(2) the overall percentage of the adjustment (if such adjustment is an increase) in the rates of basic pay for members of the uniformed services made effective for the fiscal year in which the school year ends.

(e) The Secretary of a military department, under regulations prescribed by the Secretary of Defense, may authorize members who agree to qualify in critical wartime specialties to participate in the program in return for a commitment to subsequent service in the Selected Reserve of the Ready Reserve.

* * * * *

§2123. Members of the program: ~~active duty~~ military service obligation; failure to complete training; release from program

(a) A member of the program incurs ~~an active duty~~ a military service obligation. The amount of his obligation shall be determined under regulations prescribed by the Secretary of Defense, but those regulations may not provide for a period of obligation of less than one year for each year of participation in the program.

(b) A period of time spent in military intern or residency training shall not be creditable in satisfying ~~an active duty~~ a military service obligation imposed by this section.

(c) A member of the program who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in conduct or studies, or for other reasons, may be required to ~~perform active duty~~ perform military service in an appropriate military capacity in accordance with the ~~active duty obligation~~ service obligation imposed by this section.

(d) The Secretary of a military department, under regulations prescribed by the Secretary of Defense, may relieve a member of the program who is dropped from the program from ~~an active duty~~ a military service obligation imposed by this section, but such relief shall not relieve him from any military obligation imposed by any other law.

(e)(1) A member of the program who is relieved of the member's active duty obligation under this subchapter before the completion of that active duty obligation may be given, with or without the consent of the member, any of the following alternative obligations, as determined by the Secretary of the military department concerned:

(A) A service obligation in another armed force for a period of time not less than the member's remaining active duty service obligation.

(B) A service obligation in a component of the Selected Reserve for a period not less than twice as long as the member's remaining active duty service obligation.

(C) Repayment to the Secretary of Defense of a percentage of the total cost incurred by the Secretary under this subchapter on behalf of the member pursuant to the repayment provisions of section 303a(e) or 373 of title 37.

(2) A member of the program who is relieved of the member's reserve service obligation under this subchapter before the completion of that reserve obligation may be given, with or without the consent of the member, any of the following alternative obligations, as determined by the Secretary of the military department concerned:

(A) A reserve service obligation in another armed force for a period of time not less than the member's remaining reserve service obligation.

(B) Repayment to the Secretary of Defense of a percentage of the total cost incurred by the Secretary under this subchapter on behalf of the member pursuant to the repayment provisions of section 303a(e) or 373 of title 37.

~~(23)~~ In addition to the alternative obligations specified in paragraph (1) and (2), if the member is relieved of ~~an active duty obligation~~ a military service obligation by reason of the separation of the member because of a physical disability, the Secretary of the military department concerned may give the member a service obligation as a civilian employee employed as a health care professional in a facility of the uniformed services for a period of time equal to the member's remaining ~~active duty obligation~~ military service obligation.

~~(34)~~ The Secretary of Defense shall prescribe regulations describing the manner in which an alternative obligation may be given under this subsection.

* * * * *

§ 2126. Members of the program: service credit

(a) Service Not Creditable.—Except as provided in subsection (b), service performed while a member of the program shall not be counted—

- (1) in determining eligibility for retirement other than by reason of a physical disability incurred while on active duty as a member of the program; or
- (2) in computing years of service creditable under section 205 of title 37.

(b) Service Creditable for Certain Purposes.—(1) The Secretary concerned may authorize service performed by a member of the program in pursuit of a course of study under this subchapter to be counted in accordance with this subsection if the member—

- (A) completes the course of study;
- (B) completes the ~~active duty obligation~~ military service obligation imposed under section 2123(a) of this title; and
- (C) possesses a specialty designated by the Secretary concerned as critically needed in wartime.

(2) Service credited under paragraph (1) counts only for the award of retirement points for computation of years of service under section 12732 of this title and for computation of retired pay under section 12733 of this title.

(3) The number of points credited to a member under paragraph (1) for a year of participation in a course of study is 50. The points shall be credited to the member for one of the years of that participation at the end of each year after the completion of the course of study that the member serves in the Selected Reserve and is credited under section 12732(a)(2) of this title with at least 50 points. The points credited for the participation shall be recorded in the member's records as having been earned in the year of the participation in the course of study.

(4) Service may not be counted under paragraph (1) for more than four years of participation in a course of study as a member of the program.

(5) A member of the Selected Reserve may be considered to be in an active status while pursuing a course of study under this subchapter only for purposes of sections 12732(a) and 12733(3) of this title.

(6) A member is not entitled to any retroactive award of, or increase in, pay or allowances under title 37 by reason of an award of service credit under paragraph (1).

* * * * *

§ 2128. Accession bonus for members of the program

(a) Availability of Bonus.—The Secretary of Defense may offer a person who enters into an agreement under section 2122(a)(2) of this title an accession bonus of not more than \$20,000 as part of the agreement.

(b) Relation to Other Payments.—An accession bonus paid a person under this section is in addition to any other amounts payable to the person under this subchapter.

(c) Repayment.—A person who receives an accession bonus under this section, but fails to comply with the agreement under section 2122(a)(2) of this title or to commence or complete the ~~active duty obligation~~ military service obligation imposed by section 2123 of this title, shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

Section 545 would change the current title of Joint Forces Staff College (JFSC) to the Joint Forces War College (JFWC). “Staff College” no longer accurately reflects the institution’s mission and role within National Defense University (NDU) and the broader Joint Professional Military Education (JPME) community.

In 1989, when JFSC (originally the Armed Forces Staff College) was assigned its current mission, the Joint and Combined Warfighting School (JCWS) took on the task to produce JPME-II certified officers, and was one of three JPME II granting schools (the others being National War College and Eisenhower School, formerly Industrial College of the Armed Forces) within the Department of Defense. As originally envisioned, JFSC, through the then 12-week (now 10-week) JCWS JPME II course, focused on the operational level of war. JPME II certification was originally intended to be a preparatory course for officers’ en-route to their first Joint assignment.

In 2005, the law was changed to authorize Service War college courses of at least 10-months in duration to award JPME II credit. In 2006, the Joint Advanced Warfighting School (JAWS), a senior War college equivalent, was designated at the Joint Forces Staff College and certified to award JPME II credit. In 2019, to better serve the Joint force in today’s global security environment, JFSC incorporated the Chairman of the Joint Chiefs of Staff’s Force Development vision for professional military education by refocusing the JCWS JPME II curriculum at the strategic-operational nexus, the same level as all other War college JPME II curricula.

With a refocused curriculum, the shift from a “Staff” college to a “War” college is more evident when considering the traditional Staff and War college curricular focus. Traditionally, Service Staff colleges teach joint operations and leader development from the standpoint of Service forces in a joint force supported by Service component commands. Staff colleges offer selected mid-grade officers a chance to step out of the field and the realm of small unit tactics to study the larger operational sphere of warfare. War college attendees study theater- and national-level strategies and processes, and focus on warfighting from the combatant command, Joint Staff, and DoD perspectives. War college curricula is at the strategic-operational nexus of warfare, and graduates often assume high-level command, staff, and policy responsibilities in the national security arena.

JFSC is currently enhancing its JCWS curriculum to meet the Chairman’s PME vision for JPME II level curriculum. JAWS, as a senior-level joint school, will continue to provide education to senior Service officers. The educational focus of the JFWC will be on the operational and strategic nexus of war vice the tactical or lower level operational (Service component) realm. With this proposed change, the enhanced JCWS and JAWS will be JPME-II granting programs under the Joint Forces War College component of the National Defense University.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President’s Budget Request.

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

§ 663. Joint duty assignments after completion of joint professional military education

(a) JOINT QUALIFIED OFFICERS.—The Secretary of Defense shall ensure that each officer designated as a joint qualified officer who graduates from a school within the National Defense University specified in subsection (c) shall be assigned to a joint duty assignment for that officer's next duty assignment after such graduation (unless the officer receives a waiver of that requirement by the Secretary in an individual case).

* * * * *

(c) COVERED SCHOOLS WITHIN THE NATIONAL DEFENSE UNIVERSITY.—For purposes of this section, a school within the National Defense University specified in this subsection is one of the following:

- (1) The National War College.
- (2) The Dwight D. Eisenhower School for National Security and Resource Strategy.
- (3) The Joint Forces ~~Staff~~ War College.

* * * * *

§ 2154. Joint professional military education: three-phase approach

(a) THREE-PHASE APPROACH.—The Secretary of Defense shall implement a three-phase approach to joint professional military education, as follows:

(1) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase I instruction, consisting of all the elements of a joint professional military education (as specified in section 2151(a) of this title), in addition to the principal curriculum taught to all officers at an intermediate level service school or at a joint intermediate level school.

(2) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase II instruction, consisting of—

(A) a joint professional military education curriculum taught in residence at, or offered through, the Joint Forces ~~Staff~~ War College or a senior level service school that has been designated and certified by the Secretary of Defense as a joint professional military education institution; or

(B) a senior level service course of at least ten months that has been designated and certified by the Secretary of Defense as a joint professional military education course.

(3) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as the Capstone course, for officers selected for promotion to the grade of

brigadier general or, in the case of the Navy, rear admiral (lower half) and offered in accordance with section 2153 of this title.

(b) SEQUENCED APPROACH.—The Secretary shall require the sequencing of joint professional military education so that the standard sequence of assignments for such education requires an officer to complete Phase I instruction before proceeding to Phase II instruction, as provided in section 2155(a) of this title.

* * * * *

§ 2155. Joint professional military education Phase II program of instruction

(a) PREREQUISITE OF COMPLETION OF JOINT PROFESSIONAL MILITARY EDUCATION PHASE I PROGRAM OF INSTRUCTION.—(1) After September 30, 2009, an officer of the armed forces may not be accepted for, or assigned to, a program of instruction designated by the Secretary of Defense as joint professional military education Phase II unless the officer has successfully completed a program of instruction designated by the Secretary of Defense as joint professional military education Phase I.

(2) The Chairman of the Joint Chiefs of Staff may grant exceptions to the requirement under paragraph (1). Such an exception may be granted only on a case-by-case basis under exceptional circumstances, as determined by the Chairman. An officer selected to receive such an exception shall have knowledge of joint matters and other aspects of the Phase I curriculum that, to the satisfaction of the Chairman, qualifies the officer to meet the minimum requirements established for entry into Phase II instruction without first completing Phase I instruction. The number of officers selected to attend an offering of the principal course of instruction at the Joint Forces Staff War College or a senior level service school designated by the Secretary of Defense as a joint professional military education institution who have not completed Phase I instruction should comprise no more than 10 percent of the total number of officers selected.

* * * * *

§ 2156. Joint Forces Staff War College: duration of principal course of instruction

(a) DURATION.—The duration of the principal course of instruction offered at the Joint Forces Staff War College may not be less than 10 weeks of resident instruction.

(b) DEFINITION.—In this section, the term “principal course of instruction” means any course of instruction offered at the Joint Forces Staff War College as Phase II joint professional military education.

* * * * *

§ 2162. Preparation of budget requests for operation of professional military education schools

(a) UNIFORM COST ACCOUNTING.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall promulgate a uniform cost accounting system for use by the Secretaries of the military departments in preparing budget requests for the operation of professional military education schools.

(b) PREPARATION OF BUDGET REQUESTS.—(1) Amounts requested for a fiscal year for the operation of each professional military education school shall be set forth as a separate budget request in the materials submitted by the Secretary of Defense to Congress in support of the budget request for the Department of Defense.

(2) As executive agent for funding professional development education at the National Defense University, including the Joint Forces ~~Staff War~~ College, the Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall prepare the annual budget for professional development education operations at the National Defense University and set forth that request as a separate budget request in the materials submitted to Congress in support of the budget request for the Department of Defense. Nothing in the preceding sentence affects policies in effect on December 28, 2001, with respect to budgeting for the funding of logistical and base operations support for components of the National Defense University through the military departments.

(3) The Secretary of a military department preparing a budget request for a professional military education school shall carefully consider the views of the Chairman of the Joint Chiefs of Staff, particularly with respect to the amount of the request for the operation of the schools of the National Defense University and the joint professional military education curricula of the other professional military education schools.

* * * * *

§ 2165. National Defense University: component institutions

(a) IN GENERAL.—There is a National Defense University in the Department of Defense.

(b) COMPONENT INSTITUTIONS.—The National Defense University consists of the following institutions:

- (1) The National War College.
- (2) The Dwight D. Eisenhower School for National Security and Resource Strategy.
- (3) The Joint Forces ~~Staff War~~ College.
- (4) The Institute for National Strategic Studies.
- (5) The College of Information and Cyberspace.
- (6) Any other educational institution of the Department of Defense that the Secretary considers appropriate and designates as an institution of the university.

* * * * *

Subtitle F—Decorations and Awards

Section 551 would amend section 1130 of title 10, United States Code (U.S.C.), to add authority to award or present a decoration following (1) submission to the Committee on Armed Services of the Senate (SASC) and the Committee on Armed Services of the House of Representatives (HASC) and to the requesting Member of Congress of a favorable determination and a detailed discussion of the rationale supporting the determination, and (2) a 60-day period for congressional review of that determination. This would allow for timely award or presentation of decorations pursuant to section 1130 of such title while providing SASC and HASC with ample oversight authority following submission of favorable notifications pursuant to subsection (b) of that section.

Currently, a Medal of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross, or Distinguished Service Medal may not be awarded or presented following submission of a favorable determination pursuant to section 1130(b) of title 10, U.S.C., until by-name legislation waiving the five-year statutory time limit on award (10 U.S.C. 3744, 6248, or 8744) is enacted. This results in extensive delays in awarding decorations to deserving veterans who are often elderly and sometimes in poor health. Further exasperating this issue is the practice of only including time waiver legislation for military medals in the annual National Defense Authorization Act (NDAA), which results in some award recommendations being held in abeyance by the Department of Defense for up to a year pending NDAA enactment. This process, although effective, is not efficient and further delays recognition of deserving veterans, many of whom have already waited numerous years to be appropriately recognized.

Including authority to award and present decorations 60 days following submission of a favorable recommendation pursuant to section 1130(b) of title 10, U.S.C., is a practical solution that eliminates the excessive delays in awarding or presenting decorations to deserving veterans, while still providing SASC and HASC with ample oversight on decoration recommendations resulting from favorable determinations pursuant to that section.

Budgetary Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget.

Changes to Existing Law: This proposal would make the following changes to section 1130 of title 10, United States Code:

§1130. Consideration of proposals for decorations not previously submitted in timely fashion: procedures for review and award or presentation

(a) Upon request of a Member of Congress, the Secretary concerned ~~shall~~ may review a proposal for the award or presentation of a decoration (or the upgrading of a decoration), either for an individual or a unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy for timely submission of a recommendation for such award or presentation. Based upon such review, the Secretary ~~shall~~ may make a determination as to the merits of approving the award or presentation of the decoration.

(b) Upon making a determination under subsection (a) as to the merits of approving the award or presentation of the decoration, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting Member of Congress a detailed discussion of the rationale supporting the determination. If the determination includes a favorable recommendation for the award of the Medal of Honor, the Secretary of Defense, instead of the Secretary concerned, shall make the submission under this subsection.

(c) Determinations under this section regarding the award or presentation of a decoration shall be made in accordance with the same procedures that apply to the approval or disapproval of the award or presentation of a decoration when a recommendation for such award or presentation is submitted in a timely manner as prescribed by law or regulation.

(d)(1) A decoration may be awarded or presented following submission of a favorable recommendation for the award or presentation under subsection (b).

(2) An award or presentation under paragraph (1) may not occur before the expiration of a 60-day period for congressional review beginning on the date of the favorable submission under subsection (b) regarding the award or presentation.

(3) The authority to make an award or presentation under this subsection shall apply notwithstanding any limitation described in subsection (a).

~~(d)~~(e) In this section:

(1) The term “Member of Congress” means-

(A) a Senator; or

(B) a Representative in, or a Delegate or Resident Commissioner to, Congress.

(2) The term “decoration” means any decoration or award that may be presented or awarded to a member or unit of the armed forces.

Section 552 would extend and enhance authority for the Secretary of Defense to furnish one gold star lapel button to stepbrothers and stepsisters who may have grown up in the same household as the service member. Today, the only types of siblings authorized to receive the gold star lapel button are brothers, sisters, half-brothers, and half-sisters. Section 1126(d)(4) of title 10, United States Code (U.S.C.), includes stepchildren; however, section 1126(d)(3) of such title does not include stepsiblings as next of kin. To remedy this situation, amendments to section 1126 of title 10, U.S.C., are warranted. The Gold Star and Surviving Family Member Representatives Program expressed concerns to the Casualty Advisory Board from surviving stepbrothers and stepsisters who grew up together in the same household as their deceased military family member. They feel that their relationships within the family are similar to a brother, sister, half-brother, or half-sister, as they shared the same parents when living in the same household and grew up with a similar relationship as other siblings.

This proposal would also eliminate the requirement for an eligible family member to pay for a replacement Gold Star Lapel Button that has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the family member to whom it was furnished. The cost of providing a replacement Gold Star Lapel Button (\$1.78 each) is insignificant compared to the significant loss the family member suffered due to the death of their loved one.

Budget Implications: This proposal has no significant budget impact. Any incidental costs are accounted for within the Fiscal Year (FY) 2021 President's Budget.

Changes to Existing Law: This proposal would make the following changes to section 1126 of title 10 U.S.C.:

§1126. Gold star lapel button: eligibility and distribution

(a) A lapel button, to be known as the gold star lapel button, shall be designed, as approved by the Secretary of Defense, to identify widows, parents, and next of kin of members of the armed forces-

(1) who lost their lives during World War I, World War II, or during any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958;

(2) who lost or lose their lives after June 30, 1958-

(A) while engaged in an action against an enemy of the United States;

(B) while engaged in military operations involving conflict with an opposing foreign force; or

(C) while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing armed force; or

(3) who lost or lose their lives after March 28, 1973, as a result of-

(A) an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Defense; or

(B) military operations while serving outside the United States (including the commonwealths, territories, and possessions of the United States) as part of a peacekeeping force.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary concerned, upon application to him, shall furnish one gold star lapel button without cost to the widow and to each parent and next of kin of a member who lost or loses his or her life under any circumstances prescribed in subsection (a).

(c) Not more than one gold star lapel button may be furnished to any one individual except that, when a gold star lapel button furnished under this section has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was furnished, ~~the button may be replaced upon application and payment of an amount sufficient to cover the cost of manufacture and distribution~~ may be replaced upon application and without cost.

(d) In this section:

(1) The term "widow" includes widower.

(2) The term "parents" includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis.

(3) The term "next of kin" includes only children, brothers, sisters, half brothers, ~~and half sisters~~ half sisters, stepbrothers, and stepsisters.

(4) The term "children" includes stepchildren and children through adoption.

(5) The term "World War I" includes the period from April 6, 1917, to March 3, 1921.

(6) The term "World War II" includes the period from September 8, 1939, to July 25, 1947, at 12 o'clock noon.

(7) The term "military operations" includes those operations involving members of the armed forces assisting in United States Government sponsored training of military personnel of a foreign nation.

(8) The term "peacekeeping force" includes those personnel assigned to a force engaged in a peacekeeping operation authorized by the United Nations Security Council.

(9) The terms "stepbrother" and "stepsister" shall be defined in regulations prescribed by the Secretary of Defense under subsection (b).

Subtitle G—Other Matters

Section 561 would expand the types of information that military recruiters could have access to under sections 503 and 983 of title 10, United States Code, by adding email addresses and mobile telephone numbers to the list of information required to be provided to recruiters by institutions of higher education and secondary schools. This proposal would also require secondary schools to provide student information within 60 days of a request from a military recruiter. Additionally, this proposal would require colleges and universities to provide student directory information within 60 days of the start of a school year or 60 days after the date of a recruiter's request as well as "stop-out" lists of those students who do not return to the institution from the previous semester.

Technology has significantly altered the ways in which people communicate with each other. Many people prefer to communicate by email and text message; further, many people no longer have a landline phone number. The statutes as currently written only allow for the collection of outdated communication information, such as address and telephone listing. Further, no timeframe is provided, so many schools do not provide this information until it is too late for military recruiters to make the best use of it by providing students with pertinent information enabling them to explore their options.

Half of today's youth admit that they know little to nothing about the military. Our goal is to inform the target youth market about all the options available to them. We need the youth market and their influencers to understand the military, what the military does, and what service to country can do for them. This proposal will allow recruiters to collect better information for contacting today's students, improving the Services' ability to inform students and influencers about the opportunities available to them.

Although the proposal allows for the collection of information about secondary school students, many of whom are minors, their parents could still opt out of releasing their child's information under the same terms and conditions as are currently available under section 8528 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7908).

Recruiting the volunteer force to serve in the military is a national security imperative, especially for Services that need to grow end strength to meet National Security Strategy requirements and Combatant Commander demand for forces. While many schools go above and beyond to support military recruiting, many do not. The Army recruited 70K Soldiers in Fiscal Year (FY) 2018, yet fell short of its goal for a number of reasons. Although the Services are taking a comprehensive look at the accessions enterprise, at a minimum, meeting increased

recruiting needs requires our military recruiters to have meaningful access to the recruiting pool. Updating existing statutes to reflect cultural and technological changes in how our society communicates and receives information is a necessary first step. It will also assist in opening some hard-to-reach markets so that the military reflects the Nation it serves.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request.

Changes to Existing Law: This proposal would make the following changes to sections 503 and 983 title 10, United States Code:

§ 503. Enlistments: recruiting campaigns; compilation of directory information

(a) RECRUITING CAMPAIGNS.—(1) The Secretary concerned shall conduct intensive recruiting campaigns to obtain enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, and Regular Coast Guard.

(2) The Secretary of Defense shall act on a continuing basis to enhance the effectiveness of recruitment programs of the Department of Defense (including programs conducted jointly and programs conducted by the separate armed forces) through an aggressive program of advertising and market research targeted at prospective recruits for the armed forces and those who may influence prospective recruits. Subchapter I of chapter 35 of title 44 shall not apply to actions taken as part of that program.

(b) COMPILATION OF DIRECTORY INFORMATION.—(1) The Secretary of Defense may collect and compile directory information pertaining to each student who is 17 years of age or older or in the eleventh grade (or its equivalent) or higher and who is enrolled in a secondary school in the United States or its territories, possessions, or the Commonwealth of Puerto Rico.

(2) The Secretary may make directory information collected and compiled under this subsection available to the armed forces for military recruiting purposes. Such information may not be disclosed for any other purpose.

(3) Directory information pertaining to any person may not be maintained for more than 3 years after the date the information pertaining to such person is first collected and compiled under this subsection.

(4) Directory information collected and compiled under this subsection shall be confidential, and a person who has had access to such information may not disclose such information except for the purposes described in paragraph (2).

(5) The Secretary of Defense shall prescribe regulations to carry out this subsection. Regulations prescribed under this subsection shall be submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. Regulations prescribed by the Secretaries concerned to carry out this subsection shall be as uniform as practicable.

(6) Nothing in this subsection shall be construed as requiring, or authorizing the Secretary of Defense to require, that any educational institution furnish directory information to the Secretary.

(c) ACCESS TO SECONDARY SCHOOLS.—(1)(A) Each local educational agency receiving assistance under the Elementary and Secondary Education Act of 1965—

(i) shall provide to military recruiters the same access to secondary school students as is provided generally to postsecondary educational institutions or to prospective employers of those students; ~~and~~

(ii) shall, upon a request made by military recruiters for military recruiting purposes, provide access to secondary school student names, addresses, ~~and telephone listings,~~ ~~notwithstanding section 444(a)(5)(B) of the General Education Provisions Act (20 U.S.C. 1232g(a)(5)(B)).~~ email addresses, home telephone numbers, and mobile telephone numbers, notwithstanding subsection (a)(5)(B) or (b) of section 444 of the General Education Provisions Act (20 U.S.C. 1232g); and

(iii) shall provide information requested pursuant to clause (ii) within a reasonable period of time, but in no case later than the 60th day following the date of the request.

(B) A local educational agency may not release a student's name, address, ~~and telephone listing,~~ email address, home telephone number, or mobile telephone number under subparagraph (A)(ii) without the prior written consent of a parent of the student if the student, or a parent of the student, has submitted a request to the local educational agency that the student's information not be released for a purpose covered by that subparagraph without prior written parental consent. Each local educational agency shall notify parents of the rights provided under the preceding sentence.

(2) If a local educational agency denies a request by the Department of Defense for recruiting access, the Secretary of Defense, in cooperation with the Secretary of the military department concerned, shall designate an officer in a grade not below the grade of colonel or, in the case of the Navy, captain, or a senior executive of that military department to meet with representatives of that local educational agency in person, at the offices of that agency, for the purpose of arranging for recruiting access. The designated officer or senior executive shall seek to have that meeting within 120 days of the date of the denial of the request for recruiting access.

(3) If, after a meeting under paragraph (2) with representatives of a local educational agency that has denied a request for recruiting access or (if the educational agency declines a request for the meeting) after the end of such 120-day period, the Secretary of Defense determines that the agency continues to deny recruiting access, the Secretary shall transmit to the chief executive of the State in which the agency is located a notification of the denial of recruiting access and a request for assistance in obtaining that access. The notification shall be transmitted within 60 days after the date of the determination. The Secretary shall provide to the Secretary of Education a copy of such notification and any other communication between the Secretary and that chief executive with respect to such access.

(4) If a local educational agency continues to deny recruiting access one year after the date of the transmittal of a notification regarding that agency under paragraph (3), the Secretary—

(A) shall determine whether the agency denies recruiting access to at least two of the armed forces (other than the Coast Guard when it is not operating as a service in the Navy); and

(B) upon making an affirmative determination under subparagraph (A), shall transmit a notification of the denial of recruiting access to-

(i) the specified congressional committees;

(ii) the Senators of the State in which the local educational agency is located; and

(iii) the member of the House of Representatives who represents the district in which the local educational agency is located.

(5) The requirements of this subsection do not apply to a private secondary school that maintains a religious objection to service in the armed forces and which objection is verifiable through the corporate or other organizational documents or materials of that school.

(6) In this subsection:

(A) The term "local educational agency" means-

(i) a local educational agency, within the meaning of that term in section 8101 of the Elementary and Secondary Education Act of 1965; and

(ii) a private secondary school.

(B) The term "recruiting access" means access requested as described in paragraph (1).

(C) The term "senior executive" has the meaning given that term in section 3132(a)(3) of title 5.

(D) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(E) The term "specified congressional committees" means the following:

(i) The Committee on Armed Services and the Committee on Health, Education, Labor, and Pensions of the Senate.

(ii) The Committee on Armed Services and the Committee on Education and the Workforce of the House of Representatives.

(F) The term "member of the House of Representatives" includes a Delegate or Resident Commissioner to Congress.

(d) DIRECTORY INFORMATION DEFINED.—In this section, the term "directory information" has the meaning given that term in subsection (a)(5)(A) of section 444 of the General Education Provisions Act (20 U.S.C. 1232g).

* * * * *

§983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies

(a) DENIAL OF FUNDS FOR PREVENTING ROTC ACCESS TO CAMPUS.—No funds described in subsection (d)(1) may be provided by contract or by grant to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

(1) the Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (in accordance with section 654¹ of this title and other applicable Federal laws) at that institution (or any subelement of that institution); or

(2) a student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

(b) DENIAL OF FUNDS FOR PREVENTING MILITARY RECRUITING ON CAMPUS.—No funds described in subsection (d)(1) may be provided by contract or by grant to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents-

(1) the Secretary of a military department or the Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

(2) access by military recruiters for purposes of military recruiting to the following information pertaining to students (who are 17 years of age or older) enrolled at that institution (or any subelement of that institution):

(A) Names, addresses, ~~and telephone listings~~ email addresses, home telephone numbers, and mobile telephone numbers, which information shall be made available not later than the 60th day following the start of classes for the current semester or quarter or not later than the 60th day following the date of a request, whichever occurs last.

(B) Date and place of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student; ~~or~~

(3) access by military recruiters for purposes of military recruiting to lists of students (who are 17 years of age or older) not returning to the institution after having been enrolled during the previous semester, together with student recruiting information and the reason why the student did not return, if collected by the institution.

(c) EXCEPTIONS.—The limitation established in subsection (a) or (b) shall not apply to an institution of higher education (or any subelement of that institution) if the Secretary of Defense determines that-

(1) the institution (and each subelement of that institution) has ceased the policy or practice described in that subsection; or

(2) the institution of higher education involved has a longstanding policy of pacifism based on historical religious affiliation.

(d) COVERED FUNDS.—(1) Except as provided in paragraph (2), the limitations established in subsections (a) and (b) apply to the following:

(A) Any funds made available for the Department of Defense.

(B) Any funds made available for any department or agency for which regular appropriations are made in a Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act.

(C) Any funds made available for the Department of Homeland Security.

(D) Any funds made available for the National Nuclear Security Administration of the Department of Energy.

(E) Any funds made available for the Department of Transportation.

(F) Any funds made available for the Central Intelligence Agency.

(2) Any Federal funding specified in paragraph (1) that is provided to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance, may be used for the purpose for which the funding is provided.

(e) NOTICE OF DETERMINATIONS.—Whenever the Secretary of Defense makes a determination under subsection (a), (b), or (c), the Secretary-

(1) shall transmit a notice of the determination to the Secretary of Education and to the head of each other department and agency the funds of which are subject to the determination; and

(2) shall publish in the Federal Register a notice of the determination and the effect of the determination on the eligibility of the institution of higher education (and any subelement of that institution) for contracts and grants.

Section 562 would establish a four-year pilot program that would expand eligibility in the Defense Virtual High School (DVHS) to allow certain full-time active-duty military-dependent students to attend who are not currently eligible for enrollment. In order to determine the scalability and to assess the viability of expanding the current DVHS model, this pilot program would authorize up to an additional 400 course enrollments per academic year, with one single student taking no more than two courses per academic year.

This pilot program would be open only to military-dependent students within the United States (including its commonwealths, territories, and possessions) who are in grades 9-12, are not eligible to enroll into the DVHS program, require supplementary courses to meet the graduation requirements in their State, or can demonstrate to the Secretary of Defense a clear need to participate in the program. Additionally, the Secretary shall prioritize full-time active-duty military-dependent students who reside in rural areas and military-dependent students who are enrolled in a home school program.

Under current Federal law, the Department of Defense Education Activity (DoDEA) estimates there to be approximately 133,000 full-time active-duty military-dependent students currently not eligible to enroll into DoDEA schools, including the DVHS program. Within that population, there are an estimated 10,000 military-dependent students who would potentially be eligible to participate in this pilot program.

The Department of Defense has long recognized the significance of family readiness and its impact on overall military readiness, performance, retention, and recruitment. A quality education is both a stabilizing influence in the lives of our children and their families and an overall element in the readiness, retention, and morale of our Force. With nearly one million school-age active-duty military dependent children worldwide, Service members have growing concerns about the quality and level of support offered by local primary and secondary education programs in some locations. Lack of access to high quality educational programs may compel some Service members to shorten their military careers or leave families behind to keep their children in preferred educational programs. Recent survey data suggests that such a decision puts undue hardship on military families, and affects the choice to continue to pursue a military career.

It has been reported through various surveys and media round-tables that spouses of active duty Service members and active duty members both consider child education as a top issue. In addition, many families have chosen to geographically separate away from their active

duty member in order to support their children's education. The Military Department Secretaries highlighted these and other quality of life points in their tri-signature memo signed Feb 23, 2018, notifying State governors that the Services will consider quality of life issues such as K-12 education in decisions on future basing or mission alternatives.

Section 563 would clarify that individualized services plans need only be provided to military families with special needs who have requested support, rather than to all families. This issue was identified in a May 2018 United States Government Accountability Office (GAO) study, GAO 18-348, “DoD Should Improve Its Oversight of the Exceptional Family Member Program.” As written, the current statute requires each military family member with special needs to have a plan developed. Services Plans are developed by family support personnel/case managers in collaboration with the family following the completion of a family needs assessment and are not necessary for every military family. The purpose of the Services Plan is to identify, document, and track the goals and objectives established by the family and outline and prioritize non-clinical services. The requirement to provide and monitor individualized plans for all families is burdensome and unnecessary and would require significant additional funding to execute as written. If this proposal is not accepted, the Department of Defense projects that it will require an additional \$4.67M to meet the current standard outlined in section 1781c(d) of title 10, United States Code (U.S.C); as such, this proposal will lead to cost avoidance should it be accepted. Moreover, as the proposal would align the requirements of section 1781c with the appropriate and effective standard to which the Department is currently executing, it would require no additional funding.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget. The Department projects that if this proposal is not accepted, meeting the existing standard outlined in 10 U.S.C. 1781c(d) would require an additional \$4.67M of resources requested within the Fiscal Year (FY) 2021 President’s Budget. These amounts are not currently budgeted specifically for this purpose, but are instead programmed to support the priorities of the National Defense Strategy implementation within the appropriations listed in the table below. If this proposal is not enacted, these funds would have to be redirected away from their current requirements and priorities in order to cover the costs of meeting the existing statute. This is reflected as a negative in the table to reflect the cost avoidance of implementing vs not implementing the proposal.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element
Army Exceptional Family Member Program (EFMP)	-3.11	-3.17	-3.23	-3.30	-3.36	Operation and Maintenance, Army	1	131	
Navy EFMP	-0.41	-0.41	-0.42	-0.43	-0.43	Operation and Maintenance, Navy			
Marine Corps EFMP	-0.22	-0.22	-0.23	-0.23	-0.23	Operation and Maintenance, Marine Corps			
Air Force EFMP	-0.93	-0.95	-0.97	-0.99	-1.01	Operation and			

						Maintenance, Air Force			
Total	-4.67	-4.75	-4.85	-4.95	-5.03	--	-	--	--

Changes to Existing Law: This proposal would amend section 1781c of title 10, United States Code, as follows:

§1781c. Office of Special Needs

(a) Establishment.-There is in the Office of Military Family Readiness Policy the Office of Special Needs (in this section referred to as the "Office").

(b) Purpose.-The purpose of the Office is to enhance and improve Department of Defense support around the world for military families with special needs (whether medical or educational needs) through the development of appropriate policies, enhancement and dissemination of appropriate information throughout the Department of Defense, support for such families in obtaining referrals for services and in obtaining service, and oversight of the activities of the military departments in support of such families.

(c) Responsibilities.-The Office shall have the responsibilities as follows:

(1) To develop and implement a comprehensive policy on support for military families with special needs as required by subsection (d).

(2) To establish and oversee the programs required by subsection (e).

(3) To identify gaps in services available through the Department of Defense for military families with special needs.

(4) To develop plans to address gaps identified under paragraph (3) through appropriate mechanisms, such as enhancing resources and training and ensuring the provision of special assistance to military families with special needs and military parents of individuals with special needs (including through the provision of training and seminars to members of the armed forces).

(5) To monitor the programs of the military departments for the assignment of members of the armed forces who are members of military families with special needs, and the programs for the support of such military families, and to advise the Secretary of Defense on the adequacy of such programs in conjunction with the preparation of future-years defense programs and other budgeting and planning activities of the Department of Defense.

(6) To monitor the availability and accessibility of programs provided by other Federal, State, local, and non-governmental agencies to military families with special needs.

(7) To conduct periodic reviews of best practices in the United States in the provision of medical and educational services for children with special needs.

(8) To carry out such other matters with respect to the programs and activities of the Department of Defense regarding military families with special needs as the Under Secretary of Defense for Personnel and Readiness shall specify.

(d) Policy.- (1) The Office shall develop, and update from time to time, a uniform policy for the Department of Defense regarding military families with special needs. The policy shall apply with respect to members of the armed forces without regard to their location, whether within or outside the continental United States.

(2) The policy developed under this subsection shall include elements regarding the following:

(A) The assignment of members of the armed forces who are members of military families with special needs.

(B) Support for military families with special needs.

(3) In addressing the assignment of members of the armed forces under paragraph (2)(A), the policy developed under this subsection shall, in a manner consistent with the needs of the armed forces and responsive to the career development of members of the armed forces on active duty, provide for such members each of the following:

(A) Assignment to locations where care and support for family members with special needs are available.

(B) Stabilization of assignment for a minimum of 4 years.

(4) In addressing support for military families under paragraph (2)(B), the policy developed under this subsection shall provide the following:

(A) Procedures to identify members of the armed forces who are members of military families with special needs.

(B) Mechanisms to ensure timely and accurate evaluations of members of such families who have special needs.

(C) Procedures to facilitate the enrollment of such members of the armed forces and their families in programs of the military department for the support of military families with special needs.

(D) Procedures to ensure the coordination of Department of Defense health care programs and support programs for military families with special needs, and the coordination of such programs with other

Federal, State, local, and non-governmental health care programs and support programs intended to serve such families.

(E) Requirements for resources (including staffing) to ensure the availability through the Department of Defense of appropriate numbers of case managers to provide individualized support for military families with special needs.

~~(F) Requirements regarding the development and continuous updating of an individualized services plan (medical and educational) for each military family with special needs.~~

(F) Procedures for the development of an individualized services plan for those military family members with special needs who have requested support and have a completed family needs assessment.

(G) Requirements for record keeping, reporting, and continuous monitoring of available resources and family needs under individualized services support plans for military families with special needs, including the establishment and maintenance of a central or various regional databases for such purposes.

(e) Programs.-(1) The Office shall establish, maintain, and oversee a program to provide information and referral services on special needs matters to military families with special needs on a continuous basis regardless of the location of the member's assignment. The program shall provide for timely access by members of such military families to individual case managers and counselors on matters relating to special needs.

(2) The Office shall establish, maintain, and oversee a program of outreach on special needs matters for military families with special needs. The program shall-

(A) assist military families in identifying whether or not they have a member with special needs; and

(B) provide military families with special needs with information on the services, support, and assistance available through the Department of Defense regarding such members with special needs, including information on enrollment in programs of the military departments for such services, support, and assistance.

(3)(A) The Office shall provide support to the Secretary of each military department in the establishment and sustainment by such Secretary of a program for the support of military families with special needs under the jurisdiction of such Secretary. Each program shall be consistent with the policy developed by the Office under subsection (d).

(B) Each program under this paragraph shall provide for appropriate numbers of case managers for the development and oversight of individualized services plans for educational and medical support for military families with special needs.

(C) Services under a program under this paragraph may be provided by contract or other arrangements with non-Department of Defense entities qualified to provide such services.

(f) Resources.-The Secretary of Defense shall assign to the Office such resources, including personnel, as the Secretary considers necessary for the discharge of the responsibilities of the Office, including a sufficient number of members of the armed forces to ensure appropriate representation by the military departments in the personnel of the Office.

(g) Reports. (1) Not later than April 30 each year, the Secretary of Defense shall submit to the congressional defense committees a report on the activities of the Office.

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

(A) A description of any gaps in services available through the Department of Defense for military families with special needs that were identified under subsection (c)(3).

(B) A description of the actions being taken, or planned, to address such gaps, including any plans developed under subsection (c)(4).

(C) Such recommendations for legislative action as the Secretary considers appropriate to provide for the continuous improvement of support and services for military families with special needs.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Section 601 would authorize the Secretary of Defense to continue to carry out a Government lodging pilot program on a permanent basis. Section 914 (“Pilot Program to Establish a Government Lodging Program”) of the Fiscal Year (FY) 2015 National Defense Authorization Act (NDAA) provided the Secretary of Defense with temporary authority to establish and carry out a Government lodging program to provide Government or commercial lodging for employees of the Department of Defense (DoD) or members of the uniformed services under the Secretary’s jurisdiction performing duty on official travel and to require such travelers to occupy adequate quarters on a rental basis when available. This authority expires on December 31, 2019. Under this authority, three categories of lodging programs are currently being operated: DoD Lodging (Government), Public-Private Venture (PPV) lodging, and

commercial lodging (DoD Preferred). As part of an integrated approach, the Defense Travel System (DTS) was reprogrammed at a cost of \$2.6M with new business rules and functionality to route travelers to the correct category of lodging, provide pre-audits as required, and limit reimbursement to what the Government would have paid when lodging was available, but a traveler chose a more expensive option without an authorized exception. Note that suspension of this authority will require DTS to be reprogrammed again. As a precondition to directing use, the lodging must be determined to meet quality standards described as “adequate” in this statute. This provision was exempted from collective bargaining under title 5, U.S. Code.

As background, section 5911(e) of title 5, U.S. Code, precludes the military services from requiring either civilian employees or uniformed members to stay in Government quarters on a rental basis unless the agency head determines the necessary service cannot be rendered or that property of the Government cannot otherwise be adequately protected. Subsequently, in 1965, a narrow COMP GEN ruling (i.e., B-156187, Apr 15, 1965, 44 Comp Gen 626) opined that this statute did not apply to uniformed members occupying public quarters (i.e., Government) for free even if a “nominal service charge to cover linen and housekeeping services” was assessed.

As the law stands today, a civilian employee cannot be directed to occupy Government quarters unless the agency head makes the requisite determination on a case-by case basis. This same statute prohibits requiring both civilian employees and uniformed members to occupy leased quarters (e.g., commercial lodging) on a rental basis. This is problematic for the Services in that Government quarters offer reasonable accommodations below costs of commercial quarters, and would severely hamper the Department’s ability to “...expand and leverage the Government’s purchasing power for commercial lodging to reduce travel costs associated with hotels...” as directed in OMB Memorandum M-12-12, “Promoting Efficient Spending to Support Agency Operations,” May 11, 2012.

This proposal supports DoD’s efforts to both promote efficiencies and fulfill responsibilities for each traveler’s “duty of care”. OMB M-12-12 also directed all federal agencies to spend in FY 2013 at least 30% less on travel expenses covered by the memorandum than they spent in FY 2010 and to maintain a reduced level of spending each year through FY 2016. Specifically, DoD and the General Services Administration (GSA), in consultation with OMB, were to review the Joint Federal Travel Regulations (JFTR), since consolidated into DoD’s Joint Travel Regulations (JTR), and the Federal Travel Regulation (FTR) to ensure the policies reduce travel costs without impairing the effective accomplishment of agency missions. The directed use of lodging programs, which is currently done for air travel, is essential to DoD reducing its lodging expenses. DoD estimates savings to be over \$2.3 billion, which is a key element of DoD’s implementation of the direction provided by the OMB. A key component of ensuring “duty of care” for the Department’s travelers is the establishment of quality standards, which include: 1) traveler safety and security (e.g., fire safety, security monitoring), 2) quality traveler accommodations (e.g., industry quality ratings), 3) traveler financial protections (e.g., no cancellation fee, no early departure fee), and 4) traveler conveniences (e.g., bookable online, includes no cost amenities). Additionally, the Travel Assistance Center collects and processes customer’s concerns for resolution and a customer survey collects data on customer satisfaction. Both tools are used to monitor travelers’ concerns and prioritize enhancements. Survey results demonstrate high satisfaction rates among travelers.

In addition to cost avoidance, this proposal would bring numerous other benefits to DoD, including offering greater security to DoD travelers. Approved lodging will be more secure (e.g., internal room access, secure locks) or located on secure installations or in more secure areas. Facilities participating in the program will need to meet specific standards (e.g., compliance with the Hotel and Motel Fire Safety Act of 1990 (Public Law 101-391), be non-smoking, and include more amenities (e.g., internet, parking). Also, contacting DoD travelers in case of emergency would be more efficient. The proposal would also help DoD to follow industry best practices.

Implementation of the lodging pilot was similar to the air and rental car programs as an integrated solution. The integrated approach encompassed policy, information technology, program management, training, change management, communications, performance management, and governance. For example, the policy was documented in Department of Defense Instruction (DoDI) 5154.31 and the JTR. DTS has been modified to serve as the primary traveler interface for booking travel and includes business rules codified in the software (e.g., rental car displays list compact rates first by ascending price). The DTS Change Request (CR) was vetted through the Defense Travel Improvement Board (DTIB) and the Defense Lodging Council (DLC).

Budget Implications: As this proposal would permit the Department to continue directing civilian employees and military members to use more cost-effective quarters for official travel, it would result in significant cost avoidance for the Department based on the experience we have had with our pilot program. The resources impacted are reflected in the table below and are included within the FY 2021 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS) – COST AVOIDANCE									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/S AG	Program Element (for all RDT&E programs)
Army	(\$7.0)	(\$7.9)	(\$8.9)	(\$9.9)	(\$10.0)	Operation and Maintenance, Army	Multiple	Multiple	Multiple
Navy	(\$5.3)	(\$6.0)	(\$6.6)	(\$7.3)	(\$7.3)	Operation and Maintenance, Navy	BA01	1A1A 1B4B 1C6C	Multiple
Marine Corps	(\$1.8)	(\$2.2)	(\$2.5)	(\$2.8)	(\$2.8)	Operation and Maintenance, Marine Corps	BA01	1A1A	0206312M
Air Force	(\$7.5)	(\$8.5)	(\$9.5)	(\$10.5)	(\$10.6)	Operation and Maintenance, Air Force	BA01 BA03	032C 011D 032A	84751F 27603F 84752F
DoD	(\$1.6)	(\$1.9)	(\$2.1)	(\$2.3)	(\$2.3)	Operation and Maintenance,	BA01 BA04	4GTJ	0808715B T

						Defense-Wide		4GTD 4GTO	101010GT 0701113B L
Total	(\$23.2)	(\$26.5)	(\$29.6)	(\$32.8)	(\$33.0)				

Cost Methodology: The cost avoidance figures listed above were calculated by combining the projected cost avoidance that will be achieved through commercial lodging, DoD lodging, and PPV lodging. This growth in projected cost avoidance is predicated on support for the program’s expansion to new markets/locations. For example, the Department achieved \$3.4M in total actual cost avoidance for commercial lodging in FY 2016. There were 19 commercial lodging markets in that fiscal year, which amounts to \$180,000 in cost avoidance per market. As the Department predicts there will be 60 commercial lodging sites in FY 2019, the cost avoidance projection is \$10.8M for commercial lodging in FY 2021. Similarly, the Department projects \$2.5M in PPV lodging cost avoidance and \$9.9M in DoD lodging cost savings from FY 2021. Therefore, the Department projects \$23.2M in total FY 2021 cost avoidance. Additionally, indirect savings (i.e., cost avoidance) would accrue to the Department from other sources, including amenities otherwise paid as a reimbursable expense (e.g., free internet and parking), increased usage of the Government Travel Charge Card resulting in increased rebates, reduction in reimbursements for various lodging fees (e.g., late arrival or early departure), and reduction in Travel Management Company (TMC) “touch” fees. The number of personnel affected is projected by using the number of FY 2016 DTS travel vouchers paid in FY 2016 with stay end dates in FY 2016. This table projects the number of unique military and civilian travelers who could be affected by this proposal. Travelers assigned to Joint Commands are included in the DoD line.

NUMBER OF PERSONNEL AFFECTED					
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Army	491,100	491,100	491,100	491,100	491,100
Navy	228,727	228,727	228,727	228,727	228,727
Marine Corps	77,485	77,485	77,485	77,485	77,485
Air Force	315,558	315,558	315,558	315,558	315,558
DoD	71,433	71,433	71,433	71,433	71,433
Total	1,184,303	1,184,303	1,184,303	1,184,303	1,184,303

Changes to Existing Law: This proposal would make the following changes to existing law:

TITLE 37, UNITED STATES CODE

§465. Authority to require the occupation of quarters on a rental basis while performing official travel

(a) AUTHORITY.—Notwithstanding the provisions of section 5911 of title 5, the Secretary of Defense may establish and carry out a Government lodging program to provide Government or commercial lodging for employees of the Department of Defense or members of the

uniformed services under the Secretary’s jurisdiction performing duty on official travel, and may require such travelers to occupy adequate quarters on a rental basis when available.

(b) LIMITATION.—A Government lodging program developed under the authority in subsection (a), and a requirement under subsection (a) with respect to an employee of the Department of Defense, may not be construed to be subject to a duty to negotiate under chapter 71 of title 5.

**CARL LEVIN AND HOWARD P. “BUCK” MCKEON NATIONAL DEFENSE
AUTHORIZATION ACT FOR FISCAL YEAR 2015**

**SEC. 914. PILOT PROGRAM TO ESTABLISH GOVERNMENT LODGING
PROGRAM.**

~~(a) AUTHORITY.— Notwithstanding the provisions of section 5911 of title 5, United States Code, the Secretary of Defense may, for the period of time described in subsection (b), establish and carry out a Government lodging program to provide Government or commercial lodging for employees of the Department of Defense or members of the uniformed services under the Secretary’s jurisdiction performing duty on official travel, and may require such travelers to occupy adequate quarters on a rental basis when available.~~

~~(b) PROGRAM DURATION.— The authority to establish and execute a Government lodging program under this section expires on December 31, 2019.~~

~~(c) LIMITATION.— A Government lodging program developed under the authority in subsection (a), and a requirement under subsection (a) with respect to an employee of the Department of Defense, may not be construed to be subject to a duty to negotiate under chapter 71 of title 5, United States Code.~~

Section 602 would make two technical amendments to title 37, United States Code (U.S.C.). These amendments would enable the Department of Defense (DoD) to transfer these two relevant provisions from chapter 8 of that title back to chapter 7; both provisions were transferred out of chapter 7 by recent legislation. This proposal would ensure that the Department could continue to make these payments/reimbursements without issue.

This language would transition the authority to pay per diem to a uniformed services member who is on duty outside the continental United States (OCONUS) from section 475 of title 37, U.S.C., back to chapter 7 of title 37, U.S.C. The authority was removed from chapter 7 of title 37, U.S.C., by section 621 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (P.L. 112-81), and was renumbered and placed in chapter 8 of title 37, U.S.C. This authority, which relates to paying station allowances for uniformed members stationed outside the continental United States, is set to expire when the travel authorities in chapter 8,

subchapter III of title 37, U.S.C., expire. Although this authority is prescribed as OCONUS Cost of Living Allowance and OCONUS Temporary Lodging Allowance in chapter 9 of the Joint Travel Regulations, as station allowances they are not prescribed under section 464 of title 37, U.S.C., which is now cited by section 453 of title 37, U.S.C. (the language that provides authority for travel and transportation allowances). The authority is set to expire in 2021; therefore, this proposal would transfer the authority back to its relevant title 37 chapter without allowing it to expire.

Furthermore, this language would transition the authority to reimburse Armed Forces reserve component members an allowance for performing funeral honors duty from section 495 of title 37, U.S.C., back to chapter 7 of title 37, U.S.C. The authority was transferred from chapter 7 of title 37, U.S.C., to chapter 8 of title 37, U.S.C., by section 621 of the NDAA for FY14 (P.L. 113-66). This authority was implemented in DoD 7000.14-R Financial Management Regulation, Volume 7A, Chapter 58, and was not implemented in the Joint Travel Regulations (as it concerns a pay allowance, not a travel allowance). Therefore, this authority is not prescribed in regulations under section 464 of title 37, U.S.C., which is now cited by section 453 of title 37, U.S.C., as providing the authority to reimburse Armed Forces members for travel in such circumstances. The authority is set to expire in 2021; therefore, this proposal would transfer the authority back to its relevant title 37 chapter without allowing it to expire.

Budget Implications: As this proposal would only maintain the Department’s ability to pay these expenses, it would result in no added cost to DoD. The resources impacted are reflected in the table below and are included within the FY 2021 President’s Budget request.

Effect of amendment to section 405 of title 37, United States Code (Per diem while on duty outside the continental United States): The proposed legislation would result in no added cost to the Department because the anticipated \$1.556B in annual expenditure is offset by the estimated \$1.556B of removing the section from chapter 8 of title 37, U.S.C.

Effect of amendment to section 475 of title 37, United States Code (Per diem while on duty outside the continental United States): The proposed legislation would result in no added cost to the Department because the anticipated \$1.556B that would be saved is offset by the estimated \$1.556B in expenditures under chapter 7 of title 37, U.S.C.

Effect of amendment to section 435 of title 37, United States Code (Funeral honors duty: allowance): The proposed legislation would result in no added cost to the Department because the anticipated \$95.5M in annual expenditure is offset by the estimated \$95.5M of removing the section from chapter 8 of title 37, U.S.C.

Effect of amendment to section 495 of title 37, United States Code (Funeral honors duty: allowance): The proposed legislation would result in no added cost to the Department because the anticipated \$95.5M that would be saved is offset by the estimated \$95.5M in expenditures under chapter 7 of title 37 of U.S.C.

RESOURCE IMPACT (\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element

									(for all RDT&E Programs)
Army	\$571.8	\$571.8	\$571.8	\$571.8	\$571.8	Military Personnel, Army	Military Personnel, Army	01, 02	45, 95
Navy	\$422.2	\$422.2	\$422.2	\$422.2	\$422.2	Military Personnel, Navy	Military Personnel, Navy	01, 02	45, 95
Marine Corps	\$216.2	\$216.2	\$216.2	\$216.2	\$216.2	Military Personnel, Marine Corps	Military Personnel, Marine Corps	01, 02	45, 95
Air Force	\$346.0	\$354.6	\$363.5	\$372.6	\$381.9	Military Personnel, Air Force	Military Personnel, Air Force	01	11A
Total	\$1,556.2	\$1,564.8	\$1,573.7	\$1,582.8	\$1,592.1				

RESOURCE IMPACT (\$MILLIONS) – COST AVOIDANCE

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	(\$571.8)	(\$571.8)	(\$571.8)	(\$571.8)	(\$571.8)	Military Personnel, Army	Military Personnel, Army	01, 02	45, 95
Navy	(\$422.2)	(\$422.2)	(\$422.2)	(\$422.2)	(\$422.2)	Military Personnel, Navy	Military Personnel, Navy	01, 02	45, 95
Marine Corps	(\$216.2)	(\$216.2)	(\$216.2)	(\$216.2)	(\$216.2)	Military Personnel, Marine Corps	Military Personnel, Marine Corps	01, 02	45, 95
Air Force	(\$346.0)	(\$354.6)	(\$363.5)	(\$372.6)	(\$381.9)	Military Personnel, Air Force	Military Personnel, Air Force	01	11A
Total	(\$1,556.2)	(\$1,564.8)	(\$1,573.7)	(\$1,582.8)	(\$1,592.1)				

PERSONNEL IMPACT

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Army	82,314	82,314	82,314	82,314	82,314

Navy	51,688	51,688	51,688	51,688	51,688
Marine Corps	26,990	26,990	26,990	26,990	26,990
Air Force	117,566	118,741	119,929	121,128	122,339
Total	278,558	279,733	280,921	282,120	283,331

RESOURCE IMPACT FUNERAL HONORS AMENDMENT - (\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army National Guard	24.9	25.2	18.1	11.7	11.8	Operation and Maintenance, Army National Guard	1	133	133G9200
Army National Guard	48.3	48.4	48.8	49.6	50.4	National Guard, Personnel, Army	1	010,080	Multiple
Army Reserve	.8	.8	.9	.9	.9	Operation and Maintenance, Army Reserve	04	170	434R94000
Army Reserve	6.9	6.9	7.0	7.1	7.2	Reserve Personnel, Army	01	010, 080	Multiple
Navy	13.1	13.1	13.1	13.1	13.1	Reserve Personnel, Navy	01	10, 20	Multiple
Marine Corps	.8	.8	.8	.8	.8	Reserve Personnel, Marine Corps	01	10, 20	Multiple
Air Force Reserve	.5	.5	.5	.5	.6	Reserve Personnel, Air Force	01	10	0509220F
Air National Guard	.15	.15	.16	.16	.16	National Guard Personnel, Air Force	01	10	0509690F
Total	95.5	95.9	89.4	83.9	85				

RESOURCE IMPACT FUNERAL HONORS AMENDMENT (\$MILLIONS) – COST AVOIDANCE									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	(24.9)	(25.2)	(18.1)	(11.7)	(11.8)	Operation and	1	133	133G9200

National Guard						Maintenance, Army National Guard			
Army National Guard	(48.3)	(48.4)	(48.8)	(49.6)	(50.4)	National Guard Personnel, Army	1	010,080	Multiple
Army Reserve	(.8)	(.8)	(.9)	(.9)	(.9)	Operation and Maintenance, Army Reserve	04	170	434R94000
Army Reserve	(6.9)	(6.9)	(7.0)	(7.1)	(7.2)	Reserve Personnel, Army	01	010,080	Multiple
Navy	(13.1)	(13.1)	(13.1)	(13.1)	(13.1)	Reserve Personnel, Navy	01	10,20	Multiple
Marine Corps	(.8)	(.8)	(.8)	(.8)	(.8)	Reserve Personnel, Marine Corps	01	10,20	Multiple
Air Force Reserve	(.5)	(.5)	(.5)	(.5)	(.6)	Reserve Personnel, Air Force	01	10	0509220F
Air National Guard	(.15)	(.15)	(.16)	(.16)	(.16)	National Guard Personnel, Air Force	01	10	0509690F
Total	(95.5)	(95.9)	(89.4)	(83.9)	(85)				

NUMBER OF PERSONNEL AFFECTED					
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Army	133,548	131,740	130,314	129,033	127,839
Navy	3,206	3,206	3,206	3,206	3,206
Marine Corps	1,605	1,605	1,605	1,605	1,605
Air Force	726	734	741	748	756
Total	139,085	137,285	135,866	134,592	133,406

Cost Methodology: These resource impact charts show the amount of funding estimated to be paid by the Services each year for per diem to members of the uniformed services who are on duty OCONUS, as well as for allowances to Armed Forces reserve component members for performing funeral honors duty.

Changes to Existing Law: This section would make the following changes to title 37, United States Code:

TITLE 37, UNITED STATES CODE

§475 405. Travel and transportation allowances: per diem while on duty outside the continental United States

(a) PER DIEM AUTHORIZED.—Without regard to the monetary limitation of this title, the Secretary concerned may pay a per diem to a member of the uniformed services who is on duty outside of the continental United States, whether or not the member is in a travel status. The Secretary may pay the per diem in advance of the accrual of the per diem.

(b) DETERMINATION OF PER DIEM.—In determining the per diem to be paid under this section, the Secretary concerned shall consider all elements of the cost of living to members of the uniformed services under the Secretary's jurisdiction and their dependents, including the cost of quarters, subsistence, and other necessary incidental expenses. However, dependents may not be considered in determining the per diem allowance for a member in a travel status.

(c) TREATMENT OF HOUSING COST AND ALLOWANCE.—Housing cost and allowance may be disregarded in prescribing a station cost of living allowance under this section.

(d) UNUSUAL OR EXTRAORDINARY EXPENSES.—(1) The Secretary concerned may reimburse a member of the uniformed services on duty as described in subsection (a) or (e) for an unusual or extraordinary expense incurred by the member incident to such duty that—

(A) is directly related to the conditions or location of the duty or the location of the member's dependents;

(B) is of a nature or a magnitude not normally incurred by members of the uniformed services on duty inside the continental United States; and

(C) is not included in the per diem determined under subsection (b) as payable to the member under subsection (a) or (e).

(2) Any reimbursement provided to a member under paragraph (1) is in addition to a per diem payable to that member under subsection (a) or (e).

(e) PAYMENT OF ALLOWANCE BASED ON OVERSEAS LOCATION OF DEPENDENTS.—In the case of a member assigned to duty inside the continental United States whose dependents continue to reside outside the continental United States, the Secretary concerned may pay the member a per diem under this section based on the location of the dependents and provide reimbursement under subsection (d) for an unusual or extraordinary expense incurred by the dependents if the Secretary determines that such payment or reimbursement is in the best interest of the member or the member's dependents and in the best interest of the United States.

~~(f) Termination.—During and after the travel authorities expiration date, no per diem may be paid under this section for any period.~~

§495 435. Funeral honors duty: allowance

(a) ALLOWANCE AUTHORIZED.—(1) The Secretary concerned may authorize payment of an allowance to a member of the Ready Reserve for any day on which the member performs at least two hours of funeral honors duty pursuant to section 12503 of title 10 or section 115 of title 32.

(2) The Secretary concerned may also authorize payment of that allowance to a member of the armed forces in a retired status for any day on which the member serves in a funeral honors detail under section 1491 of title 10, if the time required for service in such detail (including time for preparation) is not less than two hours. The amount of an allowance paid to a member under this paragraph shall be in addition to any other compensation to which the member may be entitled under this title or title 10 or 38.

(b) AMOUNT.—The daily rate of an allowance under this section is \$50.

~~(c) Termination.—No allowance may be paid under this section for any day after the travel authorities transition expiration date.~~

Section 603. The United States Government maintains a continued civilian presence in countries throughout the world to further United States (U.S.) foreign policy and national security interests. The challenges faced by civilian employees serving in combat zones and other high risk, high threat areas are unique and warrant special considerations for leave purposes that are not generally recognized under the provisions of chapter 63 of title 5, United States Code (U.S.C.). These assignments often support activities abroad that are hazardous to life or health, and are distinguishable from normal Government employment. Prior to enactment of the Administrative Leave Act of 2016 (ALA), Executive departments granted administrative leave based on the broad management authority in 5 U.S.C. 301-302 to address the unique circumstances of this type of civilian service overseas. This authority has been restricted by the ALA and is no longer adequate to address the needs of this unique type of service.

The intent of the ALA was to place controls and limitations on the granting of administrative leave to ensure authorization was restricted to situations where its use had a purpose consistent with Government rules and regulations. The ALA defines administrative leave as paid leave authorized at the discretion of the agency without loss of or reduction in pay, other leave, or service credit and that is not authorized under any provision of law. Additionally, 5 U.S.C. 6329a(b)(1) now imposes a 10-workday limitation on administrative leave for an employee per calendar year.

The enactment of the ALA limits federal agencies' authority to grant administrative leave for the unique circumstances that are associated with overseas duty, including service in combat zones in support of military and contingency operations. Specifically, the use of administrative leave in conjunction with authorized periods of rest and recuperation (R&R) will be limited. This affects employees from the Department of Defense (DoD), and foreign affairs agencies, including the Department of State (DOS), the Department of Agriculture, the Department of Commerce, and the United States Agency for International Development. This also affects employees from other agencies with an overseas presence, including agencies of the Department of Justice and Department of Health and Human Services.

DoD policy allows for Government-funded R&R travel for service members and DoD civilians who are assigned to combat zones supporting contingency operations overseas. The R&R program allows DoD to authorize periodic breaks from austere, stressful, and dangerous work environments. These isolated locations have unusual personal hazards, lack essential

services such as medical care and recreation facilities, and have other environmental factors making the assignment difficult to sustain over an extended period of time. Payment of travel expenses for R&R breaks is considered in the best interests of the Government as it provides a respite for military and civilian personnel from unusually stressful work situations that require separation from family members. Without R&R breaks, the ability to continue to function at such a high operational tempo would be significantly impacted.

These R&R authorizations are often in countries where travel is difficult, dangerous, and subject to delays. As such, the Government provides military transportation or otherwise arranges and funds the travel that is needed for the employee to reach the R&R destination and return. Current DoD policy for service members provides that R&R travel is not charged to leave until the member reaches the R&R destination. Current DoD policy for civilians includes a provision to grant administrative leave to cover the R&R travel period. For Iraq, Afghanistan, and Pakistan, this is specifically defined as up to 10 work days per R&R break, not to exceed 20 work days over a 12-month period if multiple R&Rs are authorized.

DOS provides similar R&R benefits to incentivize their Foreign Service Officers to bid on undesirable duty stations in dangerous and remote locations. Current DOS policy provides for normally one to two days of administrative leave for the departure and return legs of the R&R trip (i.e., transit time), and a separate grant of administrative leave during the R&R period that is specific to the incentive package for the post.

There is no current legislative authority that provides a separate category of leave or a special authorization for paid leave for the purpose of R&R breaks. Such leave is currently treated as an excused absence (i.e., administrative leave). As such, the type of leave that is currently authorized under the R&R program would be subject to the 10-day annual limitation of the ALA, adversely impacting the ability for employees to utilize the current grant of up to 20 work days per R&R break per year.

Without new legislation to preserve benefits that are comparable to those currently offered during R&R breaks, employees who are deployed to combat zones (the IRS provides a complete list of currently recognized combat zones) or serving in other high risk/high threat locations would be required to use personal leave or leave without pay for the time spent on official travel attempting to reach and return from the R&R destination. Because of the often remote locations from which R&R breaks are authorized, travel time is often unpredictable and fraught with delays and difficulties. The ability to authorize administrative leave mitigates the impact of these delays. Without this authority, the effectiveness of the R&R program could be severely impacted, thereby hampering the Government's ability to recruit civilians for deployment to these dangerous locations, particularly in contingency operations (e.g., Iraq, Afghanistan, or Pakistan).

In addition to R&R breaks, civilians working in overseas locations occasionally require leave for the observance of local holidays in foreign areas. Historically, DoD has leveraged administrative leave for the observance of local holidays that meet certain criteria. DoD Instruction 1400.25, Volume 1261, allows for administrative leave when the Chief of Mission or geographic Combatant Commander determines a closure is appropriate when a local holiday or

special occasion is of such significance that conduct of business by some or all offices would be an affront to the host-country government or not in the best interest of the United States. DOS has a similar policy and uses administrative leave for local holidays observed in foreign areas.

The National Defense Strategy (NDS) relies upon the ability to utilize civilians to perform work in support of military operations when the functions are not military-essential. This frees up uniformed personnel to perform tasks that only they can perform and also allows optimization of scarce resources. Civilians are a critical part of the Total Force mix; they serve as a force multiplier in the execution of NDS objectives and are essential to the successful execution of contingency operations. Failure to provide a legislative authority that preserves the leave benefits currently offered during R&R breaks would seriously impact the ability to meet deployment demands for civilians, thereby degrading the Department’s ability to accomplish national defense strategies.

The proposed legislative action creates a new category of leave for use with R&R breaks from combat zones and high risk/high threat locations, in an amount that is equal to the current DoD authority for use of administrative leave during R&R breaks (i.e., not more than 20 work days in a year), as well as a new category of leave for up to 5 days of paid leave for local holidays observed in foreign areas. Approval of this proposal will preserve the current level of benefits and offset the unintended negative effects that would otherwise occur upon implementation of the ALA.

Budget Implications: No budget impact. This proposal provides an authority to authorize a special category of leave in conjunction with R&R breaks at a level that is identical to the current DoD authorization for administrative leave (i.e., up to 20 days in a year). This does not create a cost or produce a savings in the salaries of employees who are deployed to areas for which R&R is authorized. Similarly, the foreign holiday leave portion does not create an additive cost, as increasing allowable paid leave does not impact an employee’s salary. However, there may be productivity costs. A table showing the number of personnel impacted is included below. The table displays the number of DoD employees working in foreign areas, in order to provide an idea of the potential impact of the proposal to DoD. The table does not include the number of U.S. Government civilian employees of other Federal agencies that would be impacted by the proposal.

PERSONNEL IMPACT (END STRENGTH)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	14,141	14,141	14,141	14,141	14,141	Operation and Maintenance, Army	01	131	
Navy	4,455	4,455	4,455	4,455	4,455	Operation and Maintenance, Navy			
Air Force	6,057	6,057	6,057	6,057	6,057	Operation and			

						Maintenance, Air Force			
Defense Wide	11,232	11,232	11,232	11,232	11,232	Operation and Maintenance, Defense Wide			
Total	35,885	35,885	35,885	35,885	35,885				

Changes to Existing Law: As set forth in the legislative text above, this proposal would add two new sections to title 5, United States Code.

Section 604 would change the quarterly congressional briefing requirement in 2481(c)(4) of title 10, United States Code (U.S.C.), to an annual written reporting requirement. Section 661 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Public Law 114-328) modified the statutory requirements on the commissary systems business model in order to direct business optimizations to the defense resale system, allow variable pricing, authorize the Secretary of Defense to convert the commissary system to a nonappropriated fund entity or instrumentality, and offset operating expenses with funds derived from improved management practices. The NDAA for FY 2017 also modified section 2484 of title 10, U.S.C., to require the Secretary of Defense to establish a baseline of overall savings to patrons achieved by commissary stores prior to the initiation of the variable pricing program. The patron savings achieved were to be based upon a comparison of prices charged by those stores on a regional basis with prices charged by relevant local competitors for a representative market basket of goods. The NDAA for FY 2017 also incorporated into statute a quarterly requirement for the Secretary to brief Congress on the defense commissary system, including an assessment of patron savings, the status of the variable pricing program, the status of the conversion of the commissary system into a nonappropriated fund entity or instrumentality, the status of the private label program, and any other matters the Secretary considers appropriate.

Currently, the Defense Commissary Agency (DeCA) coordinates with Congress to provide the briefing with the House and Senate Armed Services Committees and the House and Senate Appropriations Committees; however, at best, meeting the statutory requirement requires two separate briefings on separate dates. More often than not, meeting the briefing requirement requires three, and sometimes four, briefings on three or four different dates; in some cases the briefing requirement is waived by the Committees altogether. DeCA has implemented the changes required by the NDAA of FY 2017, and continues to maintain patron savings at the level patrons enjoyed before the transition. The programs are now stable and performing appropriately. Accordingly, this proposal seeks to change the congressional quarterly briefing requirement into an annual written reporting requirement.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President’s Budget request.

Changes to Existing Law: This proposal would make the following changes to section 2481 of title 10, United States Code:

§2481. Defense commissary and exchange systems: existence and purpose

(a) Separate Systems.—The Secretary of Defense shall operate, in the manner provided by this chapter and other provisions of law, a world-wide system of commissary stores and a separate world-wide system of exchange stores. The stores of each system may sell, at reduced prices, food and other merchandise to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and persons authorized to use the system under chapter 54 of this title. Any reference in this chapter to ‘the exchange system’ shall be treated as referring to each separate administrative entity within the Department of Defense through which the Secretary has implemented the requirement under this subsection for a world-wide system of exchange stores.

(b) Purpose of Systems.—The defense commissary system and the exchange system are intended to enhance the quality of life of members of the uniformed services, retired members, and dependents of such members, and to support military readiness, recruitment, and retention.

(c) Oversight.—(1) The Secretary of Defense shall designate a senior official of the Department of Defense to oversee the operation of both the defense commissary system and the exchange system.

(2) The Secretary of Defense shall establish an executive governing body to provide advice to the senior official designated under paragraph (1) regarding the operation of the defense commissary and exchange systems and to ensure the complementary operation of the systems.

(3)(A) The Secretary of Defense shall develop and implement a comprehensive strategy to optimize management practices across the defense commissary system and the exchange system that reduce reliance of those systems on appropriated funding without reducing benefits to the patrons of those systems or the revenue generated by nonappropriated fund entities or instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(B) The Secretary shall ensure that savings generated due to such optimization practices are shared by the defense commissary system and the exchange system through contracts or agreements that appropriately reflect the participation of the systems in the development and implementation of such practices.

(C) If the Secretary determines that the reduced reliance on appropriated funding pursuant to subparagraph (A) is insufficient to maintain the benefits to the patrons of the defense commissary system, and if the Secretary converts the defense commissary system to a nonappropriated fund entity or instrumentality pursuant to paragraph (1) of section 2484(j) of this title, the Secretary shall transfer appropriated funds pursuant to paragraph (2) of such section to ensure the maintenance of such benefits.

(4) On not less than a ~~quarterly~~ an annual basis, the Secretary shall ~~provide~~ submit to the congressional defense committees a ~~briefing~~ written report on the defense commissary system, including—

(A) an assessment of the savings the system provides patrons;

(B) the status of implementing section 2484(i) of this title;

(C) the status of implementing section 2484(j) of this title, including whether the system requires any appropriated funds pursuant to paragraph (2) of such section;

- (D) the status of carrying out a program for such system to sell private label merchandise;
- and
- (E) any other matters the Secretary considers appropriate.

Section 605 would amend 37 U.S.C. 403, to allow the Secretaries of the military departments discretionary authority to authorize a housing allowance based on the old homeport or permanent duty station for single members disadvantaged as a result of a unit's change of homeport or permanent duty station. If enacted, the Secretary concerned may determine that when undergoing a change in homeport or change in permanent duty station it would be inequitable to pay a housing allowance other than based on the previous homeport or permanent duty station. Currently, members who undergo homeport changes from CONUS to OCONUS must be on board for at least 12 months after the effective date of the homeport change to warrant a fully-funded permanent change of station move. When members are in receipt of orders to return to the area of the previous homeport or permanent duty station, rather than receiving a fully-funded move under the homeport change order, this proposal would authorize the Secretary authority to approve retention of a previously-authorized housing allowance until return to the previous homeport or duty station.

During the most recent three-carrier ship swaps, housing allowances for a number of single Sailors living in commercial housing were stopped upon the effective date of the homeport shift, as all resided on ship and there is no authority to pay a housing allowance when a member without dependents is assigned to Government quarters. Some of these Sailors were already in receipt of follow-on orders back to the old homeport where they had to terminate commercial housing leases. Under current law, these members lost their housing allowance and either had to move out of their current residence (despite returning in a few months) or pay rent/mortgage out-of-pocket. Married Sailors with dependents are afforded the opportunity to retain housing allowance at the old homeport rate. In light of the inequity between married and single members, Navy requested a waiver to pay a housing allowance to single members at the old permanent duty station or other than the permanent duty station/homeport rate. OSD denied the request due to absence of authority to approve such a waiver. The number of Sailors impacted due to the denial is unknown. Enactment of this proposal would eliminate an inequity to single Sailors with orders to return to their old permanent duty station/homeport.

This proposal considers provisions under current law of a low-cost or no-cost move, which permit a member to retain eligibility for a previously authorized housing allowance if not offered a funded permanent change of station order. This proposal would allow the Secretary concerned to treat members assigned to units that undergo a change of home port or permanent duty station in the same manner as a low-cost or no-cost move.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget request. Based on typical planned Organized Unit Moves (OUM) affecting roughly 450 officers and 2500 E-5 through E-9 per year, approximately 15 officers and 80 enlisted would receive this entitlement per year. E-4 and below were not included in the estimate because nearly all single junior Sailors should be berthed in barracks. The estimate assumes one-half of the crew has no dependents, one-fourth of the crew has received transfer orders (within ~9 months of transfer), and one-fourth of transfer

orders are to the original Permanent Duty Station (PDS). The last two assumptions will be greatly affected by PCS funding availability and assignment detailer action. The mean duration of entitlement for Sailors affected is approximately 6 months. The majority of Sailors affected typically reside in barracks at the new PDS, thus, receiving no BAH. Therefore, the cost would be the BAH rate at the old PDS rate for 6 months, per affected Sailor. The cost estimate is based on an average of fleet homeport BAH rates for officers in pay grade O3, and enlisted in pay grade E5, in FY18. After inflation, the cost is approximately \$0.9M in FY21. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget.

RESOURCE IMPACT (\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation From	Budget Activity	BLI/SAG	Program Element
Navy Basic Allowance for Housing	0.9	0.9	1.0	1.0	1.1	Military Personnel, Navy	01	Various	NA
Marine Corps does not intend to use this authority									
Army does not intend to use this authority									
Air Force does not intend to use this authority									
Total	0.9	0.9	1.0	1.0	1.1				

Changes to Existing Law: This proposal would make the following changes to section 403(o) of title 37, United States Code:

§ 403. Basic allowance for housing

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

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

* * * * *

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

basic allowance for housing on the cost of housing in the area to which the member is reassigned.

(2) In the case of a member without dependents who is assigned to a unit that undergoes a change of home port or a change of permanent duty station, the member may be treated for the purposes of this section as if the unit to which the member is assigned did not undergo such a change if the Secretary concerned determines that it would be inequitable to base the member's entitlement to, and amount of, a basic allowance for housing on the new home port or permanent duty station.

Section 606 would allow military members to designate that, upon their death, the gratuity provided pursuant to section 1475 or 1476 of title 10, United States Code (10 USC 1475 or 1476), be paid to a trust that is legally established under any Federal, State, or territorial law, to include a supplemental or special needs trust established for disabled children. The amount of the death gratuity has been increased on several occasions and is currently set at \$100,000 pursuant to 10 USC 1478. Originally designed to meet the immediate needs of a Service member's family following his or her death, the death gratuity, at its current level, frequently accounts for a sizeable portion of a Service member's estate. Allowing payment of the death gratuity to a trust would provide greater planning capability for a Service member to provide payments to those who require the protections of a trust, such as minor children or incapacitated adults.

There is currently no express statutory authority for a Service member to designate a legal entity, such as a trust, as the beneficiary of his or her death gratuity. However, there are several reasons a Service member might prefer to designate a legal entity, such as a trust, as the beneficiary of a death gratuity, rather than to designate a natural person. For example, Service members often wish to name their minor children as beneficiaries of their death gratuity. In some instances, simply designating the gratuity for a surviving spouse is acceptable to the Service member. However, in other situations, such as where a Service member has children and does not have a good relationship with the other parent, a Service member might prefer to provide directly for a child. When minor children are designated as the death gratuity beneficiary, a person other than an individual designated by the Service member may receive the gratuity payment on behalf of the minor child. For instance, the gratuity may be disbursed into a custodial account for the child, where the Service member did not select the custodian and the minor will gain full control funds upon attaining the age of 18 or 21 years. Such a system does not allow the Service member to designate a trustee where a trustee of the Service member's choosing would manage the monetary asset during and even after the child's minority. Many estate planning professionals suggest that trusts or custodial accounts for minors should not terminate upon the age of majority, but rather at a time when it is anticipated the child will be mature enough to manage his or her own finances. Under this proposal, Service members would have better planning capability to provide for their minor children in a manner that ensures responsible management of the death gratuity payment.

In addition to trusts for minors, trusts are often established for either incapacitated adults or adults who have simply proven incapable of managing significant amounts of money. In the case of incapacitated or special needs adults, trusts allow money to be used on behalf of the beneficiary while not diminishing Social Security disability payments as a result of personal

assets. This proposal would allow the death gratuity to serve such individuals while not impacting eligibility for Social Security disability payments. Service members might also desire to name a trustee for a sibling or other adult that the Service member finds incapable of handling a significant payment of money for reasons such as substance abuse or prior financial mismanagement. Under this proposal, Service members could establish a supplemental or special needs trust for the benefit of the intended beneficiary, while naming a separate trustee to ensure the proceeds to the trust are utilized in a responsible manner.

Budget Implications: This proposal has no budgetary impact. There are no resource requirements or proposed offsets associated with this proposal. This proposal would reduce the gift tax receipts going to the Department of the Treasury triggered by the transfer of death gratuities directly to trusts instead of first being given to intermediary custodians. The Department of the Treasury estimates the cost to be less than \$1 million per year.

Changes to Existing Law: This proposal would make the following changes to section 1477 of title 10, United States Code:

§ 1477. Death Gratuity: eligible survivors.

(a) DESIGNATION OF RECIPIENTS.—(1) On and after July 1, 2008, or such earlier date as the Secretary of Defense may prescribe, a person covered by section 1475 or 1476 of this title may designate one or more persons to receive all or a portion of the amount payable under section 1478 of this title. The designation of a person to receive a portion of the amount shall indicate the percentage of the amount, to be specified only in 10 percent increments, that the designated person may receive. The balance of the death gratuity, if any, shall be paid in accordance with subsection (b).

(2) If a person covered by section 1475 or 1476 of this title has a spouse, but designates a person other than the spouse to receive all or a portion of the amount payable under section 1478 of this title, the Secretary concerned shall provide notice of the designation to the spouse.

(3) In this subsection, the term “person” includes—

(A) the estate of the member; or

(B) a trust legally established under any Federal, State, or territorial law, including a supplemental or special needs trust established under subparagraph (A) or (C) of section 1917(d)(4) of the Social Security Act (42 U.S.C. 1396p(d)(4)) for the sole benefit of a dependent child considered disabled under section 1614(a)(3) of that Act (42 U.S.C. 1382c(a)(3)) who is incapable of self-support because of mental or physical incapacity.

(b) DISTRIBUTION OF REMAINDER; DISTRIBUTION IN ABSENCE OF DESIGNATED RECIPIENT.—If a person covered by section 1475 or 1476 of this title does not make a designation under subsection (a) or designates only a portion of the amount payable under section 1478 of this title, the amount of the death gratuity not covered by a designation shall be paid as follows:

(1) To the surviving spouse of the person, if any.

(2) If there is no surviving spouse, to any surviving children (as prescribed by subsection (d)) of the person and the descendants of any deceased children by representation.

(3) If there is none of the above, to the surviving parents (as prescribed by subsection (c)) of the person or the survivor of them.

(4) If there is none of the above, to the duly-appointed executor or administrator of the estate of the person.

(5) If there is none of the above, to other next of kin of the person entitled under the laws of domicile of the person at the time of the person's death.

(c) TREATMENT OF PARENTS.—For purposes of subsection (b)(3), parents include fathers and mothers through adoption. However, only one father and one mother may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent entered a status described in section 1475 or 1476 of this title.

(d) TREATMENT OF CHILDREN.—Subsection (b)(2) applies, without regard to age or marital status, to—

- (1) legitimate children;
- (2) adopted children;
- (3) stepchildren who were a part of the decedent's household at the time of his death;
- (4) illegitimate children of a female decedent; and
- (5) illegitimate children of a male decedent—
 - (A) who have been acknowledged in writing signed by the decedent;
 - (B) who have been judicially determined, before the decedent's death, to be his children;
 - (C) who have been otherwise proved, by evidence satisfactory to the Secretary of Veterans Affairs, to be children of the decedent; or
 - (D) to whose support the decedent had been judicially ordered to contribute.

(e) EFFECT OF DEATH BEFORE RECEIPT OF GRATUITY.—If a person entitled to all or a portion of a death gratuity under subsection (a) or (b) dies before the person receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by subsection (b).

Section 607 would extend certain expiring bonus and special pay authorities.

Subsection (a) of this proposal would extend income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service through December 31, 2021. The Department of Defense and Congress recognize the prudence of this incentive, which compensates an involuntarily mobilized Reserve Service member in an amount equal to the monthly income differential between the member's average monthly civilian income and the member's total monthly military compensation.

Subsection (b) of this proposal would extend two critical recruitment and retention incentive programs for Reserve component health care professionals through December 31, 2021. The Reserve components historically have found it challenging to meet the required manning in the health care professions. These incentives, which target nurse and critical health care profession skills, are essential to meet required manning levels. The financial assistance and health professions loan repayment programs have proven to be powerful recruiting tools for attracting young health professionals trained in specialty areas that are critically short in the Selected Reserve. Extending these authorities is critical to the continued success of recruiting young, skilled health professionals into the Selected Reserve.

Subsection (c) of this proposal would extend accession and retention incentives for nuclear-qualified officers through December 31, 2021. These incentives enable the Navy to attract and retain the qualified personnel required to maintain the operational readiness and unparalleled safety record of the nuclear-powered submarines and aircraft carriers, which comprise over 40% of the Navy's major combatants. Due to extremely high training costs and regulatory requirements for experienced supervisors, these incentives provide the surest and most cost-effective means to maintain the required quantity and quality of these officers.

The nuclear officer bonus and nuclear officer incentive pay (NOIP) program is structured to provide career-long retention of officers in whom the Navy has made a considerable training investment and who have continually demonstrated superior technical and management ability. The scope of the program is limited to the number of officers required to fill critical nuclear supervisory billets, and eligibility is strictly limited to those officers who continue to meet competitive career milestones. The technical, leadership, and management expertise developed in the Naval Nuclear Propulsion Program (NNPP) is highly valued in the civilian workforce, which makes the retention of these officers a continuing challenge.

Subsection (d) of this proposal would extend through December 31, 2021, the consolidated special and incentive pay authorities added to subchapter II of chapter 5 of title 37, United States Code, by the National Defense Authorization Act for FY2008. Experience shows that retention of members in critical skills would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing replacements. The Department of Defense and the Congress have long recognized the cost-effectiveness of financial incentives in supporting effective staffing in such critical military skills, assignments, and high priority units.

Subsection (e) of this proposal would extend through December 31, 2021, the Secretary of Defense authority to prescribe a temporary increase in the rates of basic allowance for housing otherwise prescribed for a military housing area or a portion of a military housing area if the military housing area or portion thereof is located in an area covered by a declaration by the President that a major disaster exists; or contains one or more military installations that are

experiencing a sudden increase in the number of members of the armed forces assigned to the installation.

ONE YEAR EXTENSION AUTHORITIES FOR RESERVE FORCES:

Budget Implications: This section will extend for one year critical income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service. Dedicated resources are included within the Fiscal Year (FY) 2021 President’s Budget request.

ONE YEAR EXTENSION OF TITLE 10 AUTHORITIES RELATING TO HEALTH CARE PROFESSIONALS:

Budget Implications: This section will extend for one year critical accession and retention incentive programs, which the military departments fund annually. The military departments have already projected expenditures for these incentives and programmed them via budget proposals. The military departments have projected expenditures of approximately \$46.6 million annually for FY2021 through FY2025 for these incentives in their budget proposals, to be funded from the Military Personnel accounts. Tables 2a and 2b included the numbers and funding for the pay authorities listed in subsection (b). The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation To	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army Res	\$20.7	\$20.7	\$20.7	\$20.7	\$20.7	Reserve Personnel, Army	01		
Army National Guard	\$20.6	\$20.6	\$20.6	\$20.6	\$20.6	National Guard Personnel, Army	01		
Navy Res	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	Reserve Personnel, Navy	01		
AF Res	\$2.2	\$2.2	\$2.2	\$2.2	\$2.2	Reserve Personnel, Air Force	01		
Air National Guard	\$.8	\$.8	\$.8	\$.8	\$.8	National Guard Personnel, Air Force	01		
Total	\$46.6	\$46.6	\$46.6	\$46.6	\$46.6				

NUMBER OF PERSONNEL AFFECTED									
Program	FY	FY	FY	FY	FY	Appropriation	Budget	BLI/SAG	Program

	2021	2022	2023	2024	2025	To	Activity		Element (for all RDT&E programs)
Army Res	1,117	1,117	1,117	1,117	1,117	Reserve Personnel, Army	01		
Army National Guard	554	554	554	554	554	National Guard Personnel, Army	01		
Navy Res	129	129	129	129	129	Reserve Personnel, Navy	01		
AF Res	80	80	80	80	80	Reserve Personnel, Air Force	01		
Air National Guard	33	33	33	33	33	National Guard Personnel, Air Force	01		
Total	1,913	1,913	1,913	1,913	1,913				

ONE YEAR EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS:

Budget Implications: This section will extend for one year the critical accession and retention incentive programs the Navy funds each year. The Navy has already projected expenditures for these incentives and programmed them into budget proposals. The Navy has projected expenditures of just over \$99.1 million annually, to be funded from their Military Personnel account, to account for new and renegotiated contracts to be executed each year from FY 2021 through 2025. The Army and Air Force are not authorized in the statute to pay these bonuses. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Navy	\$96.5	\$96.5	\$96.5	\$96.5	\$96.5	Military Personnel, Navy	01, 03		
Navy Res	\$2.6	\$2.6	\$2.6	\$2.6	\$2.6	Reserve Personnel, Navy	01		
Total	\$99.1	\$99.1	\$99.1	\$99.1	\$99.1				

NUMBER OF PERSONNEL AFFECTED									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)

									RDT&E programs)
Navy	2,724	2,724	2,724	2,724	2,724	Military Personnel, Navy	01, 03		
Navy Res	175	175	175	175	175	Reserve Personnel, Navy	01		
Total	2,899	2,899	2,899	2,899	2,899				

ONE YEAR EXTENSION OF AUTHORITIES RELATING TO CONSOLIDATED SPECIAL PAY, INCENTIVE PAY, AND BONUS AUTHORITIES.

Budget Implications: This section will extend for one year the consolidated special and incentive programs the military departments fund each year. These pays consist of enlisted and officer bonuses, aviation bonuses and incentives, non-physician health professions pays, hazardous duty pays, assignment and special duty pays, skill incentive pays, and critical skill retention bonuses. This section does not include the nuclear officer pays, which are located above. Specifically, the military departments have projected expenditures of approximately \$5.3 billion annually from FY 2021 through FY 2025 for these incentives in their budget proposals, to be funded from the Military Personnel accounts. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget.

RESOURCE IMPACT (\$ MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	\$1,426	\$1,426	\$1,426	\$1,426	\$1,426	Military Personnel, Army	01, 02		
ARNG	\$260.5	\$260.5	\$260.5	\$260.5	\$260.5	National Guard Personnel, Army	01		
USAR	\$237.4	\$237.4	\$237.4	\$237.4	\$237.4	Reserve Personnel, Army	01		
Navy	\$1,694	\$1,694	\$1,694	\$1,694	\$1,694	Military Personnel, Navy	01, 02		
USNR	\$44.5	\$44.5	\$44.5	\$44.5	\$44.5	Reserve Personnel, Navy	01		
Marine Corps	\$262	\$262	\$262	\$262	\$262	Military Personnel, Marine Corps	01, 02		
USMCR	\$10.1	\$10.1	\$10.1	\$10.1	\$10.1	Reserve Personnel, Marine Corps	01		
Air Force	\$1,144	\$1,144	\$1,144	\$1,144	\$1,144	Military Personnel, Air	01, 02		

						Force			
Air National Guard	\$104.2	\$104.2	\$104.2	\$104.2	\$104.2	National Guard Personnel, Air Force	01		
AF Res	\$71	\$71	\$71	\$71	\$71	Reserve Personnel, Air Force	01		
Total	\$5,254	\$5,254	\$5,254	\$5,254	\$5,254				

NUMBER OF PERSONNEL AFFECTED

Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	241,837	241,837	241,837	241,837	241,837	Military Personnel, Army	01, 02		
ARNG	51,168	51,168	51,168	51,168	51,168	National Guard Personnel, Army	01		
USAR	68,398	68,398	68,398	68,398	68,398	Reserve Personnel, Army	01		
Navy	333,957	333,957	333,957	333,957	333,957	Military Personnel, Navy	01, 02		
USNR	5,897	5,897	5,897	5,897	5,897	Reserve Personnel, Navy	01		
Marine Corps	43,620	43,620	43,620	43,620	43,620	Military Personnel, Marine Corps	01, 02		
USMCR	744	744	744	744	744	Reserve Personnel, Marine Corps	01		
Air Force	136,808	136,808	136,808	136,808	136,808	Military Personnel, Air Force	01, 02		
Air National Guard	6,617	6,617	6,617	6,617	6,617	National Guard Personnel, Air Force	01		
AF Res	12,471	12,471	12,471	12,471	12,471	Reserve Personnel, Air Force	01		
Total	901,517	901,517	901,517	901,517	901,517				

ONE YEAR EXTENSION OF AUTHORITY TO PROVIDE TEMPORARY INCREASE IN RATES OF BASIC ALLOWANCE FOR HOUSING:

Budget Implications: This section will extend for one year the Secretary of Defense authority to temporarily increase basic allowance for housing rates for areas hit by a major disaster or experiencing a sudden increase in the number of members of the armed forces assigned to an installation. Currently the Department is not utilizing this authority, however, the authority is necessary to provide assistance to members impacted by a disaster such as Hurricane Florence in South Carolina and Hurricane Michael in Florida. The military departments do not project expenditures for this allowance in their budget proposals.

Changes to Existing Laws: This proposal would make the following changes to title 10 and title 37, United States Code:

TITLE 10, UNITED STATES CODE

§ 2130a. Financial assistance: nurse officer candidates

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2020~~ December 31, 2021, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than \$20,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed \$10,000.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend in an amount not to exceed the stipend rate in effect under section 2121(d) of this title for each month the individual is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution by the Secretary selecting the person. The continuation bonus may be paid for not more than 24 months.

§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before ~~December 31, 2020~~ December 31, 2021.

TITLE 37, UNITED STATES CODE

§ 331. General bonus authority for enlisted members

(h) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ December 31, 2021.

§ 332. General bonus authority for officers

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ December 31, 2021.

§ 333. Special bonus and incentive pay authorities for nuclear officers

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ December 31, 2021.

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

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ December 31, 2021.

§ 335. Special bonus and incentive pay authorities for officers in health professions

(k) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ December 31, 2021.

§ 336. Contracting bonus for cadets and midshipmen enrolled in the Senior Reserve Officers' Training Corps

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2020~~ December 31, 2021.

§ 351. Hazardous duty pay

(h) TERMINATION OF AUTHORITY.—No hazardous duty pay under this section may be paid after ~~December 31, 2020~~ December 31, 2021.

§ 352. Assignment pay or special duty pay

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ December 31, 2021.

§ 353. Skill incentive pay or proficiency bonus

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2020~~ December 31, 2021.

§ 355. Special pay: retention incentives for members qualified in critical military skills or assigned to high priority units

(h) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any reenlistment, or voluntary extension of an enlistment, in the armed forces entered into after ~~December 31, 2020~~ December 31, 2021, and no agreement under this section may be entered into after that date.

§ 403. Basic allowance for housing

(b) BASIC ALLOWANCE FOR HOUSING INSIDE THE UNITED STATES.—*****

(7)(A) *****

(E) An increase in the rates of basic allowance for housing for an area may not be prescribed under this paragraph or continue after ~~December 31, 2020~~ December 31, 2021.

§ 910. Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service

(g) TERMINATION.—No payment shall be made to a member under this section for months beginning after ~~December 31, 2020~~ December 31, 2021, unless the entitlement of the member to payments under this section is commenced on or before that date.

TITLE VII— HEALTH CARE PROVISIONS

Section 701 would insert a new section 1073e in title 10, United States Code (U.S.C.), to specifically authorize an enhanced Department of Defense health care fraud and abuse prevention program and provide means for its effective and efficient operation. This is in recognition that TRICARE has been victimized by health care fraud and abuse. Subsection (a) of the new section specifically authorizes the program and provides that it may be administered jointly by the Inspector General of the Department of Defense and the Director of the Defense Health Agency. Subsection (b) of the new section allows the program to include existing legal authority under the Social Security Act for the heads of Federal agencies and the Inspectors General of those agencies that operate Federal health care programs to assess civil monetary penalties in a manner comparable to the longstanding and successful program of the Department of Health and Human Services (HHS) to combat fraud and abuse against Medicare and Medicaid. DoD has implemented this authority under the Social Security Act in a proposed regulation at 84 FR 18437, which amends Department of Defense regulations by adding 32 CFR

Part 200. Subsection (c) of the new section provides that civil monetary penalty amounts collected will be credited to the appropriation available for the Department of Defense health care program affected for the fiscal year in which the amount is collected. Penalties cannot be imposed or collected until the Final Rule is published at the end of 2019. This extends the current rule under 10 U.S.C. 1079a that refunds and other amounts collected under CHAMPUS/TRICARE are credited to the Defense Health Program appropriation and available for use under that program. Any penalty amounts collected may be used to support the operation of the fraud and abuse prevention program. Under the HHS program and the existing Social Security Act provisions, civil monetary penalty amounts are credited to the Federal Hospital Insurance Trust Fund or applicable Medicaid account and may be used to support health care fraud and abuse prevention. Subsection (d) of the new section authorizes interagency agreements with the Department of Health and Human Services, the Department of Justice, and other agencies for the effective and efficient implementation of the fraud and abuse prevention program. Subsections (e) and (f) of the new section make clear that the section does not limit existing authorities of the DoD Inspector General and provide applicable definitions.

Budgetary Implications: This section would reduce Defense Health Program requirements by \$74 million from FY 2021 – FY 2025. The savings estimates were based on recent history of TRICARE fraud and abuse audits and investigations that, for a variety of reasons, did not result in criminal or civil actions by the Department of Justice under other legal authorities. The saving estimates were based on the estimate of 50 cases per year with an average penalty of \$600,000 per case and a collection rate of 60%. Additionally, the estimated recovery amount subtracts out appeal costs, full-time equivalent costs, and administrative costs. The initial estimated amount of recovery is limited as it is anticipated that it will take DoD a few years to attain full operational capability. The resources saved are reflected in the table below and are included within the FY 2021 President's Budget.

RESOURCE IMPACT (\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element
Defense Health	(8)	(16)	(16)	(17)	(18)	Operation and Maintenance, Defense Health Program	01	5_01	-

Changes to Existing Law: This proposal would insert a new section in chapter 55 of title 10, United States Code, as shown in full in the legislative language above.

Section 702 would increase the Department of Defense’s (DOD) flexibility in determining which provider types under the TRICARE Program may diagnose or assess a mental or physical illness, injury, or bodily malfunction, and, by extension, the extent to which referrals and supervision are required for these provider types. Under current law, TRICARE beneficiaries must be assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker. This requires that one of the listed providers manage the care provided by any other provider under the TRICARE program. This statutory limitation on provider status is unique to TRICARE and not seen in private insurance

programs. Significantly, it fails to take into account the increased education and training of other allied health professionals since the statute was enacted and the evolving nature of health care delivery and coverage.

Some current TRICARE-authorized providers operate under State scopes of practice and licensures that permit them to treat patients without supervision by other categories of providers; however, TRICARE's statute prohibits them from doing so when treating TRICARE beneficiaries. These providers may have sufficient education and expertise to assess, diagnose, and treat patients within their scopes of practice. For example, physical therapists were once only required to have a bachelor's degree; this requirement has since been raised to a master's degree and, due to recent changes enacted by the Commission on Accreditation in Physical Therapy Education, new practitioners require a doctorate degree. However, physical therapists working under TRICARE are required to be referred to and supervised by one of the provider types currently listed in the statute. The Defense Health Agency is limited in its ability under existing law to independently assess provider types and determine appropriate supervision and referral requirements when the provider type is not listed in the statute by name.

Current law excludes independent practice by a large number of providers under TRICARE whose scopes of practice and licensure might otherwise allow it. Additionally, referral and supervision requirements may require TRICARE beneficiaries to make extra visits to primary care providers in order to receive continued care by an allied health professional, and adds to the burden on those providers and expense to beneficiaries. This statutory revision would not change the Defense Health Agency's authority to require supervision or referrals for any type of provider. Adoption of this legislation would not immediately change the supervision and referral requirements for any specific type of provider under TRICARE or eliminate the need for supervision and referrals program-wide; however, once granted this authority, the Defense Health Agency could review existing supervision and referral requirements and initiate changes to regulation if deemed appropriate. Additionally, this legislation would give the Defense Health Agency the ability to set supervision and referral requirements specific to the provider type when adding new types of authorized providers under the regulation.

Budgetary Implications: No budget impact. This assumes no additional costs will be incurred or saved based on this proposal, given that additional regulatory and policy changes would be required in order for costs to be incurred (or saved). While the proposal would permit the Secretary of Defense to exercise additional discretion in supervision and referral requirements for individual provider classes, no such change would automatically occur. Increased access to authorized providers might increase health care costs, but could also decrease health care costs for visits to primary care or other providers that currently must supervise or refer to a provider not listed in section 1079(a)(12) of title 10, United States Code. Any changes to referral and supervision requirements for a particular provider type will require regulatory changes; the Defense Health Agency will evaluate cost impact prior to pursuing any changes to the regulation.

Changes to Existing Law: This proposal would amend section 1079(a)(12) of title 10, United States Code, as follows:

§1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title, of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting with the other administering Secretaries, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1076 of this title, except as follows:

* * * * *

(12) Any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, ~~or~~ certified clinical social worker, or other category of provider as approved by the Secretary, as appropriate, may not be provided, except as authorized in paragraph (4). Pursuant to an agreement with the Secretary of Health and Human Services and under such regulations as the Secretary of Defense may prescribe, the Secretary of Defense may waive the operation of this paragraph in connection with clinical trials sponsored or approved by the National Institutes of Health if the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

* * * * *

Section 703 would extend eligibility for hearing aids authorized under section 1077(a)(16) of title 10, United States Code, to all pediatric dependents. Extension of the hearing aid benefit to include all pediatric dependents recognizes the critical role that hearing intervention can play in the development of the brains of children and adolescents. The current law restricts hearing aids to the dependents of active duty uniformed service members (including spouses and children, in addition to other active duty service member dependents defined in section 1072); there is no age restriction. This limited benefit is largely a cost-saving restriction, due to the increasing levels of hearing loss in older populations (disabling hearing loss increases from two percent for adults ages 45 to 54, to 8.5 percent for adults ages 55 to 64, to 25 percent for ages 65 to 74, up to 50 percent for ages 75 and older). Retirees and their dependents (particularly spouses) are more likely to be older, with an increased likelihood to need hearing amplification. However, the existing restriction impacts pediatric dependents other than dependents of active duty service members (including children of retirees), despite the fact that hearing loss in the pediatric population is both less prevalent (two to three per 1000 children are born with detectable hearing loss) and more damaging. In some cases, a pediatric dependent may be eligible for a hearing aid while the service member is on active duty, and then no longer be eligible once their sponsor retires. This proposal recognizes that hearing aids in children do more than amplify sound; they aid in brain development. Failure to correct hearing loss at a young age can impact the child's development into adulthood and can result in additional costs to the TRICARE Program, including behavioral, occupational, and speech-language therapies. Therefore, this proposals provides that all pediatric dependents should be eligible for hearing aids under an expansion of the hearing aid benefit, while continuing to exclude the costliest population (retirees and their dependents over the age of 18).

Beginning around the age of six months to a year, an infant's brain undergoes changes to the language center. At birth, infant brains have the capacity to learn any language, but during this developmental period, the child's experience causes the brain to create pathways specific to the child's native language. During this time, the infant begins to specialize in his or her ability to discriminate the native language, while losing the ability to do so for other languages. The process is typically completed between ages five and six and requires the child's active participation in order to gain experiences related to sensory perception. This process impacts not just the child's ability to speak and understand auditory language, but to comprehend language in general, including written language. While development of the language centers of the brain typically completes around age five, higher cognitive functions continue to develop until around ages 15 to 18 when the child reaches adult levels of brain development. Access to hearing intervention throughout childhood and adolescence impacts higher cognition, including reasoning, problem-solving, literacy rates, self-esteem, and the ability of the child to interact in an age-appropriate manner with peers and adults.

Much of the research on brain development and the critical role played by early hearing intervention has occurred since section 702 of Public Law 107-107, which authorized hearing aids for dependents of active duty service members, was signed into law in 2001. Since that time, the American Academy of Pediatrics has issued guidance advocating hearing intervention no later than six months of age for infants with confirmed hearing loss, arguing that hearing is essential for linguistic competency and literacy and that failure to do so can ultimately result in lower education and employment levels in adulthood. The Joint Committee on Infant Hearing also advocates hearing intervention by the age of six months, with access to high-quality technology including hearing aids and cochlear implants. Since the passage of Public Law 107-107, 23 States have passed legislation mandating that insurance providers cover some level of hearing aid intervention for children. State caps vary from 12 to 24 years of age, with a majority using the age of 18 as the cutoff point (three states mandate coverage for adults). While TRICARE has no legal requirement to follow State insurance coverage requirements, the increasing number of States requiring coverage for hearing aids for children underlines a growing understanding of the importance of early intervention for hearing-impaired children.

TRICARE covers implantable hearing devices, such as auditory brainstem implants, auditory osseointegrated implants, and middle ear implants (both fully and partially implantable), under the prosthetic benefit, but is prevented from extending that benefit to traditional hearing aids by the statutory exclusion restricting hearing aids to dependents of active duty uniformed service members. The statutory revision in this proposal would increase access to hearing interventions for a highly vulnerable population, while maintaining cost controls by continuing to restricting access for older beneficiaries. Existing requirements for profound hearing loss would remain unchanged.

Budgetary Implications: The table below details resource requirements associated with this proposal. The resources reflected in the table below are included in the fiscal year 2021 President's Budget. It details resource requirements associated with this proposal including both health care costs (i.e., costs to provide hearing aids) and administrative costs. The cost for the first year of the benefit is higher than for subsequent years due to both one-time start-up

administrative costs (0.21M) and pent-up demand by beneficiaries who either have not purchased hearing aids or who purchased lower-cost/lower-quality hearing aids out of pocket and choose to have them replaced (2.08M). Additionally, the first year cost includes a full year of health care costs, but would be lower depending on the date the legislation went into effect (reduced approximately .11M per month after October 1, 2020). This estimate assumes that hearing aids would need to be replaced every five years and includes all costs associated with the hearing aid, including fitting and repairs. The estimate also assumes that existing requirements regarding significant hearing loss and administration of the hearing aid benefit currently in place for active duty family members would remain unchanged for the beneficiary population in this proposal, with the exception of cost-shares, which are higher for non-active duty family members. This cost estimate recognizes that some TRICARE-eligible children not currently enrolled in TRICARE would be enrolled by their parents due to the new benefit, and accounts for their total health care costs. Not included in this estimate are any potential cost offsets due to reductions in other services due to early hearing intervention, such as speech, occupational, or behavioral therapy.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/ SAG	Program Element
Defense Health	4.11	1.88	1.97	2.07	2.17	Operation and Maintenance, Defense Health Program	01	02_01	-

Changes to Existing Law: This proposal would make the following changes to section 1077 of title 10, United States Code:

§1077. Medical care for dependents: authorized care in facilities of uniformed services

(a) Only the following types of health care may be provided under section 1076 of this title:

* * * * *

(16) Except as provided by subsection (g), a hearing aid, but only for a dependent of a member of the uniformed services on active duty or any dependent who is 18 years old or younger, and only if the dependent has a profound hearing loss, as determined under standards prescribed in regulations by the Secretary of Defense in consultation with the administering Secretaries.

* * * * *

Section 704. Section 1079(a) of title 10, United States Code, authorizes the services of Christian Science practitioners and carves out those services as an exception to the requirement that all services covered under the TRICARE program be medically necessary. This creates an inequity in the TRICARE program, as other services that are not medically necessary, including other faith-based healing services, are not covered. Additionally, it diverts resources away from the overall lethality of the Armed Forces.

This proposal would remove Christian Science practitioners as authorized providers, thereby reinforcing the requirement that TRICARE only cover medically necessary services and aligning TRICARE with the health care insurance industry, which by-in-large, does not pay for Christian Science services. While a few insurers cover Christian Science services, the industry has trended towards exclusion of these providers and services as covered medical benefits, as they are neither medically necessary, nor medical in nature.

The authorization of Christian Science practitioners and associated statutory exemption of Christian Science services from the medical necessity requirement was originally enacted because members of the Church of Christ, Science (the Church) were originally instructed to seek the care of Christian Science practitioners in lieu of other clinicians, including physicians. However, the Church has changed its position and no longer prohibits members from seeking traditional medical care, so this statutory exemption is no longer necessary.

Christian Science practitioner services include prayer, recommending certain biblical and Christian Science writings, and answering spiritual questions. The scope of care does not include any form of psychological treatment, including counseling or therapy; utilizing any form of medical technology or treatment, including diagnosis, prognosis, drugs (medicated, herbal, vitamin-based products or remedies); or physical therapy or any form of physical contact or therapeutic measures.

TRICARE recognizes the important place that personal faith has in beneficiaries' lives; however, this must be balanced with the charge of TRICARE to support a medically ready force, as well as increased efforts to improve the lethality of the Armed Forces, and thus it is incumbent on the program to use taxpayer dollars for care that is medically necessary and supported by reliable evidence, including peer-reviewed clinical trials. In addition, covering faith-based healing of one faith but not others creates an inherent lack of parity in the TRICARE benefit. This proposal removes outdated legislation that is no longer necessary given that members of the Church are now able to seek traditional medical care. It also restores parity and promotes evidence-based medicine by eliminating Christian Science practitioners as an independent class of provider and the associated exemption of Christian Science services from the requirement in section 1079 that TRICARE-covered services be medically necessary. Christian Science practitioners would not be prohibited from coverage if they were able to meet the requirements of an otherwise authorized TRICARE provider type (for example, a skilled nursing facility).

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request. In FY 2018, 53 services were reported as being provided by Christian Science practitioners at a total cost to the TRICARE Program of approximately \$3,000. Executing this proposal would lead to no additional administrative costs. As a result, there are minimal cost savings and no expenditures that would result.

Changes to Existing Law: This proposal would make the following changes to section 1079 of title 10, United States Code:

§1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title, of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting with the other administering Secretaries, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1076 of this title, except as follows:

* * * * *

~~(4) Under joint regulations to be prescribed by the administering Secretaries, the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided. Repealed.~~

...

* * * * *

(12) Any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker, as appropriate, may not be provided; ~~except as authorized in paragraph (4).~~ Pursuant to an agreement with the Secretary of Health and Human Services and under such regulations as the Secretary of Defense may prescribe, the Secretary of Defense may waive the operation of this paragraph in connection with clinical trials sponsored or approved by the National Institutes of Health if the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

...

* * * * *

Section 705 would amend title XVII of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2567), which authorized the Department of Defense (DoD)-Department of Veterans (VA) Affairs Medical Facility Demonstration Project in North Chicago and Great Lakes, Illinois. The purpose of this proposal is to authorize the continuation of the demonstration project. A comprehensive assessment of the demonstration project concluded that continued joint operation of a medical center in the North Chicago-Great Lakes area serves the needs of both departments and continues to provide a valuable demonstration of VA-DoD medical system collaboration.

This proposal would amend would amend section 1704 of title XVII to extend the term of the Joint Medical Facility Demonstration Fund from September 30, 2021, to September 30, 2023. Continued use of the joint fund is essential to the program.

Budget Implications: The resources reflected in the table below are included within the FY 2021 President’s Budget; however, they are subject to update based upon the final reconciliation

of prior year costs, as agreed to by the Department of Defense and the Department of Veterans Affairs.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element
Defense Health Program	130.40	134.04	137.78	141.62	146.91	Defense Health Program, Operation and Maintenance	01	3_01	-
Total	130.40	134.04	137.78	141.62	146.91	--			

Changes to Existing Law: This proposal would make the following changes to section 1704 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2190):

SEC. 1704 JOINT FUNDING AUTHORITY.

(a) JOINT MEDICAL FACILITY DEMONSTRATION FUND.--

(1) ESTABLISHMENT.--There is established on the books of the Treasury under the Department of Veterans Affairs a fund to be known as the `Joint Department of Defense-Department of Veterans Affairs Medical Facility Demonstration Fund' (in this section referred to as the `Fund').

(2) ELEMENTS.--The Fund shall consist of the following:

(A) Amounts transferred to the Fund by the Secretary of Defense, in consultation with the Secretary of the Navy, from amounts authorized and appropriated for the Department of Defense specifically for that purpose.

(B) Amounts transferred to the Fund by the Secretary of Veterans Affairs from amounts authorized and appropriated for the Department of Veterans Affairs specifically for that purpose.

(C) Amounts transferred to the Fund from medical care collections under paragraph (4).

(3) DETERMINATION OF AMOUNTS TRANSFERRED GENERALLY.--The amount transferred to the Fund by each of the Secretary of Defense and the Secretary of Veterans Affairs under subparagraphs (A) and (B), as applicable, of paragraph (2) each fiscal year shall be such amount, as determined by a methodology jointly established by the Secretary of Defense and the Secretary of Veterans Affairs for purposes of this subsection, that reflects the mission-specific activities, workload, and costs of provision of health care at the James A. Lovell Federal Health Care Center of the Department of Defense and the Department of Veterans Affairs, respectively.

(4) TRANSFERS FROM MEDICAL CARE COLLECTIONS.--

(A) IN GENERAL.--Amounts collected under the authorities specified in subparagraph (B) for health care provided at the James A. Lovell Federal Health Care Center may be transferred to the Fund under paragraph (2)(C).

(B) AUTHORITIES.--The authorities specified in this subparagraph are the following:

(i) Section 1095 of title 10, United States Code.

(ii) Section 1729 of title 38, United States Code.

(iii) Public Law 87-693, popularly known as the `Federal Medical Care Recovery Act' (42 U.S.C. 2651 et seq.).

(5) ADMINISTRATION.--The Fund shall be administered in accordance with such provisions of the executive agreement under section 1701 as the Secretary of Defense and the Secretary of Veterans Affairs shall jointly include in the executive agreement. Such provisions shall provide for an independent review of the methodology established under paragraph (3).

(b) AVAILABILITY.--

(1) IN GENERAL.--Funds transferred to the Fund under subsection (a) shall be available to fund the operations of the James A. Lovell Federal Health Care Center, including capital equipment, real property maintenance, and minor construction projects that are not required to be specifically authorized by law under section 2805 of title 10, United States Code, or section 8104 of title 38, United States Code.

(2) LIMITATION.--The availability of funds transferred to the Fund under subsection (a)(2)(C) shall be subject to the provisions of section 1729A of title 38, United States Code.

(3) PERIOD OF AVAILABILITY.--

(A) IN GENERAL.--Except as provided in subparagraph (B), funds transferred to the Fund under subsection (a) shall be available under paragraph (1) for one fiscal year after transfer.

(B) EXCEPTION.--Of an amount transferred to the Fund under subsection (a), an amount not to exceed two percent of such amount shall be available under paragraph (1) for two fiscal years after transfer.

(c) FINANCIAL RECONCILIATION.--The executive agreement under section 1701 shall provide for the development and implementation of an integrated financial reconciliation process that meets the fiscal reconciliation requirements of the Department of Defense, the Department of the Navy, and the Department of Veterans Affairs. The process shall permit each of the Department of Defense, the Department of Navy, and the Department of Veterans Affairs to identify their fiscal contributions to the Fund, taking into consideration accounting, workload, and financial management differences.

(d) ANNUAL REPORT.--The Secretary of Defense, in consultation with the Secretary of the Navy, and the Secretary of Veterans Affairs shall jointly provide for an annual independent review of the Fund for at least three years after the date of the enactment of this Act. Such review shall include detailed statements of the uses of amounts of the Fund and an evaluation of the adequacy of the proportional share contributed to the Fund by each of the Secretary of Defense and the Secretary of Veterans Affairs.

(e) TERMINATION.--The authorities in this section shall terminate on ~~September 30, 2021~~September 30, 2023.

Section 706 would resolve constitutional defects in the current provisions of law governing appointment of members of the Council of Directors of the Henry M. Jackson Foundation for the Advancement of Military Medicine. Currently, the Council is composed of the Chairmen and Ranking Members of the House and Senate Armed Services Committees, the President (referred to in the statute as “Dean”) of the Uniformed Services University of the Health Sciences (USUHS), and several additional members appointed by those five *ex officio* members. Section 739 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 increased from four to six the number of additional

members. With respect to this provision, the President's signing statement included the following:

[S]ection 739 would deepen existing violations of the Appointments Clause, the Incompatibility Clause, and the separation of powers contained within the statute that established the Henry M. Jackson Foundation for the Advancement of Military Medicine. President Reagan signed that legislation on the understanding that these constitutional defects would be remedied (see Statement on Signing the Foundation for the Advancement of Military Medicine Act of 1983, 1 Pub. Papers 782, 782 (May 27, 1983)), but that has not happened. The Attorney General and the Secretary of Defense should confer about measures that would allow this Foundation to continue its important work in compliance with the Constitution.

The concern reflected in the President's signing statement is consistent not only with President Reagan's signing statement when the authorizing legislation was first enacted, but also with the recent Supreme Court decision in *Department of Transportation v. Ass'n of American Railroads*, 135 S. Ct. 1225 (2015), relating to the Board of Directors and operations of Amtrak. To remedy the constitutional defects, this proposal would provide that the Foundation's Council of Directors be made up of seven individuals appointed and removable by, and subject to the plenary supervision of, the Secretary of Defense. Seven is the current number of members exclusive of the members of Congress. To avoid any appearance of conflicting interests, the proposal also provides that Council members may not be officers or employees of the Federal Government or members of the USUHS Board of Regents.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request.

Changes to Existing Law: This proposal would make the following changes to section 178 of title 10, United States Code:

§178. The Henry M. Jackson Foundation for the Advancement of Military Medicine

(a) There is authorized to be established a nonprofit corporation to be known as the Henry M. Jackson Foundation for the Advancement of Military Medicine (hereinafter in this section referred to as the "Foundation") which shall not for any purpose be an agency or instrumentality of the United States Government. The Foundation shall be subject to the provisions of this section and, to the extent not inconsistent with this section, the Corporations and Associations Articles of the State of Maryland.

(b) It shall be the purpose of the Foundation (1) to carry out medical research and education projects under cooperative arrangements with the Uniformed Services University of the Health Sciences, (2) to serve as a focus for the interchange between military and civilian medical personnel, and (3) to encourage the participation of the medical, dental, nursing, veterinary, and other biomedical sciences in the work of the Foundation for the mutual benefit of military and civilian medicine.

(c)(1) The Foundation shall have a Council of Directors (hereinafter in this section referred to as the "Council") composed of:-

~~(A) the Chairmen and ranking minority members of the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives (or their designees from the membership of such committees), who shall be ex officio members,~~

~~(B) the Dean of the Uniformed Services University of the Health Sciences, who shall be an ex officio member, and~~

~~(C) six members appointed by the ex officio members of the Council designated in clauses (A) and (B).~~

seven individuals appointed by the Secretary of Defense. Such individuals may not be officers or employees of the Federal Government (other than for purposes of membership on the Council) nor be members of the Board of Regents under section 2113a of this title. The members of the Council shall be removable at will by, and subject to the plenary supervision of, the Secretary of Defense

(2) The term of office of each member of the Council appointed under ~~clause (C) of~~ paragraph (1) shall be four years, except that-

(A) any person appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(B) the terms of office of members first taking office shall expire, as designated by the ~~ex officio members of the Council~~ Secretary at the time of the appointment, ~~two~~ three at the end of two years and ~~two~~ four at the end of four years.

(3) The Council shall elect a chairman from among its members.

(d)(1) The Foundation shall have an Executive Director who shall be appointed by the Council and shall serve at the pleasure of the Council. The Executive Director shall be responsible for the day-to-day operations of the Foundation and shall have such specific duties and responsibilities as the Council shall prescribe.

(2) The rate of compensation of the Executive Director shall be fixed by the Council.

(e) The initial members of the Council shall serve as incorporators and take whatever actions as are necessary to establish under the Corporations and Associations Articles of the State of Maryland the corporation authorized by subsection (a).

(f) Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner in which the original designation or appointment was made.

(g) In order to carry out the purposes of this section, the Foundation is authorized to-

(1) enter into contracts with, accept grants from, and make grants to the Uniformed Services University of the Health Sciences for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education, including contracts for provision of such personnel and services as may be necessary to carry out such cooperative enterprises;

(2) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

(3) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Foundation and its employees;

(4) accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation;

(5) enter into contracts with individuals, public or private organizations, professional societies, and government agencies for the purpose of carrying out the functions of the Foundation;

(6) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation; and

(7) charge such fees for professional services furnished by the Foundation as the Executive Director determines reasonable and appropriate.

(h) A person who is a full-time or part-time employee of the Foundation may not be an employee (full-time or part-time) of the Federal Government.

(i) The Council shall transmit to the President annually, and at such other times as the Council considers desirable, a report on the operations, activities, and accomplishments of the Foundation.

Section 707 would extend the termination date of the authorities in section 1599c of title 10, United States Code (U.S.C.), for an additional five years with a new termination date of December 31, 2025.

Section 1599c allows the Secretary of Defense to exercise any authority for the appointment and pay of health care personnel under chapter 74 of title 38, U.S.C., for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense if the Secretary determines that the exercise of such authority is

necessary to provide or enhance the capacity of the Department to provide care and treatment for members of the Armed Forces who are wounded or injured on active duty in the Armed Forces and to support the ongoing patient care and medical readiness, education, and training requirements of the Department.

The authority further authorizes the Secretary to designate any category of healthcare occupations within the Department as shortage category positions or critical need occupations and utilize the authorities in section 3304 of title 5, U.S.C., to recruit and appoint qualified persons directly to positions so designated. This expedited hiring authority is critical to allowing the Department to hire highly qualified candidates into healthcare career fields.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request.

Changes to Existing Law: This proposal would make the following changes to section 1599c of title 10, United States Code:

§ 1599c. Health care professionals: enhanced appointment and compensation authority for personnel for care and treatment of wounded and injured members of the armed forces

(a) In General.—

(1) The Secretary of Defense may, at the discretion of the Secretary, exercise any authority for the appointment and pay of health care personnel under chapter 74 of title 38 for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense if the Secretary determines that the exercise of such authority is necessary in order to provide or enhance the capacity of the Department to provide care and treatment for members of the armed forces who are wounded or injured on active duty in the armed forces and to support the ongoing patient care and medical readiness, education, and training requirements of the Department of Defense.

(2)(A) For purposes of section 3304 of title 5, the Secretary of Defense may—

(i) designate any category of medical or health professional positions within the Department of Defense as a shortage category occupation or critical need occupation; and
(ii) utilize the authority in such section to recruit and appoint qualified persons directly in the competitive service to positions so designated.

(B) In using the authority provided by this paragraph, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(C) Any designation by the Secretary for purposes of subparagraph (A)(i) shall be based on an analysis of current and future Department of Defense workforce requirements.

(b) Termination of Authority.—

(1) The authority of the Secretary of Defense under subsection (a)(1) to exercise authorities available under chapter 74 of title 38 for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense expires ~~December 31, 2020~~ December 31, 2025.

(2) The Secretary may not appoint a person to a position of employment under subsection (a)(2) after ~~December 31, 2020~~ December 31, 2025.

Section 708 would allow the Nation's only Federal health sciences university, the Uniformed Services University of the Health Sciences (USUHS), to pursue medical research, medical consultation, and medical education impacting care provided throughout the Military Health System in a manner that is comparable with fully accredited schools of the health professions. Non-U.S. governmental institutions of higher learning are able to establish endowments for the purposes of programs, endowed chairs, and other research and educational activities that greatly benefit from the nature of no-year funds encompassed in an endowment construct. Presently, funds from royalties at USUHS are treated as having a limited lifecycle and must be used in a short period of time. This prevents the establishment of endowments that would provide enduring funds to foster continuity of military-relevant education and research. This proposal allows gifts and royalties received by USUHS to be used indefinitely as endowments for military-relevant medical education and research without having an expiration date.

Budget Implications: This proposal has no significant budget impact. Incidental costs or savings are accounted for within the FY 2021 President's Budget. There are no budgetary implications with this proposal because the research and education endeavors already occur. This simply permits the administrative change to allow royalties acquired by the university from the current activities to not expire as is currently the situation.

Changes to Existing Law: This section would make the following changes to section 2113 of title 10, United States Code:

§2113. Administration of University

(a) The business of the University shall be conducted by the Secretary of Defense with funds appropriated for and provided by the Department of Defense.

(b) The Secretary shall appoint a President of the University (hereinafter in this chapter referred to as the "President").

(c)(1) The Secretary, after considering the recommendations of the President, shall obtain the services of such military and civilian professors, instructors, and administrative and other employees as may be necessary to operate the University. Civilian members of the faculty and staff shall be employed under salary schedules and granted retirement and other related benefits prescribed by the Secretary (after due consideration by the Secretary) so as to place the employees of the University on a comparable basis with the employees of fully accredited schools of the health professions identified by the Secretary for purposes of this paragraph.

(2) The Secretary may confer academic titles, as appropriate, upon military and civilian members of the faculty.

(3) The military members of the faculty shall include a professor of military, naval, or air science as the Secretary may determine.

(4) The limitations in sections 5307 and 5373 of title 5 do not apply to the authority of the Secretary under paragraph (1) to prescribe salary schedules and other related benefits. In no event may the total amount of compensation paid to an employee under paragraph (1) in any year (including salary, allowances, differentials, bonuses, awards, and other similar cash payments) exceed the total amount of annual compensation (excluding expenses) specified in section 102 of title 3.

(d) The Secretary may negotiate agreements with agencies of the Federal Government to utilize on a reimbursable basis appropriate existing Federal medical resources. Under such agreements the facilities concerned will retain their identities and basic missions. The Secretary may negotiate affiliation agreements with an accredited university or universities. Such agreements may include provisions for payments for educational services provided students participating in Department of Defense educational programs.

(e) The Secretary of Defense may establish the following educational programs at the University:

- (1) Postdoctoral, postgraduate, and technological institutes.
- (2) A graduate school of nursing.
- (3) Other schools or programs, including certificate, certification, and undergraduate degree programs, that the Secretary determines necessary in order to operate the University in a cost-effective manner.

(f) The Secretary shall also establish programs in continuing medical education for military members of the health professions to the end that high standards of health care may be maintained within the military medical services.

(g) (1) The Secretary also is authorized--

(A) to enter into contracts with, accept grants from, and make grants to the Henry M. Jackson Foundation for the Advancement of Military Medicine established under section 178 of this title, or any other nonprofit entity, for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education;

(B) to make available to the Henry M. Jackson Foundation for the Advancement of Military Medicine, or any other nonprofit entity, on such terms and conditions as the Secretary determines appropriate, such space, facilities, equipment, and support services within the University as the Secretary considers necessary to accomplish cooperative enterprises undertaken by such Foundation, or nonprofit entity, and the University;

(C) to enter into contracts with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or any other nonprofit entity, under which the Secretary may furnish the services of such professional, technical, or clerical personnel as may be necessary to fulfill cooperative enterprises undertaken by such Foundation, or nonprofit entity, and the University;

(D) to accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property made to the University, including any gift, devise, or bequest for the support of an academic chair, teaching, research, or demonstration project;

(E) to enter into agreements with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other nonprofit entity, under which

scientists or other personnel of the Foundation or other entity may be utilized by the University for the purpose of enhancing the activities of the University in education, research, and technological applications of knowledge; and

(F) to establish and fund endowments under agreement with a nonprofit entity, including with funding from gifts, devises, and bequests received under this section and other authorities, or royalties received under chapter 63 of title 15, to carry out medical research, medical consultation, and medical education, with such endowment funds available to the University until expended; and

~~(FG)~~ to accept the voluntary services of guest scholars and other persons.

(2) The Secretary may not enter into any contract with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other entity, if the contract would obligate the University to make outlays in advance of the enactment of budget authority for such outlays.

(3) Scientists or other medical personnel utilized by the University under an agreement described in clause (E) of paragraph (1) may be appointed to any position within the University and may be permitted to perform such duties within the University as the Secretary may approve.

(4) A person who provides voluntary services under the authority of clause (F) of paragraph (1) shall be considered to be an employee of the Federal Government for the purposes of chapter 81 of title 5, relating to compensation for the work-related injuries, and to be an employee of the Federal Government for the purposes of chapter 171 of title 28, relating to tort claims. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of the provision of such services.

Section 709 would extend the collaborative relationship between the Department of Defense (DoD) and Department of Veterans Affairs (VA) beyond the sharing of existing health care resources and permit proactive, joint planning and capital investment in shared medical facilities with the goal of improving access to and the continuity, quality, and cost effectiveness of the direct health care provided to the Departments' respective beneficiaries. Joint construction and leasing of shared medical facilities to meet the combined requirements of both Departments fall outside of the existing statutory authorities of section 1104 of title 10, United States Code (U.S.C.), and section 8111 of title 38, U.S.C., for DoD-VA resource sharing of existing health care resources. This legislation would permit the Departments to optimize expenditures to enable collaboration where the Secretaries determine it is in the best interest of the Departments to do so. There is a corresponding legislative proposal by VA, which includes the addition of a new section in title 38, U.S.C., to facilitate and permit this joint effort.

Subsection (a) of this proposal would create a new section in chapter 55 of title 10, U.S.C., to allow the Department of Defense to enter into agreements with the Department of Veterans Affairs for the planning, designing, constructing, or leasing of shared medical facilities with the goal of improving the access to, and quality and cost effectiveness of, the health care provided by the Departments to their respective beneficiaries.

Subsection (a) also would provide authority to the Departments to both transfer and accept funds appropriated for planning and design, minor construction projects, and leasing of shared medical facilities. Specifically, both Departments desire authority to use minor

construction dollars within their respective thresholds to fund worthy collaborative projects, without having the aggregation of these funds convert a minor project into a major one. This legislative proposal would provide authority to both Departments to transfer and accept funds appropriated for minor projects. Each Department’s contribution for minor construction is limited to its respective dollar threshold and contributions from the other Department are not counted towards the receiving Department’s minor construction threshold. The result is that a minor construction project may be carried out using funds combined by both Departments as long as neither Department exceeds their respective minor construction authority.

While the Economy Act clearly includes purchasing and contracting, including services for renting and leasing, within the authorized support services, the Departments do not currently have sufficient statutory authority under the Economy Act, or elsewhere, to permit the transfer and receipt of funds between Departments to lease a shared medical facility (one that exceeds the needs of either Department individually but would meet the combined requirements). Consequently, this legislative proposal also would permit the Departments to transfer funds in furtherance of a combined/joint lease for shared medical facilities.

As a result of joint facility planning and shared services supported by the like legislation, DoD and VA beneficiaries will have more and easier access to healthcare facilities. In addition, DoD may realize a savings in facility lifecycle costs through future DoD/VA co-locations and joint facility operations. Over the years, DoD built large hospitals and clinics at installations where missions and healthcare delivery practices have changed. These changes have resulted in potential available capacity. That capacity may be used by the VA. When VA and DoD identify specific opportunities to co-locate or jointly operate facilities, the burden of facility operating costs can then shift from DoD only to DoD/VA sharing.

Facility operating cost sharing is significant. In the lifecycle of a healthcare facility, the two major cost components are the initial construction costs and the long-term operating/upkeep costs. Through a 50 or more year facility life, the initial construction cost is about 10% of the lifecycle cost and the operating/upkeep costs are 90%. For example, a facility that costs \$100M to construct will require approximately \$900M for operating/upkeep over its lifecycle.

Currently the Capital Asset Planning Committee has presented 9 facilities to the Joint Executive Committee (JEC) as possible candidates for joint planning study. The JEC fully endorses this proposed legislation.

DoD Facility Enterprise is collaborating with the VA Market Assessment Teams to determine DoD and VA beneficiary medical care requirements in 11 markets, in coordination with the implementation of the VA Mission Act.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget.

RESOURCE REQUIREMENTS (\$ MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/ SAG	Program Element
Defense	0.0	0.0	0.0	\$1.65	\$0.65	Defense Health	07	070	-

Health Program						Program, Operation and Maintenance			
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Changes to Existing Law: This proposal would add a new section 1104a to chapter 55 of title 10, United States Code, and a new section 8111B to chapter 81 of title 38, United States Code, as shown in full in the legislative text above.

Section 710 would repeal the requirements for the Secretary of Defense, acting through the Director of the Defense Health Agency, to: 1) establish a subordinate organization comprised of the Army Medical Research and Materiel Command (MRMC) and other medical research organizations and activities to be called the Defense Health Agency Research and Development; 2) establish a subordinate organization comprised of the Army Public Health Command, the Navy–Marine Corps Public Health Command, Air Force public health programs, and other related defense health activities to be called the Defense Health Agency Public Health; and 3) designate the Defense Health Agency (DHA) as a Combat Support Agency. This proposal does not affect continuing with the designation for creating the Center of Excellence for Joint Biomedical Research, Development, and Acquisition Management.

Risk If Legislative Proposal Is Not Adopted

This proposal is necessary to ensure that the Secretaries of the military departments are capable of performing those functions that are in direct support of Operating Forces to execute the U.S. National Security and Defense Strategies. These responsibilities include control over Military Service-specific medical research, product development, acquisition, and medical logistics programs involved with battlefield casualty care. Ensuring that these programs are synchronized and integrated with other warfighting functions to ensure proper combat casualty care, military medical readiness, and lethality, as well as to ensure a continued synchronized response to emerging public health threats in a timely and efficient manner. If this proposal is not adopted, the Department incurs substantial risk in both the transition of the Military Medical Treatment Facilities (MTFs) to the DHA and fielding equipping solutions and materiel to the warfighter.

Background on Transfer of Military Healthcare Capabilities to DHA

The Military Health System (MHS) is currently undergoing a historic transformation as the DHA assumes authority, direction, and control for MTFs around the globe. The DHA should be focused on building a world class healthcare delivery system by merging the three Service medical departments. There is enormous complexity merging three global health care systems, complicated by the cultural and organization differences between these systems. Additionally, the DHA is already responsible for implementing the Electronic Health Record across the enterprise. As a result of the complexities involved in this process, the National Defense Authorization Act for Fiscal Year 2019 extended the transfer of the administration of MTFs from the original date of October 1, 2018, to September 30, 2021. Transferring medical research and

development and public health to the DHA during an already complex reform effort poses significant risk to systems that serve both our warfighters and their beneficiaries.⁴

DHA's role as a Combat Support Agency (CSA) has created uncertainty regarding responsibility and authorities. Removing the CSA designation in statute will allow the Secretary of Defense to determine what functions are aligned to the Military Services and what functions are aligned to DHA. The CSA designation also creates redundancy with the Services who provide ready, trained, and equipped medical formations. Appropriately aligning capabilities and responsibilities will unburden DHA and allow it to focus on MTFs while streamlining the Services' ability to generate ready medical formations.

Department of Defense Study on Medical Research and Public Health Reforms

The Department of Defense has been studying the transfer of military public health organizations and medical research and development activities from the military medical departments to the DHA. The assessment and recommended courses of action are not complete due to the intricacies of these systems. For example, the study group determined that medical logistics was outside the scope of the study involving medical research. However, the current statutory language transfers both Army organizations responsible for medical research and development, as well as operational medical logistics.

Army Essential Responsibilities

While DHA is assuming control of MTFs, this proposal ensures the Army will remain in control of essential medical research and materiel functions that support readiness, combat casualty care, and lethality in combat environments across multiple domains with full life-cycle infrastructure (research labs, product development/program management, acquisition, medical logistics, and contracting). These functions are not focused primarily on care at MTFs. Most capabilities employed in MTFs are developed by civilian medicine industry; whereas, capabilities developed by Army's research, development, acquisition, and logistics are inherently oriented toward operational medicine for warfighters.

The Army research, development, and logistics capabilities inherent in this mission involve funding the Defense Health Program (DHP) and the Chemical and Biological Defense Program. This funding directly provides cutting-edge materiel, technology, and capabilities that enhance the readiness of operational units for all Service members against medical threats while also fulfilling Military Service and Joint requirements.

⁴ In establishing Army Futures Command (AFC), the Army intended to realign elements of the Army's modernization enterprise and bring unity of effort to the future force development process, including medical research and development and public health. AFC will manage all Army Concepts, Capability Development, Science and Technology activities, informed by Army and Joint future force capabilities and requirements. Consolidation of requirements development and science and technology activities will drive the accelerated capability development needed for near-peer competition.

Medical programs must also be synchronized and integrated with other warfighting functions to ensure proper combat casualty care, military medical readiness, and lethality. The clearest examples of this synchronization include medical variants of air-and-ground vehicles, as well as casualty support capabilities for other non-medical vehicles in austere environments. Moving medical research, development, and acquisition will decrease system synchronization and integration away from system developers, thereby complicating research, development, and acquisition within the Military Services and eliminating other essential Service specific capabilities.

Impact of Transfer of Research and Development Capabilities to DHA

A new DHA research and development organization would add additional layers of review. As reported in numerous U.S. Government Accountability Office reports (e.g., GAO-17-499) and contrary to previous Department of Defense reform initiatives, these layers will produce greater inefficiencies in medical research and development and impede modernization efforts. Producing the systems and knowledge necessary to care for Service members will be hampered by these additional layers.

System acquisition of related non-medical warfighting capabilities will also be hampered. Medical research, development, and acquisition responsibilities are co-located within MRMC, which effectively supports both Joint and Military Service activities. Moving it from Army management to agency management will specifically produce inefficiencies for the Army that are contrary to best practices described by the GAO and others. As conditions during war may change rapidly, medical research and development is essential to respond quickly and effectively to support warfighter capabilities and survivability. If MRMC's medical research and development assets are not left with the Army, the Army's ability to fulfill its title 10 responsibilities and integrate medical capabilities with warfighting systems for Service members will be degraded and at risk.

Impact of Transfer of Public Health Capabilities to DHA

Transferring the Army Public Health Center and other Army public health capabilities to the DHA creates an organizational seam between the clients of the Army Public Health Enterprise, our Senior Mission Commanders, and the public health service providers. This transfer reduces the agility of the Army Public Health Enterprise to respond to emerging public health threats in a timely manner, and may increase costs and organizational friction, increasing the risks to Army war-fighting capabilities.

Conclusion

In conclusion, the historic MHS transformation is important for standardizing care across the MTFs and creating efficiencies. However, we should not transfer capabilities for military-relevant and field-based military medical knowledge and systems. Army systems and management of medical research, development, and acquisition by MRMC has worked well as evidenced by robust congressional special interest commitments and engagement. In addition to putting this at risk, moving MRMC out from Army management puts medical readiness,

battlefield, and operational quality of care, modernization, efficiency, interoperability, and integration with related non-medical Army and Joint weapon system acquisitions, and Military Service flexibility at risk. The Department requires time to implement the current large-scale reforms. This proposal mitigates risks to critical capabilities during the implementation of these reforms.

Budget Implications: This proposal has no budget implications. The repeal of subsection (e) of section 1073c of title 10, United States Code, which required the transfer of Medical Research and Materiel Command and Public Health Command to the Defense Health Agency, will maintain these capabilities within the Army under currently authorized funding and personnel requirements.

Changes to Existing Law: This proposal would make the following changes to section 1073c title 10, United States Code:

§1073c. Administration of Defense Health Agency and military medical treatment facilities

(a) ADMINISTRATION OF MILITARY MEDICAL TREATMENT FACILITIES.—(1) In accordance with paragraph (5), by not later than September 30, 2021, the Director of the Defense Health Agency shall be responsible for the administration of each military medical treatment facility, including with respect to—

- (A) provision and delivery of health care within each such facility;
- (B) management of privileging, scope of practice, and quality of health care provided within each such facility;
- (C) budgetary matters;
- (D) information technology;
- (E) health care administration and management;
- (F) supply and equipment;
- (G) administrative policy and procedure;
- (H) military medical construction; and
- (I) any other matters the Secretary of Defense determines appropriate.

(2) In addition to the responsibilities set forth in paragraph (1), the Director of the Defense Health Agency shall, commencing when the Director begins to exercise responsibilities under that paragraph, have the authority—

- (A) to direct, control, and serve as the primary rater of the performance of commanders or directors of military medical treatment facilities;
- (B) to direct and control any intermediary organizations between the Defense Health Agency and military medical treatment facilities;
- (C) to determine the scope of medical care provided at each military medical treatment facility to meet the military personnel readiness requirements of the senior military operational commander of the military installation;
- (D) to identify the capacity of each military medical treatment facility to support clinical readiness standards of health care providers established by the Secretary of a military department or the Assistant Secretary of Defense for Health Affairs;
- (E) to determine total workforce requirements at each military medical treatment facility;

(F) to determine, in coordination with each Secretary of a military department, manning, including joint manning, assigned to military medical treatment facilities and intermediary organizations;

(G) to select, after considering nominations from the Secretaries of the military departments, commanders or directors of military medical treatment facilities;

(H) to address personnel staffing shortages at military medical treatment facilities; and

(I) to select among service nominations for commanders or directors of military medical treatment facilities.

(3) The military commander or director of each military medical treatment facility shall be responsible for—

(A) on behalf of the military departments, ensuring the readiness of the members of the armed forces at such facility; and

(B) on behalf of the Defense Health Agency, furnishing the health care and medical treatment provided at such facility.

(4) If the Secretary of Defense determines it appropriate, a military director (or any other senior military officer or officers) of a military medical treatment facility may be a commanding officer for purposes of chapter 47 of this title (the Uniform Code of Military Justice) with respect to military personnel assigned to the military medical treatment facility.

(5) The Secretary of Defense shall establish a timeline to ensure that each Secretary of a military department transitions the administration of military medical treatment facilities from such Secretary to the Director of the Defense Health Agency pursuant to paragraph (1) by the date specified in such paragraph.

(6) The Secretary of Defense shall establish within the Defense Health Agency a professional staff to provide policy, oversight, and direction to carry out paragraphs (1) and (2). The Secretary shall carry out this paragraph by appointing the positions specified in subsections (b) and (c).

(b) DHA ASSISTANT DIRECTOR.—(1) There is in the Defense Health Agency an Assistant Director for Health Care Administration. The Assistant Director shall—

(A) be a career appointee within the Department; and

(B) report directly to the Director of the Defense Health Agency.

(2) The Assistant Director shall be appointed from among individuals who have the education and experience to perform the responsibilities of the position.

(3) The Assistant Director shall be responsible for the following:

(A) Establishing priorities for health care administration and management.

(B) Establishing policies, procedures, and direction for the provision of direct care at military medical treatment facilities.

(C) Establishing priorities for budgeting matters with respect to the provision of direct care at military medical treatment facilities.

(D) Establishing policies, procedures, and direction for clinic management and operations at military medical treatment facilities.

(E) Establishing priorities for information technology at and between the military medical treatment facilities.

(c) DHA DEPUTY ASSISTANT DIRECTORS.—(1)(A) There is in the Defense Health Agency a Deputy Assistant Director for Information Operations.

(B) The Deputy Assistant Director for Information Operations shall be responsible for policies, management, and execution of information technology operations at and between the military medical treatment facilities.

(2)(A) There is in the Defense Health Agency a Deputy Assistant Director for Financial Operations.

(B) The Deputy Assistant Director for Financial Operations shall be responsible for the policy, procedures, and direction of budgeting matters and financial management with respect to the provision of direct care at military medical treatment facilities.

(3)(A) There is in the Defense Health Agency a Deputy Assistant Director for Health Care Operations.

(B) The Deputy Assistant Director for Health Care Operations shall be responsible for the policy, procedures, and direction of health care administration in the military medical treatment facilities.

(4)(A) There is in the Defense Health Agency a Deputy Assistant Director for Medical Affairs.

(B) The Deputy Assistant Director for Medical Affairs shall be responsible for policy, procedures, and direction of clinical quality and process improvement, patient safety, infection control, graduate medical education, clinical integration, utilization review, risk management, patient experience, and civilian physician recruiting at military medical treatment facilities.

(5) Each Deputy Assistant Director appointed under paragraphs (1) through (4) shall report directly to the Assistant Director for Health Care Administration.

(d) CERTAIN RESPONSIBILITIES OF DHA DIRECTOR.—(1) In addition to the other duties of the Director of the Defense Health Agency, the Director shall coordinate with the Joint Staff Surgeon to ensure that the Director most effectively carries out the responsibilities of the Defense Health Agency ~~as a combat support agency under section 193 of this title.~~

(2) The responsibilities of the Director shall include the following:

(A) Ensuring that the Defense Health Agency meets the operational needs of the commanders of the combatant commands.

(B) Coordinating with the military departments to ensure that the staffing at the military medical treatment facilities supports readiness requirements for members of the armed forces and health care personnel.

(C) Ensuring that the Defense Health Agency meets the military medical readiness requirements of the senior military operational commander of the military installations.

~~(e) ADDITIONAL DHA ORGANIZATIONS.—Not later than September 30, 2022, the Secretary of Defense shall, acting through the Director of the Defense Health Agency, establish within the Defense Health Agency the following:~~

~~(1) A subordinate organization, to be called the Defense Health Agency Research and Development—~~

~~(A) led, at the election of the Director, by a director or commander (to be called the Director or Commander of Defense Health Agency Research and Development);~~

~~(B) comprised of the Army Medical Research and Materiel Command and such other medical research organizations and activities of the armed forces as the Secretary considers appropriate; and~~

~~(C) responsible for coordinating funding for Defense Health Program Research, Development, Test, and Evaluation, the Congressionally Directed Medical Research Program, and related Department of Defense medical research.~~

~~(2) A subordinate organization, to be called the Defense Health Agency Public Health—~~

~~(A) led, at the election of the Director, by a director or commander (to be called the Director or Commander of Defense Health Agency Public Health); and~~

~~(B) comprised of the Army Public Health Command, the Navy Marine Corps Public Health Command, Air Force public health programs, and any other related defense health activities that the Secretary considers appropriate, including overseas laboratories focused on preventive medicine, environmental health, and similar matters.~~

~~(fe) TREATMENT OF DEPARTMENT OF DEFENSE FOR PURPOSES OF PERSONNEL ASSIGNMENT.— In implementing this section—~~

~~(1) the Department of Defense shall be considered a single agency for purposes of civilian personnel assignment under title 5; and~~

~~(2) the Secretary of Defense may reassign any employee of a component of the Department of Defense or a military department in a position in the civil service (as defined in section 2101 of title 5) to any other component of the Department of Defense or military department.~~

~~(gf) DEFINITIONS.—In this section:~~

~~(1) The term “career appointee” has the meaning given that term in section 3132(a)(4) of title 5.~~

~~(2) The term “Defense Health Agency” means the Defense Agency established pursuant to Department of Defense Directive 5136.13, or such successor Defense Agency.~~

~~(3) The term “military medical treatment facility” means—~~

~~(A) any fixed facility of the Department of Defense that is outside of a deployed environment and used primarily for health care; and~~

~~(B) any other location used for purposes of providing health care services as designated by the Secretary of Defense.~~

Section 711 would add active duty status for medical care to the list of authorities excluded from the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) five-year service limit. Currently, section 12301(h) of title 10, United States Code (U.S.C.), states that “When authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a reserve component to active duty – to receive medical care; to be medically evaluated for disability or other purposes; or to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.” Currently, section 12301(h) of title 10, U.S.C., is not identified as a statutory exemption under USERRA. The result is that reserve component Service members receiving medical care under section 12301(h) of title 10, U.S.C., authority, some of whom are assigned to wounded warrior units for significant amounts of time, have this period of service counted against their individual five-year cumulative absence limitation as defined in USERRA.

After discussions with representatives from the Department of Labor and the military representatives to the Department of Defense USERRA Working Group, it was determined that adding section 12301(h) of title 10, U.S.C., to the list of statutory exemptions identified in section 4312(c)(4)(A) of title 38, U.S.C., is a justifiable exemption across all Services, and will help avoid the confusion often created for Service members and employers when exempting periods of service via secretarial authority.

In addition, this proposal includes a conforming amendment that is required due to the redesignation of sections in title 14, U.S.C., by Public Law 115-282.

Budget Implications: No budget impact. This change only impacts determinations of whether a Service member has met or exceeded their five-year limitation for reemployment benefits with their current civilian employer.

Changes to Existing Law: This proposal would make the following changes to section 4312 of title 38, United States Code:

§4312. REEMPLOYMENT RIGHTS OF PERSONS WHO SERVE IN THE UNIFORMED SERVICES.

(a) Subject to subsections (b), (c), and (d) and to section 4304, any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if-

(1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer;

(2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and

(3) except as provided in subsection (f), the person reports to, or submits an application for reemployment to, such employer in accordance with the provisions of subsection (e).

(b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service-

(1) that is required, beyond five years, to complete an initial period of obligated service;

(2) during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

(3) performed as required pursuant to section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is-

(A) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12301(h), 12302, 12304, 12304a, 12304b, or 12305 of title 10 or under section ~~331, 332, 359, 360, 367, or 712~~ 2127, 2128, 2308, 2309, 2314, or 3713 of title 14;

(B) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services;

(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10; or

(F) ordered to full-time National Guard duty (other than for training) under section 502(f)(2)(A) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds, as determined by the Secretary concerned.

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Section 712 would augment the Uniformed Services University of the Health Sciences (USUHS) Board of Regents membership with the Director of the Defense Health Agency (DHA) as a voting, ex officio member. Presently, the DHA Director is not a member of the USUHS Board of Regents, only a non-voting advisor. This amendment would recognize the role and authority of the DHA Director at an equal level with the Service Surgeon Generals on the Board of Regents.

USUHS is a primary source of developing the next generation of military healthcare providers, educators, and scientists in the Military Health System (MHS) through its School of Medicine, Graduate School of Nursing, Postgraduate Dental College, and College of Allied Health Sciences. The primary venues for this education and research are in the military treatment facilities (MTFs). These MTFs are now coming under the administration, direction, and control of the DHA Director, rather than the Surgeons General of the military Services. It is paramount that USUHS and the DHA Director have a synergistic relationship where students, residents, and faculty receive clinical exposure. This education and research opportunity benefits not only the students, residents, and faculty, but benefits the care received by the beneficiary. As a member of the USUHS Board of Regents, the DHA Director would be able to ensure this synergy between the University and the MTFs.

Changes to Existing Law: This proposal would make the following changes to section 2113a of title 10, United States Code:

§2113a. Board of Regents

- (a) In General.—To assist the Secretary of Defense in an advisory capacity, there is a Board of Regents of the University.
- (b) Membership.—The Board shall consist of—
- (1) nine persons outstanding in the fields of health care, higher education administration, or public policy who shall be appointed from civilian life by the Secretary of Defense;
 - (2) the Secretary of Defense, or his designee, who shall be an ex officio member;
 - (3) the Director of the Defense Health Agency, who shall be an ex officio member;
 - ~~(3)~~(4) the surgeons general of the [uniformed services](#), who shall be ex officio members; and
 - ~~(4)~~(5) the President of the University, who shall be a nonvoting ex officio member.
- (c) Term of Office.—The term of office of each member of the Board (other than ex officio members) shall be six years except that—
- (1) any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and
 - (2) any member whose term of office has expired shall continue to serve until his successor is appointed.
- (d) Chairman.—One of the members of the Board (other than an ex officio member) shall be designated by the Secretary as Chairman. He shall be the presiding [officer](#) of the Board.
- (e) Compensation.—Members of the Board (other than ex officio members) while attending conferences or meetings or while otherwise performing their duties as members shall be entitled to receive compensation at a rate to be fixed by the Secretary and shall also be entitled to receive an allowance for necessary travel expenses while so serving away from their place of residence.
- (f) Meetings.—The Board shall meet at least once a quarter.

**TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT,
AND RELATED MATTERS**

Subtitle A—[Reserved]

Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

Section 811 would consolidate and harmonize sections of legislation related to rapid acquisition and urgent operational needs, specifically:

1. Section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2302 note) is repealed. The required review process is incorporated into Enclosure 13, “Urgent Capability Acquisition,” to DoD Instruction 5000.02, “Operation of the Defense Acquisition System,” January 7, 2015, incorporating change 2, February 2, 2017. The repeal of such section 804 and incorporation of selected items from section 806(c) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 in the proposed changes resolves inconsistencies between multiple laws associated with urgent acquisition in support of urgent operational needs.

2. Section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2302 note) is codified in title 10, United States Code, and as codified is revised as follows:

Revision to subsection (a): Changes first sentence to reflect a continuing Secretary responsibility to proscribe procedures rather than the one time requirement from December 2002. Introduces the phrase “urgent acquisition” to distinguish acquisition in response to urgent needs from acquisition associated with “section 804 rapid acquisition pathway.” Urgent acquisition is used, where appropriate in the remaining subsections.

Proposed subsection (a)(1)(A): Aligns the requirements for capabilities subject to the procedures for urgent acquisition and deployment in response to an urgent operational need that were required by section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 124 Stat. 4256; 10 U.S.C. 2302 note) and were subsequently incorporated into DoD Instruction 5000.02, “Operation of the Defense Acquisition System,” January 7, 2015.

Proposed subsection (a)(2) allows for the use, throughout the proposal of the shorter phrase, “section 804 rapid acquisition pathway,” in lieu of the full cite: “for capabilities that are developed or procured under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note).”

Proposed subsections (b) through (e), except subsection (c)(3): Except as noted in the paragraph below, regarding “Subsection (c)(3) “USE OF FUNDS:”, “Supplies and associated services” is replaced throughout with “capability,” This provides consistency with the terminology used by the Chairman, Joint Chiefs of Staff in the Joint Staff Instructions and processes for the validation of capability gaps associated with urgent operational needs. It is also consistent with the terminology adopted by the Department of Defense in DoD Directive 5000.71, “Rapid Fulfillment of Combatant Commander Urgent Operational Needs,” August 24, 2012, and Enclosure 13, “Urgent Capability Acquisition,” to DoD Instruction 5000.02,

“Operation of the Defense Acquisition System,” January 7, 2015. Paragraph (b)(2)(A), of the current legislation, is modified by replacing the word “capability” with “performance” for purposes of clarity.

Proposed subsection (b)(3): Adds a process that makes subsection (c)(5) “Time for transitioning to Normal Acquisition System,” unnecessary and subsection (c)(5) is therefore proposed to be deleted. Proposed subparagraph (b)(3) requires a process to evaluate and determine the disposition of a capability, including termination (demilitarization or disposal), sustainment for current contingency operation, or transition to program of record. This process is established in Enclosure 13, “Urgent Capability Acquisition,” to DoD Instruction 5000.02, “Operation of the Defense Acquisition System,” January 7, 2015 with revision 2, February 2, 2017. The process in Enclosure 13 to DoD Instruction 5000.02 establishes a more suitable and flexible process for determining the ultimate disposition of capability fielded in response to an urgent operational need. The process describes specific responsibility and accountability for accomplishing the disposition analyses and decision which, the Department believes, is more comprehensive and effective than what is currently required by subsection (c)(5).

Proposed subsection (b)(4) renumbered (old subparagraph (b)(3))

Proposed subsection (c)(1)(C): Modified to delete the phrase, “without delegation.” Deleting this phrase conforms (c)(1)(C) with the paragraphs (A) and (B) above it, and also makes the subparagraph consistent with subparagraph (c)(5) that allows that the authority to make a determination under subparagraph(A), (B), (C) of paragraph (1) may be exercised only by the Secretary or Deputy Secretary of Defense.

Subsection (c)(2)(B): Clarifies that the Secretary’s authorization to designated official is with regard to a needed capability.

Subsection (c)(3) “USE OF FUNDS:” The term “supplies and associated support services,” is deleted as it can be misinterpreted to unnecessarily restrict the Secretary to using only those funds appropriated for “supplies and associated support services,” rather than allowing the Secretary to, more appropriately, use any funds available to the Department of Defense. Clarifies that the use of funds is for the documented or identified deficiency or compelling national security interest.

Subsection (c)(3)(B): Provides an exception for new subparagraph (c)(3)(C). Clarifies the authority provided by the section.

Subsection (c)(3)(C): Provides permanent authority to increase the limitations established in subparagraph (c)(3)(B)(i) and (ii). This flexibility in authority will enable the Department to quickly address more of its most urgent operational needs.

Subsection (c)(4)(A): Amended to also add paragraph (c)(1)(C). This corrects an administrative oversight in the FY16 NDAA that omitted notification of the Congressional Defense Committees when the cyber attack provision of (c)(1)(C) is used.

Subsection (c)(4)(C): Added to require notification to the Defense Committees within 10 days after the date of the use of such funds.

New subparagraph (E) of subsection (c)(4): This subparagraph is amended to clarify and better conform to legislative language regarding “new starts.”

Subsection (c)(5): Subsection deleted - replaced by subsection (b)(3), as discussed previously, above, under the explanation for subsection (b)(3).

Subsection (c)(5) (old subsection (c)(5)): “LIMITATION ON OFFICERS WITH AUTHORITY ...” amended to incorporate a section 804 rapid acquisition pathway provision and to enable both the Secretary and the Deputy Secretary of Defense, only, to exercise the listed authorities.

Subsection (d)(1)(C): Adds new subparagraph (C) and re-letters subparagraph (D). New subparagraph (C) adds authority for waivers associated with the production, fielding and sustainment of the capability. This aligns the waiver authority to that for the “Rapid Acquisition and Deployment Procedures for United States Special Operations Command” [Public Law 113-291, section 851, December 19, 2014] and “Secretary of Defense Waiver of Acquisition Laws to Acquire Vital National Security Capabilities” [Public Law 114-92, section 806, November 25, 2015].

Subsection (e): Replaces the term “Testing Requirement” with “Operational Assessment” to better convey that the evaluation of a proposed solution for an urgent operational need may simply be a report on its capabilities and limitations. This allows the warfighter to determine if the proposed solution will adequately address the urgent need in a timely manner. “Testing Requirement” if wrongly interpreted can lead to a formal and time consuming process that results in a more sophisticated solution that arrives too late to be useful to the warfighter.

Subsection(f): The “Limitation” established in (previous) subsection (f) is recommended for deletion. The majority of urgent need solutions have not been associated with major systems. The current language in subsection (f) is therefore inappropriate in the majority of instances. The quantities procured in fulfillment of urgent needs are limited to those required by the urgent operational need submitted by the Warfighter. Urgent need solutions are not procured to equip general forces unless they are later transitioned to the normal acquisition system.

Subsection (g): The definition of associated support services is deleted. The term is no longer needed with the use of the term “capability” throughout the revised Section 806(c) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003.

The final subsection in section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 regarding the Secretary of Defense certification is deleted. The required certification was made by the Secretary of Defense in the notification letters to the Defense Committees on August 21, 2013.

Budgetary Implications: This proposed change has no budgetary impact as it addresses authorities associated with fulfilling the urgent needs of the warfighter and authority to use any existing funds available to the Department in support of such urgent needs. Implementation of the suggested changes does not necessitate any new appropriation of funds. The resources impacted to implement these changes with regard to guidance, directives and training are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request.

Changes to Existing Law:

1. This proposal would repeal section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2302 note):

~~SEC. 804. REVIEW OF ACQUISITION PROCESS FOR RAPID FIELDING OF CAPABILITIES IN RESPONSE TO URGENT OPERATIONAL NEEDS~~

~~(a) Review of Rapid Acquisition Process Required.~~

~~(b) Discriminating Urgent Operational Needs From Traditional Requirements.~~

~~(1) Expedited review process. Not later than 270 days after the date of the enactment of this Act, the Secretary shall develop and implement an expedited review process to determine whether capabilities proposed as urgent operational needs are appropriate for fielding through the process for the rapid fielding of capabilities or should be fielded through the traditional acquisition process.~~

~~(2) Elements. The review process developed and implemented pursuant to paragraph (1) shall—~~
~~(A) apply to the rapid fielding of capabilities in response to joint urgent operational need statements and to other urgent operational needs statements generated by the military departments and the combatant commands;~~

~~(B) identify officials responsible for making determinations described in paragraph (1);~~

~~(C) establish appropriate time periods for making such determinations;~~

~~(D) set forth standards and criteria for making such determinations based on considerations of urgency, risk, and life-cycle management;~~

~~(E) establish appropriate thresholds for the applicability of the review process, or of elements of the review process; and~~

~~(F) authorize appropriate officials to make exceptions from standards and criteria established under subparagraph (D) in exceptional circumstances.~~

~~(3) Covered capabilities. The review process developed and implemented pursuant to paragraph (1) shall provide that, subject to such exceptions as the Secretary considers appropriate for purposes of this section, the acquisition process for rapid fielding of capabilities in response to urgent operational needs is appropriate only for capabilities that—~~

~~(A) can be fielded within a period of two to 24 months;~~

~~(B) do not require substantial development effort;~~

~~(C) are based on technologies that are proven and available; and~~

~~(D) can appropriately be acquired under fixed price contracts.~~

~~(4) Inclusion in report. The Secretary shall include a description of the expedited review process implemented pursuant to paragraph (1) in the report required by subsection (a).~~

2. This proposal would revise section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2302 note) and codify it as section 2317 of title 10, United States Code, as set forth above. The revisions to the text of section such 806 are as follows:

(a) ~~REQUIREMENT TO ESTABLISH PROCEDURES.~~ - ~~Not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002], the~~

(1) IN GENERAL. - The Secretary of Defense shall prescribe procedures for the ~~rapid urgent~~ acquisition and deployment of capability supplies and associated support services that are needed in response to urgent operational needs. The capabilities for which such procedures for urgent acquisition and deployment may be used in response to urgent operational needs are those

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~~(1)(A) currently under development by the Department of Defense or available from the commercial sector; or~~

~~(B) require only minor modifications to supplies described in subparagraph (A);~~

~~(C) developed or procured under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note); and~~

~~(2) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations.~~

(A) that, subject to such exceptions as the Secretary considers appropriate for purposes of this section, -

(i) can be fielded within a period of two to 24 months;

(ii) do not require substantial development effort;

(iii) are based on technologies that are proven and available; and

(iv) can appropriately be acquired under fixed price contracts.

or

(B) that can be developed or procured under a section 804 rapid acquisition pathway

(2) DEFINITION. - In this section, the term 'section 804 rapid acquisition pathway' means the rapid fielding acquisition pathway or the rapid prototyping acquisition pathway authorized under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note);

(b) ~~ISSUES MATTERSTO BE ADDRESSED INCLUDED.~~ - The procedures prescribed under subsection (a) shall include the following:

(1) A process for streamlined communications between the Chairman of the Joint Chiefs of Staff, the acquisition community, and the research and development community, including-

(A) a process for the commanders of the combatant commands and the Chairman of the Joint Chiefs of Staff to communicate their needs to the acquisition community and the research and development community; and

(B) a process for the acquisition community and the research and development community to propose ~~supplies and associated support services~~ capability that meet the needs communicated by the combatant commands and the Chairman of the Joint Chiefs of Staff.

(2) Procedures for demonstrating, ~~rapidly~~ urgently acquiring, and deploying ~~supplies and associated support services~~ a capability proposed pursuant to paragraph (1)(B), including-

(A) a process for demonstrating performance and evaluating for current operational purposes the ~~existing capability performance~~ of the ~~supplies and associated support services capability~~;

(B) a process for developing an acquisition and funding strategy for the deployment of the ~~supplies and associated support services capability~~; and

(C) a process for making deployment and utilization determinations based on information obtained pursuant to subparagraphs (A) and (B).

(3) a process to determine the disposition of a capability, including termination (demilitarization or disposal), continued sustainment, or transition to a program of record.

~~(3)~~(4) Specific procedures in accordance with the guidance developed under section 804(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note)

(c) RESPONSE TO COMBAT EMERGENCIES AND CERTAIN URGENT OPERATIONAL NEEDS.—

(1) DETERMINATION OF NEED FOR ~~RAPID~~ URGENT ACQUISITION AND DEPLOYMENT.—(A) In the case of any ~~supplies and associated support services capability~~ that, as determined in writing by the Secretary of Defense, ~~are~~ is urgently needed to eliminate a documented deficiency that has resulted in combat casualties, or is likely to result in combat casualties, the Secretary may use the procedures developed under this section in order to accomplish the ~~rapid urgent~~ acquisition and deployment of the needed ~~supplies and associated support services capability~~.

(B) In the case of any ~~supplies and associated support services capability~~ that, as determined in writing by the Secretary of Defense, ~~are~~ is urgently needed to eliminate a documented deficiency that impacts an ongoing or anticipated contingency operation and that, if left unfulfilled, could potentially result in loss of life or critical mission failure, the Secretary may use the procedures developed under this section in order to accomplish the ~~rapid urgent~~ acquisition and deployment of the needed ~~supplies and associated support services capability~~.

(C)(i) In the case of any ~~supplies and associated support services cyber capability~~ that, as determined in writing by the Secretary of Defense ~~without delegation~~, ~~are~~ is urgently needed to eliminate a deficiency that as the result of a cyber attack has resulted in critical mission failure, the loss of life, property destruction, or economic effects, or if left unfilled is likely to result in critical mission failure, the loss of life, property destruction, or economic effects, the Secretary may use the procedures developed under this section in order to accomplish the ~~rapid urgent~~ acquisition and deployment of the needed offensive or defensive cyber ~~capabilities, supplies, and associated support services capability~~.

(ii) In this subparagraph, the term “cyber attack” means a deliberate action to alter, disrupt, deceive, degrade, or destroy computer systems or networks or the information or programs resident in or transiting these systems or networks.

(2) DESIGNATION OF SENIOR OFFICIAL RESPONSIBLE.—(A)(i) Except as provided under clause (ii), whenever the Secretary makes a determination under subparagraph (A), (B), or (C) of paragraph (1) that ~~certain supplies and associated support services a capability~~ ~~are~~ is urgently needed to eliminate a deficiency described in that subparagraph, the Secretary shall designate a senior official of the Department of Defense to ensure that the needed ~~supplies and associated support services capability~~ ~~are~~ is acquired and deployed as quickly as

possible, with a goal of awarding a contract for the acquisition of the ~~supplies and associated support services capability~~ within 15 days.

(ii) Clause (i) does not apply to an acquisition ~~acquisitions~~ initiated in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 rapid acquisition pathway ~~of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note)~~ if the designated official for acquisitions using such pathway ~~pathways~~ is the service acquisition executive.

(B) Upon designation of a senior official under subparagraph (A) with respect to a needed capability, the Secretary shall authorize that official to waive any provision of law, ~~policy, directive,~~ or regulation described in subsection (d) that such official determines in writing would unnecessarily impede the rapid urgent acquisition and deployment of the needed ~~supplies and associated support services capability~~. In a case in which the needed ~~supplies and associated support services capability~~ cannot be acquired without an extensive delay, the senior official shall require that an interim solution be implemented and deployed using the procedures developed under this section to minimize adverse consequences resulting from the urgent need.

(3) USE OF FUNDS.—(A) In any fiscal year in which the Secretary makes a determination described in subparagraph (A), (B), or (C) of paragraph (1), or upon the Secretary making a determination that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 rapid acquisition pathway ~~of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note)~~ based on a compelling national security need, the Secretary may use any funds available to the Department of Defense ~~for acquisitions of supplies and associated support services~~ if the determination includes a written finding that the use of such funds is necessary to address ~~the deficiency~~ in a timely manner the deficiency documented or identified under such subparagraph (A), (B), or (C) or the compelling national security need identified for purposes of such section 804 rapid acquisition pathway, respectively.

(B) ~~The authority of~~ Except as provided under subparagraph (C), the authority of provided by this section may only be used to acquire ~~supplies and associated support services capability~~—

(i) in the case of determinations by the Secretary under paragraph (1)(A), in an amount aggregating not more than \$200,000,000 during any fiscal year;

(ii) in the case of determinations by the Secretary under paragraph (1)(B), in an amount aggregating not more than \$200,000,000 during any fiscal year;

(iii) in the case of determinations by the Secretary under paragraph (1)(C), in an amount aggregating not more than \$200,000,000 during any fiscal year; and

(iv) in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 rapid acquisition pathway ~~of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note)~~; in an amount not more than \$200,000,000 during any fiscal year.

(C) ~~For each of fiscal year years 2017 and 2018,~~ the limits set forth in clauses (i) and (ii) of subparagraph (B) do not apply to the exercise of authority under such clauses provided that the total amount of supplies and associated support services acquired as provided under such subparagraph does not exceed \$800,000,000 during such fiscal year.

(4) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—(A) In the case of a determination by the Secretary under paragraph (1)(A) and (1)(C), the Secretary shall notify the congressional defense committees [~~Committees on Armed Services and Appropriations of the senate and the House of Representatives~~] of the determination within 15 days after the date of the determination.

(B) In the case of a determination by the Secretary under paragraph (1)(B), the Secretary shall notify the congressional defense committees of the determination at least 10 days before the date on which the determination is effective.

(C) In the case of a determination by the Secretary under paragraph (3)(A) that funds are necessary to immediately initiate a project under a the rapid fielding or rapid prototyping acquisition pathways under section 804 rapid acquisition pathway of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note), the Secretary shall notify the congressional defense committees [~~Committees on Armed Services and Appropriations of the Senate and the House of Representatives~~] of the determination within 10 days after the date of the use of such funds.

(D) A notice under this paragraph shall include the following:

(i) Identification of t~~The supplies and associated support services~~ capability to be acquired.

(ii) The amount anticipated to be expended for the acquisition.

(iii) The source of funds for the acquisition.

(E) A notice under this paragraph shall ~~be sufficient to fulfill~~ any requirement to provide notification to Congress for a program (referred to as a “new start program”) that has not previously been specifically authorized by law or for which funds have not previously been appropriated.

(F) A notice under this paragraph shall be provided in consultation with the Director of the Office of Management and Budget.

~~(5) TIME FOR TRANSITIONING TO NORMAL ACQUISITION SYSTEM.—(A) Any acquisition initiated under this subsection shall transition to the normal acquisition system not later than two years after the date on which the Secretary makes the determination described in paragraph (1) with respect to the supplies and associated support services concerned.~~

~~(B) Subparagraph (A) does not apply to acquisitions initiated in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note).~~

~~(65) LIMITATION ON OFFICERS WITH AUTHORITY TO MAKE A DETERMINATION.—~~
The authority to make a determination under subparagraph (A), (B), or (C) of paragraph (1) and under paragraph (3)(A), that funds are necessary to immediately initiate a project under a section 804 rapid acquisition pathway, to designate a senior official responsible under paragraph (3), and to provide notification to the congressional defense committees under paragraph (4) may be exercised only by the Secretary or Deputy Secretary of Defense.

~~(d) AUTHORITY TO WAIVER OF CERTAIN LAWS, STATUTES, AND REGULATIONS.—(1) The Secretary and Deputy Secretary of Defense, for a capability required to address the needs described in subsection (c)(1), or, upon ~~Upon~~ a determination described in subsection (c)(1), the senior official designated in accordance with subsection (c)(2) with respect to that designation, is authorized to waive any provision of law, policy, directive or regulation addressing-~~

~~(A) the establishment of the a requirement or specification for the supplies and associated support services capability to be acquired;~~

~~(B) the research, development, test, and evaluation of the supplies and associated support services capability to be acquired; or~~

~~(C) the production, fielding, and sustainment of the capability to be acquired, or~~

~~(D) the solicitation, and selection of sources, and the award of the contracts for procurement of the supplies and associated support services capability to be acquired.~~

~~(2) LIMITATIONS. - Nothing in this subsection authorizes the waiver of-~~

~~(A) the requirements of this section or the regulations implementing this section; or~~

~~(B) any provision of law imposing civil or criminal penalties; or~~
~~(C) any provision of law governing the proper expenditure of appropriated funds.~~

~~(e) Testing Requirement. OPERATIONAL ASSESSMENTS.-(1) The process prescribed under subsection (b)(2)(A) for demonstrating performance and evaluating for the current operational purposes performance the existing capability of the supplies and associated support services capability proposed pursuant to subsection (b)(1)(B) prescribed under subsection (b)(2)(A) shall include the following:-~~

~~(A) a An operational assessment in accordance with procedures prescribed by the Director of Operational Test and Evaluation, and~~

~~(B) a A requirement to provide information about any deficiency of the supplies and associated support services capability in meeting the original requirements for the supplies and associated support services capability (as stated in a statement of the urgent operational need or similar document) to the deployment decisionmaking authority.~~

~~(2) The process may not include a requirement for any deficiency of supplies and associated support services capability identified in the operational assessment to be the determining factor in deciding whether to deploy the supplies and associated support services capability.~~

~~(3) If supplies and associated support services a capability are deployed under the rapid acquisition and deployment procedures prescribed pursuant to this section, or under any other authority, before the completion of operational test and evaluation of the supplies and associated support services capability is completed, the Director of Operational Test and Evaluation shall have access to operational records and data relevant to such supplies and associated support services capability in accordance with section 139(e)(3) of this title 10, United States Code, for the purpose of completing operational test and evaluation of the supplies and associated support services capability. The Such access to the operational records and data shall be provided in a time and manner determined by the Secretary of Defense consistent with requirements of operational security and other relevant operational requirements.~~

~~(f) Limitation. In the case of supplies that are part of a major system for which a low rate initial production quantity determination has been made pursuant to section 2400 of title 10, United States Code, the quantity of such supplies acquired using the procedures prescribed pursuant to this section may not exceed an amount consistent with complying with limitations on the quantity of articles approved for low rate initial production for such system. Any such supplies shall be included in any relevant calculation of quantities for low rate initial production for the system concerned.~~

~~(g) Associated Support Services Defined. In this section, the term 'associated support services' means training, operation, maintenance, and support services needed in connection with the deployment of supplies to be acquired pursuant to the authority of this section. The term does not include functions that are inherently governmental or otherwise exempted from private sector performance.~~

Subtitle C—Provisions Relating to Defense Industrial Base

Section 821 would authorize acquisition of certain materials for the National Defense Stockpile (NDS) under the Strategic and Critical Materials Stock Piling Act (Act).

DISPOSAL

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

ACQUISITION

Subsection (b) of this proposal would provide authority under section 5(a)(1) of the Act (50 U.S.C. 98d(a)(1)) to acquire strategic and critical materials for the Stockpile.

The materials for which acquisition authority is requested have been identified as necessary to meet the military, industrial, and essential civilian needs of the United States through a rigorous analytical requirements determination processes and are identified in the 2017 and 2019 Biennial Report to the Congress on Stockpile Requirements (Report). The Report is prepared pursuant to the Act, which applies a rigorous analytical process to identify strategic and critical materials required to sustain the United States during various military conflict scenarios developed by the Under Secretary of Defense for Policy. A discussion of the materials follows.

Dysprosium. Dysprosium metal improves the ability of NdFeB magnets to resist demagnetization in demanding, high temperature, service environments. China accounted for approximately 100% of dysprosium production over the past five years. Terbium may serve as a substitute for dysprosium in magnets with a minimum reduction in properties. However, terbium is relatively scarcer than dysprosium and is much more expensive. In addition, substituting terbium for dysprosium would require re-engineering of the magnet and further qualification work thus possibly lengthening time of any supply disruption for NdFeB magnets.

Rare earth cerium compounds. Virtually every integrated circuit chip fabricated today requires multiple steps of polishing with sophisticated formulations of slurries containing cerium in a process known as Chemical Mechanical Planarization (CMP). In the transportation fuels sector, consumption of additive cerium-based catalysts from oil refineries is growing in order to reduce sulfur oxide (SOx) and nitrogen oxide (NOx) emissions and to eliminate metal elements in the crude that have deleterious effects in the

process of producing petrochemical distillates. The production of cerium-based cover glass for solar panels is critical for protection against ultraviolet (UV) radiation on geostationary and non-geostationary space satellites.

Rare earth lanthanum compounds. Lanthanum is critical to the production of certain petroleum products that, in turn, are essential to the national economy. The use of lanthanum as a component of fluid cracking catalysts (FCC) used in oil refining is tantamount for maintaining the supply chains for transportation fuels across the country. It is notable that FCCs account for 70% of the U.S.'s lanthanum consumption. Currently, the U.S. imports all of its lanthanum oxide. The civilian economy and the military are dependent on a continuous, reliable supply of transportation fuel from this supply chain.

Neodymium oxide, Praseodymium oxide and Neodymium Iron Boron (NdFeB) magnet block. The United States does not possess the industrial capability to manufacture a type of rare earth permanent magnets (REPM) known as neodymium-iron-boron (NdFeB) magnets. Stockpiling REPMs and related raw materials is a cost-effective, relatively quick albeit short-term stopgap solution to the U.S.'s foreign reliance on REPMs. Numerous weapon systems rely upon NdFeB magnets to function, and a disrupted foreign supply would similarly disrupt the manufacture of these systems. Select critical NdFeB magnet applications include Joint Direct Attack Munition (JDAM) kits, multiple radar systems, and a next-generation submarine propulsion system.

DLA Strategic Materials recommends implementing a stockpiling strategy for NdFeB magnets consisting of separate Nd oxide and Pr oxide in order to provide operational flexibility to manufacturers of NdFeB magnets should there be a requirement for a particular magnet specification. Stockpiling large quantities of NdFeB magnet block or NdFeB alloy has several limitations, most notably technological obsolescence and shelf life. Furthermore, there are currently about 80 different grades of NdFeB magnets making a grade determination highly uncertain, a problem compounded by the existence of several business proprietary blends of NdFeB magnet materials in defense platforms.

While there are noted limitations with storing multiple grades of magnetic block, DLA Strategic Materials is aware of a specific grade of NdFeB magnet block that meets military specifications. Having some of the material in the block form will shorten the manufacturing time. DLA Strategic Materials recommends acquisition of magnet block, along with the Nd oxide and Pr oxide, as part of an overall risk mitigation strategy.

Yttrium. Yttrium is a required material used in numerous defense and essential civilian applications (e.g. lasers and radar, sensors, visual displays and lighting, high-temperature ceramics, and metal alloys). Lasers for range finders and target designators are important military applications for yttrium. While the U.S. has a robust domestic supply chain for lasers, the U.S. is currently 100% dependent upon imports of yttrium most of which comes from China. Alternate sources including Japan, France, and Austria likely produce yttrium-containing materials from concentrates and intermediate compounds imported from China. Procurement of quantities of high-purity yttrium oxide for the NDS Program inventory will provide for a domestic source of this critical material in the event of a supply disruption during a national emergency.

Samarium–Cobalt (Sm-Co) alloy: Currently, the United States only has one manufacturer capable of producing a type of rare earth permanent magnet (REPM) known as samarium cobalt (SmCo) magnets. This sole source domestic producer relies on foreign supplies of samarium metal and cobalt metal for needed raw materials. Stockpiling SmCo magnet raw materials is a cost-effective, relatively quick short-term solution to the U.S.’s foreign reliance on samarium metal and cobalt metal. Numerous defense systems rely on SmCo magnets for actuator motors and traveling wave tubes incorporated into precision guided munitions and a variety of radar systems.

Budgetary Implications: The National Defense Stockpile Transaction Fund (T-Fund) has a projected Fiscal Year 2019 ending unobligated balance of \$235 million. Budgeted costs of the Stockpile average \$72.4 million per annum for fiscal years 2021-2025. This budget includes the \$50 million of funding required in order to execute the proposed acquisitions. In lieu of an appropriation, the proposed disposal authorities will generate revenue and serve as the financing source to fund these acquisitions, provided that the revenues generated from these disposals are retained in the T-Fund. The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget Request.

Budget Table									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	BA	BLI/SAG	Total	Appropriation
FY 2020 Budget (\$Millions)	\$83.6	\$77.1	\$72.2	\$64.9	\$64.4	04	UNDD	\$362.2	National Defense Stockpile Transaction Fund
Proposed Acquisitions (\$Millions)									
Material	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025			Total	Appropriation
Dysprosium	\$0.432	\$0.432	\$0.432	\$0.432	\$0.432			\$2.16	National Defense Stockpile Transaction Fund
Rare earth cerium compounds	\$0.188	\$0.188	\$0.188	\$0.188	\$0.188			\$0.94	National Defense Stockpile Transaction Fund
Rare earth lanthanum compounds	\$0.924	\$0.924	\$0.924	\$0.924	\$0.924			\$4.62	National Defense Stockpile Transaction Fund
Nd-Pr Oxide and NdFeB magnet blocks	\$7.37	\$7.37	\$7.37	\$7.37	\$7.37			\$36.85	National Defense Stockpile Transaction Fund
Yttrium	\$0.27	\$0.27	\$0.27	\$0.27	\$0.27			\$1.35	National Defense Stockpile Transaction Fund

Sm-Co alloy	\$0.818	\$0.818	\$0.818	\$0.818	\$0.818			\$4.09	National Defense Stockpile Transaction Fund
Acquisition Sub-Total	\$10	\$10	\$10	\$10	\$10			\$50	National Defense Stockpile Transaction Fund
Proposed Disposals (\$Millions)									
Material	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025			Total	Appropriation
Tungsten O&C	\$10	\$10	\$10	\$10	\$10			\$50	National Defense Stockpile Transaction Fund
Revenue Sub-Total	\$10	\$10	\$10	\$10	\$10			\$50	National Defense Stockpile Transaction Fund

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

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Office of the Secretary of Defense and Related Matters

Section 901 would amend the title of ASD Special Operations and Low Intensity Conflict (SO/LIC) to Special Operations and Irregular Warfare (SO/IW) to more accurately reflect SO/LIC’s current mission and responsibilities in implementing the National Defense Strategy (NDS) and its recently approved Irregular Warfare Annex. The position of the ASD SO/LIC was established by the Nunn-Cohen amendment to the NDAA for FY1987, which also established U.S. Special Operations Command. The term “low-intensity conflict” is a Cold War-era term that reflects proxy conflicts prevalent during that period and does not adequately reflect the full range of the ASD’s responsibilities for IW and related activities. The term is not clearly defined in 10 U.S.C. 138(b)(4), does not appear in current DoD joint doctrine, and is not used within the Defense enterprise except when referring to this office.

In April 2019, the ASD SO/LIC approved a reorganization of SO/LIC in order to institutionalize his Title 10 administrative chain-of-command responsibilities overseeing the SOF Enterprise, and to support the objectives of the NDS. Based on a comprehensive review of SO/LIC’s legislative history, current structure, roles, and missions, changing the name of the position and organization is an important part of this effort. Maintaining “Special Operations” in the ASD’s title remains important to reflect the ASD’s core responsibility in the administrative chain-of-command for SOCOM:

The current term “Low-Intensity Conflict” fails to capture the full breadth of activities and unconventional threats falling under the ASD’s responsibilities. It also lacks meaning to other departments and agencies, allies, and partners. The descriptor “low-intensity” is seen as

inaccurate, bordering on a slight, by those who have waged close combat against unconventional enemies, or taken risk in amorphous situations.

The term “irregular warfare” is specifically referenced as a responsibility of the ASD in 10 U.S.C. 138(b)(4), and in March the Acting Secretary of Defense approved an IW Annex to the NDS in order to institutionalize IW as a critical core competency for the Department. ASD (SO/LIC) is leading this department-wide effort. Irregular warfare missions span from stability operations and counterterrorism to information operations and unconventional warfare, reflecting the core portfolio of ASD (SO/LIC).

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President’s Budget request. Since this proposal only seeks a change in title, any additional costs for letterhead and other materials would be minimal and easily absorbed within resources programmed for SO/LIC headquarters support.

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

* * * * *

§138. Assistant Secretaries of Defense

(a)(1) There are 13 Assistant Secretaries of Defense.

(2) The Assistant Secretaries of Defense shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.

(2) One of the Assistant Secretaries is the ~~Assistant Secretary of Defense for Special Operations and Low Intensity Conflict~~ Assistant Secretary of Defense for Special Operations and Irregular Warfare. He shall have as his principal duty the overall supervision (including oversight of policy and resources) of special operations activities (as defined in section 167(j) of this title) and ~~low intensity conflict~~ irregular warfare activities of the Department of Defense. The Assistant Secretary is the principal civilian adviser to the Secretary of Defense on special operations and ~~low intensity conflict~~ irregular warfare matters and (after the Secretary and Deputy Secretary) is the principal special operations and ~~low intensity conflict~~ irregular warfare official within the senior management of the Department of Defense. Subject to the authority, direction, and control of the Secretary of Defense, the Assistant Secretary shall do the following:

(A) Exercise authority, direction, and control of all special-operations peculiar administrative matters relating to the organization, training, and equipping of special operations forces.

(B) Assist the Secretary and the Under Secretary of Defense for Policy in the development and supervision of policy, program planning and execution, and allocation and use of resources for the activities of the Department of Defense for the following:

(i) Irregular warfare, combating terrorism, and the special operations activities specified by section 167(k)⁵ of this title.

- (ii) Integrating the functional activities of the headquarters of the Department to most efficiently and effectively provide for required special operations forces and capabilities.
- (iii) Such other matters as may be specified by the Secretary and the Under Secretary.

* * * * *

§139b. Special Operations Policy and Oversight Council

(a) In General.-In order to fulfill the responsibilities specified in section 138(b)(4) of this title, the ~~Assistant Secretary of Defense for Special Operations and Low Intensity Conflict~~ Assistant Secretary of Defense for Special Operations and Irregular Warfare, or the designee of the Assistant Secretary, shall establish and lead a team to be known as the "Special Operations Policy and Oversight Council" (in this section referred to as the "Council").

* * * * *

§167. Unified combatant command for special operations

(a) Establishment.-With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall establish under section 161 of this title a unified combatant command for special operations forces (hereinafter in this section referred to as the "special operations command"). The principal function of the command is to prepare special operations forces to carry out assigned missions.

* * * * *

(e) Authority of Combatant Commander.-

(1) In addition to the authority prescribed in section 164(c) of this title, the commander of the special operations command shall be responsible for, and shall have the authority to conduct, all affairs of such command relating to special operations activities.

(2) Subject to the authority, direction, and control of the ~~Assistant Secretary of Defense for Special Operations and Low Intensity Conflict~~ Assistant Secretary of Defense for Special Operations and Irregular Warfare, the commander of such command shall be responsible for, and shall have the authority to conduct, the following functions relating to special operations activities (whether or not relating to the special operations command):

* * * * *

(f) Administrative Chain of Command.- (1) Unless otherwise directed by the President, the administrative chain of command to the special operations command runs-

(A) from the President to the Secretary of Defense;

(B) from the Secretary of Defense to the ~~Assistant Secretary of Defense for Special Operations and Low Intensity Conflict~~ Assistant Secretary of Defense for Special Operations and Irregular Warfare; and

(C) from the ~~Assistant Secretary of Defense for Special Operations and Low Intensity Conflict~~ Assistant Secretary of Defense for Special Operations and Irregular Warfare to the commander of the special operations command.

* * * * *

§127e. Support of special operations to combat terrorism

* * * * *

(g) Oversight by ASD for ~~SOLIC~~ SOIW.-The ~~Assistant Secretary of Defense for Special Operations and Low Intensity Conflict~~ Assistant Secretary of Defense for Special Operations and Irregular Warfare shall have primary responsibility within the Office of the Secretary of Defense for oversight of policies and programs for support authorized by this section.

Subtitle B—[Reserved]

Subtitle C—[Reserved]

Subtitle D—United States Space Force

Sections 931 through 937 would make technical and conforming changes to various provisions of existing law in title 10 and other relevant titles of the United States Code (USC) that are necessary to fully integrate the Space Force into current law following the establishment of the Space Force by the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020

This proposal makes the necessary conforming amendments to provisions of law in the relevant titles of the USC that have been enacted as positive law. The vast majority of these amendments are to titles 10 and 37 of the USC, the principal titles involving authorities of the Armed Forces and pay and benefits for the uniformed services. Additional conforming changes are also needed in titles 5, 14, 18, 31, 38, 41, and 51 as various provisions relate specifically to the Armed Forces or members of the Armed Forces. These amendments are largely intended to insert “Space Force” where existing law currently addresses the “Army, Navy, Air Force, and Marine Corps”.

Notably, in amending the provisions relevant to military members serving in specific grades, the proposal inserts references to officers of the Space Force serving in an equivalent grade to an officer in the Air Force. The Department is currently engaged in an evaluation of the appropriate grade structure for the Space Force and this proposal allows Space Force members to be treated equally to their counterparts in the other Armed Forces, while maintaining the opportunity for the Department to determine the appropriate grade structure for the Space Force.

Additionally, in section 931 the proposal clarifies that the function of the Space Force is to organize, train, and equip forces; clarifies that the Chief of Space Operations should be selected from officers of the Space Force or Air Force and, beginning four years after

establishment, only the Space Force; and repeals the requirement for an officer career field for space in the Air Force. Section 937 is a general savings provision to ensure that with respect to any provision of law not addressed by the proposal that involves an authority of the Secretary of Defense or the Secretary of the Air Force with respect to the Air Force, the relevant Secretary can exercise the same authority with respect to the Space Force. The savings provision also allows members of the Space Force to be treated the same as other members of the Armed Forces under other provisions of law that were not specifically amended to reference Space Force members.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Section 1001 would authorize the Secretary of Defense to exclude advance billings for declared disasters or major emergencies from the advance billing \$1 billion limitation.

The current law includes a permanent cap of \$1 Billion in total for all Working Capital Fund billings in any fiscal year across the Department of Defense (DOD). DLA supports other federal agencies, particular the Federal Emergency Management Agency (FEMA), through interagency agreements that permit FEMA to place reimbursable orders with DLA for support in its disaster response missions. Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§5121—5206, FEMA is responsible for coordinating Federal government response to support state, local, tribal, and territorial efforts under the National Response Framework.

In past years, Congress has waived or modified the advance billing limitation to accommodate DLA’s efforts in supporting federal disaster relief efforts. This was most recently done in Public Law 115-72, enacted on October 26, 2017, Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017. In that law, section 310 read “Notwithstanding section 2208(1)(3) of title 10, United States Code, during fiscal year 2018, the dollar limitation on advance billing of a customer of a working-capital fund in such section shall not apply with respect to the advance billing of the Federal Emergency Management Agency. In the preceding sentence, the term ‘advance billing’ has the meaning given the term in section 2208(1)(4) of title 10, United States Code”.

Section (1)(3) of 10 U.S.C. 2208 was previously modified in Public Law 109-234, title I, §1206, enacted June 15, 2006, in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror and Hurricane Recovery, 2006. Section 1206 provided “Notwithstanding 10 U.S.C. 2208(1), the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in fiscal year 2006 shall not exceed \$1,200,000,000: *Provided*, That the amounts made available pursuant to this section are designated as an emergency requirement pursuant to section 402 of H. Con. Res. 95 (109th Congress), the concurrent resolution on the budget for fiscal year 2006.”.

In 2005, Public Law 109-13, div. A, Title I, §1005, enacted May 11, 2005, in the Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief Act, provided “For fiscal year 2005, the limitation under paragraph (3) of section 2208(1) of title 10, United States Code, on the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in a fiscal year shall be applied by substituting “\$1,500,000,000” for “\$1,000,000,000”.

Support to these relief efforts continue to increase and are outside normal operating requests and are not included in cyclic budget requirements. Working Capital Funds must maintain sufficient cash balances to execute their primary mission of warfighter support and set aside a reserve for price fluctuations in petroleum prices. The availability of cash depends on outcomes from the budget cycle (workload, costs, rate setting); supporting unforeseen world events that are not part of the budget directly impacts the agency’s ability to do so and the timing of disbursements to vendors and collections from customers. Therefore, DLA is requesting the law include permanent authority to advance bill for support to disaster relief efforts up to the amount of the orders received. Implementing this change will improve cash solvency while ensuring DLA’s primary mission of warfighter support is not adversely impacted and enable DLA to support disaster relief efforts.

Budget Implications: The resources required are reflected in the table below and are included in the Fiscal Year (FY) 2021 President’s Budget. Note: After querying DOD Components, only the DLA DWCF is impacted by this proposal.

RESOURCE REQUIREMENTS (\$MILLIONS)								
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI / SAG
Labor	.03	.03	.03	.03	.03	Working Capital Fund, Defense-wide	08	ES08
Total	.03	.03	.03	.03	.03			

Changes to Existing Law: This proposal would amend section 2208 of title 10, United States Code, as follows:

§ 2208 Working-capital funds

(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working-capital funds in the Department of Defense to-

- (1) finance inventories of such supplies as he may designate; and
- (2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of-

(1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used, including the cost of the procurement and qualification of technology-enhanced maintenance capabilities that improve either reliability, maintainability, sustainability, or supportability and have, at a minimum, been demonstrated to be functional in an actual system application or operational environment; and

(2) services or work performed; including applicable administrative expenses, and be reimbursed from available appropriations or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the activities, and the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. However, supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense. Working-capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) For provisions relating to sales outside the Department of Defense of manufactured articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, see section 4543 of this title.

(j)(1) The Secretary of a military department may authorize a working capital funded industrial facility of that department to manufacture or remanufacture articles and sell these articles, as well as manufacturing, remanufacturing, and engineering services provided by such facilities, to persons outside the Department of Defense if-

(A) the person purchasing the article or service is fulfilling a Department of Defense contract or a subcontract under a Department of Defense contract, and the solicitation for the contract or subcontract is open to competition between Department of Defense activities and private firms; or

(B) the Secretary would advance the objectives set forth in section 2474(b)(2) of this title by authorizing the facility to do so.

(2) The Secretary of Defense may waive the conditions in paragraph (1) in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(k)(1) Subject to paragraph (2), a contract for the procurement of a capital asset financed by a working-capital fund may be awarded in advance of the availability of funds in the working-capital fund for the procurement.

(2) Paragraph (1) applies to any of the following capital assets that have a development or acquisition cost of not less than \$500,000 for procurements by a major range and test facility installation or a science and technology reinvention laboratory and not less than \$250,000 for procurements at all other facilities:

- (A) An unspecified minor military construction project under section 2805(c) of this title.
- (B) Automatic data processing equipment or software.
- (C) Any other equipment.
- (D) Any other capital improvement.

(l)(1) An advance billing of a customer of a working-capital fund may be made if the Secretary of the military department concerned submits to Congress written notification of the advance billing within 30 days after the end of the month in which the advanced billing was made. The notification shall include the following:

- (A) The reasons for the advance billing.
- (B) An analysis of the effects of the advance billing on military readiness.
- (C) An analysis of the effects of the advance billing on the customer.

(2) The Secretary of Defense may waive the notification requirements of paragraph (1)-

- (A) during a period of war or national emergency; or;
- (B) to the extent that the Secretary determines necessary to support a contingency operation.

(3) The total amount of the advance billings rendered or imposed for all working-capital funds of the Department of Defense in a fiscal year may not exceed \$1,000,000,000. The dollar limitation in the preceding sentence on advance billing of a customer of a working-capital fund shall not apply to advance billing for relief efforts following a declaration of a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(4) In this subsection:

(A) The term "advance billing", with respect to a working-capital fund, means a billing of a customer by the fund, or a requirement for a customer to reimburse or otherwise credit the fund, for the cost of goods or services provided (or for other expenses incurred) on behalf of the customer that is rendered or imposed before the customer receives the goods or before the services have been performed.

(B) The term "customer" means a requisitioning component or agency.

(m) Capital Asset Subaccounts.-Amounts charged for depreciation of capital assets shall be credited to a separate capital asset subaccount established within a working-capital fund.

(n) Separate Accounting, Reporting, and Auditing of Funds and Activities.-The Secretary of Defense, with respect to the working-capital funds of each Defense Agency, and the Secretary

of each military department, with respect to the working-capital funds of the military department, shall provide for separate accounting, reporting, and auditing of funds and activities managed through the working-capital funds.

(o) Charges for Goods and Services Provided Through the Fund.- (1) Charges for goods and services provided for an activity through a working-capital fund shall include the following:

(A) Amounts necessary to recover the full costs of the goods and services provided for that activity.

(B) Amounts for depreciation of capital assets, set in accordance with generally accepted accounting principles.

(2) Charges for goods and services provided through a working-capital fund may not include the following:

(A) Amounts necessary to recover the costs of a military construction project (as defined in section 2801(b) of this title), other than a minor construction project financed by the fund pursuant to section 2805(c) of this title.

(B) Amounts necessary to cover costs incurred in connection with the closure or realignment of a military installation.

(C) Amounts necessary to recover the costs of functions designated by the Secretary of Defense as mission critical, such as ammunition handling safety, and amounts for ancillary tasks not directly related to the mission of the function or activity managed through the fund.

(p) Procedures For Accumulation of Funds.- The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of a military department, with respect to each working-capital fund of the military department, shall establish billing procedures to ensure that the balance in that working-capital fund does not exceed the amount necessary to provide for the working-capital requirements of that fund, as determined by the Secretary.

(q) Annual Reports and Budget.- The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of each military department, with respect to each working-capital fund of the military department, shall annually submit to Congress, at the same time that the President submits the budget under section 1105 of title 31, the following:

(1) A detailed report that contains a statement of all receipts and disbursements of the fund (including such a statement for each subaccount of the fund) for the fiscal year ending in the year preceding the year in which the budget is submitted.

(2) A detailed proposed budget for the operation of the fund for the fiscal year for which the budget is submitted.

(3) A comparison of the amounts actually expended for the operation of the fund for the fiscal year referred to in paragraph (1) with the amount proposed for the operation of the fund for that fiscal year in the President's budget.

(4) A report on the capital asset subaccount of the fund that contains the following information:

(A) The opening balance of the subaccount as of the beginning of the fiscal year in which the report is submitted.

(B) The estimated amounts to be credited to the subaccount in the fiscal year in which the report is submitted.

(C) The estimated amounts of outlays to be paid out of the subaccount in the fiscal year in which the report is submitted.

(D) The estimated balance of the subaccount at the end of the fiscal year in which the report is submitted.

(E) A statement of how much of the estimated balance at the end of the fiscal year in which the report is submitted will be needed to pay outlays in the immediately following fiscal year that are in excess of the amount to be credited to the subaccount in the immediately following fiscal year.

(r) Notification of Transfers.—(1) Notwithstanding any authority provided in this section to transfer funds, the transfer of funds from a working-capital fund, including a transfer to another working-capital fund, shall not be made under such authority unless the Secretary of Defense submits, in advance, a notification of the proposed transfer to the congressional defense committees in accordance with customary procedures.

(2) The amount of a transfer covered by a notification under paragraph (1) that is made in a fiscal year does not count toward any limitation on the total amount of transfers that may be made for that fiscal year under authority provided to the Secretary of Defense in a law authorizing appropriations for a fiscal year for military activities of the Department of Defense or a law making appropriations for the Department of Defense.

(s) Limitation on Cessation or Suspension of Distribution of Funds for Certain Workload.—(1) Except as provided in paragraph (2), the Secretary of Defense or the Secretary of a military department is not authorized—

(A) to suspend the employment of indirectly funded Government employees of the Department of Defense who are paid for out of working-capital funds by ceasing or suspending the distribution of such funds; or

(B) to cease or suspend the distribution of funds from a working-capital fund for a current project undertaken to carry out the functions or activities of the Department.

(2) Paragraph (1) shall not apply with respect to a working-capital fund if—

(A) the working-capital fund is insolvent; or

(B) there are insufficient funds in the working-capital fund to pay labor costs for the current project concerned.

(3) The Secretary of Defense or the Secretary of a military department may waive the limitation in paragraph (1) if such Secretary determines that the waiver is in the national security interests of the United States.

(4) This subsection shall not be construed to provide for the exclusion of any particular category of employees of the Department of Defense from furlough due to absence of or inadequate funding.

(t) Market Fluctuation Account.—(1) From amounts available for Working Capital Fund, Defense, the Secretary shall reserve up to \$1,000,000,000, to remain available without fiscal year limitation, for petroleum market price fluctuations. Such amounts may only be disbursed if the Secretary determines such a disbursement is necessary to absorb volatile market changes in fuel prices without affecting the standard price charged for fuel.

(2) A budget request for the anticipated costs of fuel may not take into account the availability of funds reserved under paragraph (1).

(u) Use for Unspecified Minor Military Construction Projects to Revitalize and Recapitalize Defense Industrial Base Facilities.—(1) The Secretary of a military department may use a working capital fund of the department under this section to fund an unspecified minor military construction project under section 2805 of this title for the revitalization and

recapitalization of a defense industrial base facility owned by the United States and under the jurisdiction of the Secretary.

(2)(A) Except as provided in subparagraph (B), section 2805 of this title shall apply with respect to a project funded using a working capital fund under the authority of this subsection in the same manner as such section applies to any unspecified minor military construction project under section 2805.

(B) For purposes of applying subparagraph (A), the dollar limitation specified in subsection (a)(2) of section 2805 of this title, subject to adjustment as provided in subsection (f) of such section, shall apply rather than the dollar limitation specified in subsection (c) of such section.

(3) In this subsection, the term “defense industrial base facility” means any Department of Defense depot, arsenal, shipyard, or plant located within the United States.

(4) The authority to use a working capital fund to fund a project under the authority of this subsection expires on September 30, 2023.

Section 1002 would authorize the Secretary of Defense to exclude advance billings for background investigations (BIs) and related services provided by the Defense Counterintelligence and Security Agency from the requirement for Congressional notification and the advance billing \$1 billion limitation.

The National Defense Authorization Act for Fiscal Year 2018 (FY 2018 NDAA) (Public Law 115–91), section 925, provided the Secretary of Defense the authority to conduct security, suitability, and credentialing BIs for DoD personnel.

Executive Order (EO) 13869 of April 24, 2019, amending EO 13467 of June 30, 2008, directed transfer of authority to conduct BIs Government-wide from the Office of Personnel Management (OPM) National Background Investigations Bureau (NBIB) to the DoD, and renamed the Defense Security Service (DSS) as the Defense Counterintelligence and Security Agency (DCSA).

In the FY 2020 Passback #3, Department of Defense, dated December 21, 2018, the Office of Management and Budget (OMB) directed that the “DoD should confirm that the Department’s FY 2020 budget request will include a working capital fund that has advanced billing and is capable of receiving agency payments for BIs by October 1, 2019.”

The NBIB advance bills all of its customers for background investigations and related services. This minimizes the cash corpus required for the WCF. Due to the requirement to implement the transition to the DoD one year earlier than directed by the FY 2018 NDAA, the most expedient way forward was to leverage NBIB back-office processes where appropriate, including advanced billing.

The current law requires the Secretary of the military department concerned to submit to Congress written notification of the advance billing within 30 days after the end of the month in which the advanced billing was made. The current law also includes a permanent cap of \$1 billion in total for all working capital fund billings in any fiscal year across the Department of Defense (DOD).

Since the DCSA will be advance billing all of its customers as part of its normal operations, the requirement to notify Congress for advance billings for background investigations and related services should be waived. In addition, the DCSA expects to receive approximately \$1.2 billion in new orders annually. Advance billing for background investigations and related services should be exempt from the \$1 billion annual cap.

The DoD, through the Defense Logistics Agency (DLA), typically advance bills the Federal Emergency Management Agency (FEMA) in support of hurricane relief and other humanitarian efforts. The DLA advance billed FEMA \$721 million in FY 2017 and \$964 million in FY 2018. Similar FEMA advance billing in future years, combined with the expected DCSA amount, would result in \$2 billion or more in total advance billings in a given year.

Budget Implications: None

Changes to Existing Law: This proposal would amend section 2208 of title 10, United States Code, as follows:

§ 2208 Working-capital funds

(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working-capital funds in the Department of Defense to-

- (1) finance inventories of such supplies as he may designate; and
- (2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of-

- (1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used, including the cost of the procurement and qualification of technology-enhanced maintenance capabilities that improve either reliability, maintainability, sustainability, or supportability and have, at a minimum, been demonstrated to be functional in an actual system application or operational environment; and

- (2) services or work performed; including applicable administrative expenses, and be reimbursed from available appropriations or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the activities, and the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section. The accomplishment of the most economical and efficient organization and operation of working capital fund activities for the purposes of this subsection shall include actions toward the following:

- (1) Undertaking efforts to optimize the rate structure for all requisitioning entities.
- (2) Encouraging a working capital fund activity to perform reimbursable work for other entities to sustain the efficient use of the workforce.
- (3) Determining the appropriate leadership level for approving work from outside entities to maximize efficiency.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. However, supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense. Working-capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) For provisions relating to sales outside the Department of Defense of manufactured articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, see section 7543 of this title.

(j)(1) The Secretary of a military department may authorize a working capital funded industrial facility of that department to manufacture or remanufacture articles and sell these articles, as well as manufacturing, remanufacturing, and engineering services provided by such facilities, to persons outside the Department of Defense if-

(A) the person purchasing the article or service is fulfilling a Department of Defense contract or a subcontract under a Department of Defense contract, and the solicitation for the

contract or subcontract is open to competition between Department of Defense activities and private firms; or

(B) the Secretary would advance the objectives set forth in section 2474(b)(2) of this title by authorizing the facility to do so.

(2) The Secretary of Defense may waive the conditions in paragraph (1) in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(k)(1) Subject to paragraph (2), a contract for the procurement of a capital asset financed by a working-capital fund may be awarded in advance of the availability of funds in the working-capital fund for the procurement.

(2) Paragraph (1) applies to any of the following capital assets that have a development or acquisition cost of not less than \$500,000 for procurements by a major range and test facility installation or a science and technology reinvention laboratory and not less than \$250,000 for procurements at all other facilities:

- (A) An unspecified minor military construction project under section 2805(c) of this title.
- (B) Automatic data processing equipment or software.
- (C) Any other equipment.
- (D) Any other capital improvement.

(l)(1) An advance billing of a customer of a working-capital fund may be made if the Secretary of the military department concerned submits to Congress written notification of the advance billing within 30 days after the end of the month in which the advanced billing was made. The notification shall include the following:

- (A) The reasons for the advance billing.
- (B) An analysis of the effects of the advance billing on military readiness.
- (C) An analysis of the effects of the advance billing on the customer.

(2) The Secretary of Defense may waive the notification requirements of paragraph (1)-

- (A) during a period of war or national emergency; or;
- (B) to the extent that the Secretary determines necessary to support a contingency operation.

(3) The total amount of the advance billings rendered or imposed for all working-capital funds of the Department of Defense in a fiscal year may not exceed \$1,000,000,000.

(4) In this subsection:

(A) The term "advance billing", with respect to a working-capital fund, means a billing of a customer by the fund, or a requirement for a customer to reimburse or otherwise credit the fund, for the cost of goods or services provided (or for other expenses incurred) on behalf of the customer that is rendered or imposed before the customer receives the goods or before the services have been performed.

(B) The term "customer" means a requisitioning component or agency.

(5) This subsection shall not apply to advance billing for background investigations and related services provided by the Defense Counterintelligence and Services Agency.

(m) Capital Asset Subaccounts.-Amounts charged for depreciation of capital assets shall be credited to a separate capital asset subaccount established within a working-capital fund.

(n) Separate Accounting, Reporting, and Auditing of Funds and Activities.-The Secretary of Defense, with respect to the working-capital funds of each Defense Agency, and the Secretary of each military department, with respect to the working-capital funds of the military department, shall provide for separate accounting, reporting, and auditing of funds and activities managed through the working-capital funds.

(o) Charges for Goods and Services Provided Through the Fund.-(1) Charges for goods and services provided for an activity through a working-capital fund shall include the following:

(A) Amounts necessary to recover the full costs of the goods and services provided for that activity.

(B) Amounts for depreciation of capital assets, set in accordance with generally accepted accounting principles.

(2) Charges for goods and services provided through a working-capital fund may not include the following:

(A) Amounts necessary to recover the costs of a military construction project (as defined in section 2801(b) of this title), other than a minor construction project financed by the fund pursuant to section 2805(c) of this title.

(B) Amounts necessary to cover costs incurred in connection with the closure or realignment of a military installation.

(C) Amounts necessary to recover the costs of functions designated by the Secretary of Defense as mission critical, such as ammunition handling safety, and amounts for ancillary tasks not directly related to the mission of the function or activity managed through the fund.

(p) Procedures For Accumulation of Funds.-The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of a military department, with respect to each working-capital fund of the military department, shall establish billing procedures to ensure that the balance in that working-capital fund does not exceed the amount necessary to provide for the working-capital requirements of that fund, as determined by the Secretary.

(q) Annual Reports and Budget.-The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of each military department, with respect to each working-capital fund of the military department, shall annually submit to Congress, at the same time that the President submits the budget under section 1105 of title 31, the following:

(1) A detailed report that contains a statement of all receipts and disbursements of the fund (including such a statement for each subaccount of the fund) for the fiscal year ending in the year preceding the year in which the budget is submitted.

(2) A detailed proposed budget for the operation of the fund for the fiscal year for which the budget is submitted.

(3) A comparison of the amounts actually expended for the operation of the fund for the fiscal year referred to in paragraph (1) with the amount proposed for the operation of the fund for that fiscal year in the President's budget.

(4) A report on the capital asset subaccount of the fund that contains the following information:

(A) The opening balance of the subaccount as of the beginning of the fiscal year in which the report is submitted.

(B) The estimated amounts to be credited to the subaccount in the fiscal year in which the report is submitted.

(C) The estimated amounts of outlays to be paid out of the subaccount in the fiscal year in which the report is submitted.

(D) The estimated balance of the subaccount at the end of the fiscal year in which the report is submitted.

(E) A statement of how much of the estimated balance at the end of the fiscal year in which the report is submitted will be needed to pay outlays in the immediately following fiscal year that are in excess of the amount to be credited to the subaccount in the immediately following fiscal year.

(r) Notification of Transfers.- (1) Notwithstanding any authority provided in this section to transfer funds, the transfer of funds from a working-capital fund, including a transfer to another working-capital fund, shall not be made under such authority unless the Secretary of Defense submits, in advance, a notification of the proposed transfer to the congressional defense committees in accordance with customary procedures.

(2) The amount of a transfer covered by a notification under paragraph (1) that is made in a fiscal year does not count toward any limitation on the total amount of transfers that may be made for that fiscal year under authority provided to the Secretary of Defense in a law authorizing appropriations for a fiscal year for military activities of the Department of Defense or a law making appropriations for the Department of Defense.

(s) Limitation on Cessation or Suspension of Distribution of Funds for Certain Workload.- (1) Except as provided in paragraph (2), the Secretary of Defense or the Secretary of a military department is not authorized-

(A) to suspend the employment of indirectly funded Government employees of the Department of Defense who are paid for out of working-capital funds by ceasing or suspending the distribution of such funds; or

(B) to cease or suspend the distribution of funds from a working-capital fund for a current project undertaken to carry out the functions or activities of the Department.

(2) Paragraph (1) shall not apply with respect to a working-capital fund if-

(A) the working-capital fund is insolvent; or

(B) there are insufficient funds in the working-capital fund to pay labor costs for the current project concerned.

(3) The Secretary of Defense or the Secretary of a military department may waive the limitation in paragraph (1) if such Secretary determines that the waiver is in the national security interests of the United States.

(4) This subsection shall not be construed to provide for the exclusion of any particular category of employees of the Department of Defense from furlough due to absence of or inadequate funding.

(t) Market Fluctuation Account.- (1) From amounts available for Working Capital Fund, Defense, the Secretary shall reserve up to \$1,000,000,000, to remain available without fiscal year

limitation, for petroleum market price fluctuations. Such amounts may only be disbursed if the Secretary determines such a disbursement is necessary to absorb volatile market changes in fuel prices without affecting the standard price charged for fuel.

(2) A budget request for the anticipated costs of fuel may not take into account the availability of funds reserved under paragraph (1).

(u) Use for Unspecified Minor Military Construction Projects to Revitalize and Recapitalize Defense Industrial Base Facilities.-(1) The Secretary of a military department may use a working capital fund of the department under this section to carry out an unspecified minor military construction project under section 2805 for the revitalization and recapitalization of a defense industrial base facility owned by the United States and under the jurisdiction of the Secretary.

(2) Section 2805 shall apply with respect to a project carried out with a working capital fund under the authority of this subsection in the same manner as such section applies to any unspecified minor military construction project under section 2805.

(3) In this subsection, the term "defense industrial base facility" means any Department of Defense depot, arsenal, shipyard, or plant located within the United States.

(4) The authority to use a working capital fund to carry out a project under the authority of this subsection expires on September 30, 2023.

Subtitle B—Counterdrug Activities

Section 1011. Changes enacted through the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 lowered the cap on construction projects in support of counter-drug activities and activities to counter transnational organized crime from \$3,000,000 to \$750,000, causing a number of previously planned and validated construction projects to be canceled unexpectedly. Due to the high cost of materials, transportation, and other costs associated with foreign construction, the lower cap is insufficient to achieve minimal requirements. In several instances, project cancellations followed previous and substantial investments by the U.S. Government, causing disruption to relationships and collaboration with key interagency and foreign partners. Projects of this type are routinely planned to complement, and mutually reinforce, other U.S.-provided support such as equipment and training. Amending section 284 of title 10, United States Code, to define small-scale construction as projects not to exceed \$1,500,000 would be consistent with the enacted FY 2019 NDAA that changed the Chapter 16 definition for small-scale construction as construction not to exceed \$1,500,000. This proposal seeks to amend Chapter 15 to mirror Chapter 16 maintaining consistency across Title 10 when supporting foreign partners.

This proposal provides for the concurrence of the Secretary of State for DoD's support to foreign law enforcement agencies related to counter-drug and counter-transnational organized crime activities.

Budgetary Implications: No budgetary impact.

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

(F) Aerial and ground reconnaissance.

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

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

* * * * *

(i) DEFINITIONS.—In this section:

(1) The term “appropriate committees of Congress” means—

(A) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Affairs of the House of Representatives; and

(B) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Relations of the Senate.

(2) The term “Indian tribe” means a Federally recognized Indian tribe.

(3) The term “small scale construction” means construction at a cost not to exceed ~~\$750,000~~ \$1,500,000 for any project.

(4) The term “tribal government” means the governing body of an Indian tribe, the status of whose land is “Indian country” as defined in section 1151 of title 18 or held in trust by the United States for the benefit of the Indian tribe.

(5) The term “tribal law enforcement agency” means the law enforcement agency of a tribal government.

(6) The term “transnational organized crime” means self-perpetuating associations of individuals who operate transnationally for the purpose of obtaining power, influence, monetary, or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption or violence or through a transnational organization structure and the exploitation of transnational commerce or communication mechanisms.

Subtitle C—Naval Vessels

Section 1021 would amend section 2218 of title 10, United States Code, to provide the Secretary of Defense with the discretionary authority to purchase seven used, foreign built sealift ships without the accompanying requirement to procure 10 new sealift vessels in U.S. shipyards. This proposal would also waive the requirement for a new construction sealift vessel to be delivered by 2026. This authority is intended to recapitalize the sealift capability in the Ready Reserve Force component of the National Defense Reserve Fleet (NDRF) and the Military Sealift Command’s surge fleet.

The Department of Defense (DoD) has developed a hybrid sealift recapitalization strategy of new construction (long term), extending the service life of certain vessels (short term) and acquiring used vessels in order to maintain capacity at an acceptable level of risk. This proposal facilitates one portion of the overall strategy by permitting the Secretary of Defense to purchase seven used vessels now while the acquisition strategy for new construction is still under development.), There are a number of sealift vessels approaching the end of their service life. The new construction phase of the strategy is still under development by the Navy and is seeking

to explore the most cost effective new construction design. The development of the requirement, as well as design process, will drive an anticipated first delivery in the late 2020's. Actions must be taken sooner to maintain an acceptable level of risk in sealift capabilities.

Budget Implications: If enacted this proposal would not increase the budgetary requirements of the DoD. Funds to purchase the used vessels authorized by this proposal would be included as part of the Department of Navy's budget submissions for the National Defense Sealift Fund after completion of market surveys and business case assessments. Final budget estimates will be highly dependent on availability of suitable ships, market conditions, material condition, size, and overall military utility.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Navy	60	31				Operation and Maintenance, Navy	02	2A2F	0408042N
Total	60	31				Operation and Maintenance, Navy	02	2A2F	0408042N

Changes to Existing Law: This proposal would make the following changes to section 2218 of title 10, United States Code:

§ 2218. National Defense Sealift Fund

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the “National Defense Sealift Fund”.

* * * * *

(f) LIMITATIONS.—(1) A vessel built in a foreign ship yard may not be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1), unless specifically authorized by law.

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of Public Law 101–510 (104 Stat. 1683).

(3)(A) Notwithstanding the limitations under subsection (c)(1)(E) and paragraph (1), the Secretary of Defense may, as part of a program to recapitalize the Ready Reserve Force component of the national defense reserve fleet and the Military Sealift Command surge fleet, purchase any used vessel, regardless of where such vessel was constructed if such vessel—

- (i) participated in the Maritime Security Fleet; and
- (ii) is available for purchase at a reasonable cost, as determined by the Secretary.

(B) If the Secretary determines that no used vessel meeting the requirements under clauses (i) and (ii) of subparagraph (A) is available, the Secretary may purchase a used vessel comparable to a vessel described in clause (i) of subparagraph (A), regardless of the source of

the vessel or where the vessel was constructed, if such vessel is available for purchase at a reasonable cost, as determined by the Secretary.

(C) The Secretary may not use the authority under this paragraph to purchase more than seven foreign constructed vessels.

(D) The Secretary shall ensure that the initial conversion, or modernization of any vessel purchased under the authority of subparagraph (A) occurs in a shipyard located in the United States.

~~(E) The Secretary may not use the authority under this paragraph to procure more than two foreign constructed vessels unless the Secretary submits to Congress, by not later than the second week of February of the fiscal year during which the Secretary plans to use such authority, a certification that—~~

~~(i) the Secretary has initiated an acquisition strategy for the construction in United States shipyards of not less than ten new sealift vessels; and~~

~~(ii) of such new sealift vessels, the lead ship is anticipated to be delivered by not later than 2026.~~

~~(E)~~ Not later than 30 days before the purchase of any vessel using the authority under this paragraph, the Secretary, in consultation with the Maritime Administrator, shall submit to the congressional defense committees a report that contains each of the following with respect to such purchase:

(i) The proposed date of the purchase.

(ii) The price at which the vessel would be purchased.

(iii) The anticipated cost of modernization of the vessel.

(iv) The proposed military utility of the vessel.

(v) The proposed date on which the vessel will be available for use by the Ready Reserve.

(vi) The contracting office responsible for the completion of the purchase.

(vii) Certification that—

(I) there was no vessel available for purchase at a reasonable price that was constructed in the United States; and

(II) the used vessel purchased supports the recapitalization of the Ready Reserve Force component of the National Defense Reserve Fleet or the Military Sealift Command surge fleet.

(viii) A detailed account of the criteria used to make the determination under subparagraph (B).

~~(G) The Secretary may not finalize or execute the final purchase of any vessel using the authority under this paragraph until 30 days after the date on which a report under subparagraph (E) is submitted with respect to such purchase.~~

* * * * *

Section 1022 would clarify that funds may be used as authorized by the language of the statute regardless of the restrictions that would otherwise be applicable under section 1502 of title 31, United States Code (U.S.C.).

The proposal would also clarify the applicability of the statute to the range of ship work efforts consistent with the range of efforts identified in the body of the statute, which are

overhaul, maintenance, and repair, and to ensure that ship modernization is included for the fiscal flexibilities provided by the statute.

The proposal would explicitly exclude the use under this statute of otherwise-expired appropriations, or appropriations after their period of availability, from the approval and notification requirements associated with use of expired appropriations under section 1553(c) of title 31, U.S.C.

Background

A provision similar to section 8683 of title 10, U.S.C. was first enacted in the Department of Defense Appropriations Act, 1982 and was provided as a recurring provision in subsequent appropriation acts until codified in 1988 by Public Law 100-370 as 10 U.S.C. 7313, recently renumbered as 10 U.S.C. 8683 in the John S. McCain National Defense Authorization Act for Fiscal Year 2019. The FY 2019 revision also reinstated the statute's congressional notification requirement that was previously inadvertently terminated by section 602 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433). Note that the notification requirement was never facially removed from the statutory language, but yet had been inadvertently terminated by the Goldwater-Nichols provision.

The statute as originally enacted was intended to alleviate unique fiscal issues arising from ship repair and overhaul by providing flexibility necessary to accommodate the fact that most ship overhauls cannot be completed within the one-year availability of the Operation and Maintenance, Navy appropriation used to fund them due to the uncovering of needed work after the start of the availability once removal of equipment and other inspections of the ship have begun. The limitations associated with access to operational vessels makes it difficult to estimate the costs of ship overhaul, modernization, maintenance, or repair, efforts for advance planning and budgeting purposes, as it is always uncertain exactly what work will need to be done until the ship is in dock, inspected and equipment removal has begun. Congress previously acknowledged the need for fiscal flexibility in H.R. Report No. 97-333 for the Fiscal Year 1982 Defense Appropriations Bill as follows:

Financing Change Orders Scope of Effort Changes on Ship Overhauls

As Naval ships became more complex and the average age of those ships retained in the fleet increased, so did the effort of estimating a definitive overhaul work package. Frequently, post induction open and inspection procedures disclose repair requirements not previously allowed for. This results in either a reduction in the original work package for a given ship or a program reduction elsewhere to accommodate for the increased scope of effort. Consequently, some years ago the Navy commenced budgeting for a funding wedge in the subsequent year for scope of effort changes relative to the initial ship overhaul repair package.

The Committee also attempted to address this problem through the use of a two year appropriation since multiyear funding of ship overhauls from an

annual appropriation is not proper. Navy indicated that a two year availability which "fenced" ship overhaul would be unnecessarily restrictive, and the proposal was dropped in conference.

The Committee is now recommending new language in the fiscal year 1982 Bill, Section 708 (n) and (o), which will allow Navy to budget for scope of effort changes in the same fiscal year in which the ship is inducted. The Committee believes this procedure will alleviate the problem Navy has encountered in maintaining accountability of fiscal year funds used to finance increased scope of effort changes. These funds will remain unobligated at the end of the fiscal year and remain available to finance scope of effort changes. It should be noted that the language is restricted to depot level maintenance related work on ships. The Office of the Secretary of Defense and the Military Departments should take whatever action deemed necessary to assure availability of resources at end year. The Committee proposes an increase of \$58 million in fiscal year 1982 to cover change order costs related to ship overhauls based on an average of such costs identified for the last three fiscal years.

Such costs for other depot maintenance programs should be covered from unobligated balances available at end year from within the appropriation which funded the initial repair effort.

Language has also been included which would allow the use of current year appropriations to cover unusual cost overruns, with prior congressional approval, associated with depot repair work inducted in the previous fiscal year.

Additionally, the associated Senate Report, No. 97-273, provided:

Ship overhaul change orders and advanced funding.-Beginning in fiscal year 1983, the Committee directs that the Navy budget for ship change orders in the same fiscal year in which the ship is inducted. Further, the Navy should finance the procurement of all long-lead materials through the stock fund to be provided in the same fiscal year in which a ship enters an industrial facility. The effect of this recommendation will be to improve the accountability of fiscal year funding provided for ship maintenance. Unlike prior year programs, as of fiscal year 1983 all costs associated with ship overhauls and repair will be charged to the same fiscal year funding as the year that the ship enters overhaul. The recommendation to defer implementation of this financing procedure has been made in recognition of the adjustments necessary to accommodate this effort in the fiscal year 1983 budget submission.

However, in retrospect, the statute as currently written has not provided the level of flexibility needed to efficiently and cost effectively carry out ship overhaul, modernization, maintenance, or repair as we believe Congress intended. Additionally, an issue has arisen as to whether the subsequently enacted notification and approval requirements for use of expired funds at 31 U.S.C. 1553(c)(1) and (2), first established in the FY 1990 National Defense Authorization Act (P.L. 101-189), apply to use of funds after their "otherwise-applicable

expiration” under 10 U.S.C. 8683. The 31 U.S.C. 1553(c)(1) and (2) approval and notification procedures include a requirement to obtain approval from the head of the agency (or delegee within the office of the head) in order to obligate expired funds in excess of \$4 million during a fiscal year for contract changes for a program, project or activity. For contract changes involving use of expired funds for a program, project or activity in excess of \$25 million during a fiscal year, the head of the agency is required to notify the appropriate authorizing and appropriations committees of Congress and wait 30 days before use of such funds. But where 10 U.S.C. 8683 contains congressional authorization to use expired funds, it is redundant and a major cause of delays to availability execution which the statute sought to eliminate to also require the additional approvals under 31 U.S.C. 1553(c). Therefore, this proposed 10 U.S.C. 8683 amendment would explicitly exclude the use of funds under 10 U.S.C. 8683 after their period of availability from the approval and notification requirements of 31 U.S.C. 1553(c).

The Department of Defense and Department of the Navy have interpreted the notification and approval requirements under 31 U.S.C. 1553(c) to be applicable to the use of “otherwise” expired funds under 10 U.S.C. 8683. As a result, the Navy has been unable to use 10 U.S.C. 8683 to exercise the fiscal flexibility needed for prompt resolution of emergent requirements resulting from changes in the scope of work for ship overhauls, modernization, maintenance, and repair. Many approval requests occur while the ship is undergoing time sensitive availabilities, and the delay caused by the funding approval process increases the risk of unacceptable delay to that ship availability. Whenever overhaul, modernization, maintenance, and repair work on ships cannot be immediately funded and performed as intended by 10 U.S.C. 8683, the Navy is at risk for decreased mission readiness. Application of the 31 U.S.C. §1553(c) approval requirements in order to use expired funding for changes identified during ship availabilities has resulted in exercise of a time-consuming process that takes anywhere between six (6) and twelve (12) weeks before funds are approved, creating significant potential for delay and work stoppages, extension of the ship availability and modernization milestones, and incurrence of additional contract costs.

Another issue associated with the statute, and that this proposal seeks to resolve, is that its history creates some ambiguity regarding the applicability of the statute to solely depot level ship overhauls, or whether it may also be applied to other ship modernization, maintenance, and repair efforts. As currently written, the language in the body of the statute, specifically paragraphs (a)(1), (b)(1) and (b)(2), indicates that the authorities provided therein may be broadly applied to all “ship overhaul, maintenance, and repair.” However, the current title of 10 U.S.C. 8683 and legislative history of the statute leave room for a more restrictive application of the statute to only certain major ship repair efforts. Specifically, the title of the statute refers only to “ship overhaul.” The legislative history of the statute, particularly H. Rpt. 97-333 for the FY 1982 Appropriations Act, states that “[i]t should be noted that the language is restricted to depot level maintenance related work on ships.” Although the rules of statutory construction may generally allow the broader application of the authority to include ship repair and maintenance based on the language in the body of the statute, the current interpretation, informed by the title and legislative history, limits the authority to only depot level overhauls. This proposed amendment would provide certainty that the authority provided in the statute may be broadly applied to all ship overhauls, ship modernization, ship maintenance, and ship repair

efforts. Broader application of the authority would provide needed funding flexibility for smaller ship availabilities and would facilitate timely work execution at the performing shipyard.

Budget Implications: This proposal has no budget impact.

Changes to Existing Law: This proposal would amend section 8683 of title 10, United States Code as follows:

§ 8683. Ship overhaul, modernization, maintenance, and repair work: availability of appropriations for unusual cost overruns and for changes in scope of work

(a) UNUSUAL COST OVERRUNS.—(1) Notwithstanding section 1502 of title 31, appropriations ~~Appropriations~~ available to the Department of Defense for a fiscal year may be used for payment of unusual cost overruns incident to ship overhaul, modernization, maintenance, and repair for a vessel inducted into an industrial-fund activity or contracted for during a prior fiscal year.

(2) The Secretary of Defense shall notify Congress promptly before an obligation is incurred for any payment under paragraph (1).

(b) CHANGES IN SCOPE OF WORK.—Notwithstanding sections 1502 and 1553(c) of title 31, an ~~An~~ appropriation available to the Department of Defense for a fiscal year may be used after the otherwise-applicable expiration of the availability for obligation of that appropriation—

(1) for payments to an industrial-fund activity for amounts required because of changes in the scope of work for ship overhaul, modernization, maintenance, and repair, in the case of work inducted into the industrial-fund activity during the fiscal year; and

(2) for payments under a contract for amounts required because of changes in the scope of work, in the case of a contract entered into during the fiscal year for ship overhaul, maintenance, and repair.

Section 1023 would grant the Secretary of the Navy the authority to waive the limitation on returning naval vessels that were “forward deployed” overseas for more than 10 years as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2019.

Navy understands the intent of Congress to re-assign a U.S. homeport within a 3-year timeframe (AUG 2018 – to – AUG 2021) for those ships currently “forward deployed” overseas in excess of 10 years. This proposal grants the Secretary of the Navy the flexibility needed to adjust the departure date of a currently “forward deployed” ship if needed to meet mission requirements and reduce operational risk.

This proposal has no budget implications since the proposed change provides the Secretary of the Navy the ability to waive a congressional requirement with justification, as the planned operational use of affected ships is included in the FY 2021 Budget request.

Budget Implications: No budgetary impact.

Changes to Existing Law: This proposal would make the following changes to section 323 of the National Defense Authorization Act for Fiscal Year 2019:

SEC. 323. LIMITATION ON LENGTH OF OVERSEAS FORWARD DEPLOYMENT OF NAVAL VESSELS.

(a) LIMITATION.—

* * * * *

(b) TREATMENT OF CURRENTLY DEPLOYED VESSELS.—(1) Subject to paragraph (2), in the case of any naval vessel that has been forward deployed overseas for a period in excess of ten years as of the date of the enactment of this Act, the Secretary of the Navy shall ensure that such vessel is assigned a homeport in the United States by not later than three years after the date of the enactment of this Act.

(2) The Secretary of the Navy may waive the limitation under paragraph (1) with respect to a naval vessel in the same manner as provided for in subsection (c) of section 8690 of title 10, United States Code, with respect to the limitation in subsection (a) of that section.

* * * * *

Subtitle D—Counterterrorism

Section 1031 would codify and make permanent the authorities provided in section 1022 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2004 (Public Law 108-136, as amended) (referred to as “section 1022”). For over a decade, section 1022 has provided the Department of Defense (DoD) the authority to use funds from the drug interdiction and counter-drug activities account to enable joint task forces that support law enforcement agencies conducting counter-drug activities to also provide support to law enforcement agencies conducting counter-terrorism or counter-transnational organized crime activities. Since section 1022 was first enacted in November 2003, the authority has been reauthorized eight times. In the FY 2015 NDAA, section 1022 was reauthorized for a period of five years and was expanded to also authorize support to joint task forces conducting counter-transnational organized crime activities. The authority is set to expire at the end of FY 2020.

Section 1022 has been particularly useful in authorizing DoD analytical support to disrupt the financial resources of terrorists, transnational criminal organizations, and other threat networks that derive revenue from illicit trafficking. Details of support authorized under section 1022 have been reported to Congress annually through a classified report. Section 1022(d) requires that counterterrorism or counter-transnational organized crime activities must “relate significantly” to counterdrug objectives, unless the Secretary of Defense issues a waiver that providing such support is “vital to the national security interests of the United States.” This provision allows DoD to support the most critical national security requirements, while preserving the integrity of the counterdrug appropriation for activities to disrupt the flow of cocaine, heroin, and other dangerous drugs and precursor chemicals bound for the United States. Codifying section 1022 would facilitate long-term planning and budgeting, and would enhance the efforts of the Combatant Commanders to confront the persistent national security threat posed to the United States and our allies and partners by the nexus among drugs, terrorism, and

transnational organized crime.

Finally, this provision would repeal the condition that support under this authority may only be provided within the area of responsibility of a given joint task force. Many of the illicit threat networks this authority was designed to counter operate globally, conducting their operations in multiple countries and regions, which often span multiple geographic combatant commands' areas of responsibility. Furthermore, many of the joint task forces currently designated to provide support pursuant to section 1022, such as U.S. Special Operations Command and the Narcotics and Transnational Organized Crime Support Center (NTC), by design, do not have a specific geographic area of responsibility. We, therefore, believe this provision is no longer necessary and could unnecessarily restrict DoD support for transregional law enforcement investigations.

Budget Implications: The resources impacted are reflected in the table below and are included in the Fiscal Year (FY) 2021 President's Budget.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
DoD Counterdrug Programs	\$50.3	\$51.3	\$52.4	\$53.4	\$54.5	Drug Interdiction and Counter Drug Activities, Defense	01	N/A	N/A
Total	\$50.3	\$51.3	\$52.4	\$53.4	\$54.5				

Changes to Existing Law: This proposal would transfer the text of section 1022 of the National Defense Authorization Act for Fiscal Year 2004 into a new section 285 of title 10, United States Code, and amend such section as follows:

~~SEC. 1022. AUTHORITY FOR JOINT TASK FORCES TO PROVIDE SUPPORT TO LAW ENFORCEMENT AGENCIES CONDUCTING COUNTER-TERRORISM ACTIVITIES.~~

§ 285. Authority for joint task forces to support law enforcement agencies conducting counterterrorism and counter transnational organized crime activities

(a) **AUTHORITY.**—A joint task force of the Department of Defense that provides support to law enforcement agencies conducting counter-drug activities may also provide, subject to all applicable laws and regulations, support to law enforcement agencies conducting counter-terrorism activities or counter-transnational organized crime activities.

(b) **AVAILABILITY OF FUNDS.**—~~During fiscal years 2006 through 2020, funds for drug~~

~~interdiction~~ Funds for drug interdiction and counter-drug activities that are available to a joint task force to support counter-drug activities may also be used to provide the counter-terrorism or counter-transnational organized crime support authorized by subsection (a).

(c) ANNUAL REPORT.—Not later than December 31 of each year in which the authority in subsection (a) is in effect, the Secretary of Defense shall submit to the congressional defense committees a report setting forth, for the one-year period ending on the date of such report, the following:

(1) An assessment of the effect on counter-drug, counter-transnational organized crime, and counter-terrorism activities and objectives of using counter-drug funds of a joint task force to provide counter-terrorism or counter-transnational organized crime support authorized by subsection (a).

(2) A description of the type of support and any recipient of support provided under subsection (a), and a description of the objectives of such support.

(3) A list of current joint task forces exercising the authority under subsection (a).

(4) A certification by the Secretary of Defense that any support provided under subsection (a) during such one-year period was provided in compliance with the requirements of subsection (d).

~~(d) CONDITIONS.—(1) Any support provided under subsection (a) may only be provided in the geographic area of responsibility of the joint task force.~~

~~(2)(A) Support~~ (d) CONDITIONS.—(1) Support for counter-terrorism or counter-transnational organized crime activities provided under subsection (a) may only be provided if the Secretary of Defense determines that the objectives of using the counter-drug funds of any joint task force to provide such support relate significantly to the objectives of providing support for counter-drug activities by that joint task force or any other joint task force.

~~(B) The Secretary of Defense may waive the requirements of subparagraph (A) (2) The Secretary may waive the requirements of paragraph (1) if the Secretary determines that such a waiver is vital to the national security interests of the United States. The Secretary shall promptly submit to the congressional defense committees notice in writing of any waiver issued under this subparagraph, together with a description of the vital national security interests associated with the support covered by such waiver.~~

(e) DEFINITIONS.—(1) In this section, the term “transnational organized crime” has the meaning given such term in section 284(i) of ~~title 10, United States Code~~ this title.

(2) For purposes of applying the definition of transnational organized crime under paragraph (1) to this section, the term “illegal means”, as it appears in such definition, includes the trafficking of money, human trafficking, illicit financial flows, illegal trade in natural resources and wildlife, trade in illegal drugs and weapons, and other forms of illegal means determined by the Secretary of Defense.

Subtitle E—Miscellaneous Authorities and Limitations

Section 1041 would modify section 1045 of the National Defense Authorization Act for Fiscal Year 2018, which adds additional post-employment restrictions to certain senior Department of Defense (DoD) personnel, to be consistent with the post-government employment

criminal statute in section 207 of title 18, United States Code. The following modifications are proposed:

The term “component” is added to subsection (a)(1), and defined in new paragraph (4) of subsection (d) (originally subsection (c) and redesignated as subsection (d)). Under the authority in 18 U.S.C. 207(h), the Director of the Office of Government Ethics has designated separate components within the Department of Defense (See Appendix B to 5 C.F.R. Part 2641). This change aligns section 1045 with the criminal statute, which reasonably permits former senior personnel serving in DoD positions below the Presidentially appointed, Senate-confirmed level to communicate with employees of a designated separate and distinct component of the Department from that in which the former official served.

Using “lobbying contacts” rather than “lobbying activities” throughout makes section 1045 more consistent with the criminal restrictions in 18 U.S.C. 207(c) that bar direct communication with or appearance before a departed official’s former agency, but permit former personnel to work behind-the-scenes. This change alleviates the confusion introduced by the original section 1045’s definitions suggesting activities “in support of lobbying contacts” are prohibited.

To further harmonize section 1045 with the criminal statute, paragraph (1) of subsection (d) (as redesignated) is amended to include the exceptions provided under the post-government employment law at 18 U.S.C. 207(j). This continues the ability of former senior officials to communicate on behalf of recognized institutions of higher education and hospitals and similar excepted entities and circumstances.

Paragraph (4) of subsection (d) (as redesignated) is added to set forth the existing definition of DoD components.

Budget Implications: No budget impact.

Changes to Existing Law: This proposal would make the following changes to section 1045 of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 971 note prec.):

SEC. 1045. PROHIBITION ON LOBBYING ACTIVITIES WITH RESPECT TO THE DEPARTMENT OF DEFENSE BY CERTAIN OFFICERS OF THE ARMED FORCES AND CIVILIAN EMPLOYEES OF THE DEPARTMENT FOLLOWING SEPARATION FROM MILITARY SERVICE OR EMPLOYMENT WITH THE DEPARTMENT.

(a) TWO-YEAR PROHIBITION.—

(1) PROHIBITION.—An individual described in paragraph (2) may not engage in lobbying ~~activities~~ contacts with respect to ~~the a~~ a Department of Defense component in which such individual served within one year of retirement or separation during the two-year period beginning on the date of retirement or separation from service in the Armed Forces or the date of retirement or separation from service with the Department, as applicable.

(2) COVERED INDIVIDUALS.—An individual described in this paragraph is the following:

(A) An officer of the Armed Forces in grade 0-9 or higher at the time of retirement or separation from the Armed Forces.

(B) A civilian employee of the Department of Defense who had a civilian grade equivalent to a military grade specified in subparagraph (A) at the time of the employee's retirement or separation from service with the Department.

(b) ONE-YEAR PROHIBITION.—

(1) PROHIBITION.—An individual described in paragraph (2) may not engage in lobbying ~~activities~~ contacts with respect to ~~the a~~ a Department of Defense component in which such individual served within one year of retirement or separation during the one-year period beginning on the date of retirement or separation from service in the Armed Forces or the date of retirement or separation from service with the Department, as applicable

(2) COVERED INDIVIDUALS.—An individual described in this paragraph is the following:

(A) An officer of the Armed Forces in grade 0-7 or 0-8 at the time of retirement or separation from the Armed Forces.

(B) A civilian employee of the Department of Defense who had a civilian grade equivalent to a military grade specified in subparagraph (A) at the time of the employee's retirement or separation from service with the Department.

(c) SPECIAL RULE FOR CERTAIN APPOINTEES.—Notwithstanding any other provision of this section, for purposes of applying the prohibitions in subsections (a)(1) and (b)(1) with respect to an individual who is employed at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, the Department of Defense shall be treated as a single component.

~~(e)~~ (d) DEFINITIONS.—In this section:

(1)(A) The term “lobbying ~~activities~~ contacts with respect to ~~the a~~ a Department of Defense component in which such individual served within one year of retirement or separation” means, subject to subparagraph (B), the following:

(A*i*) Lobbying contacts ~~and other lobbying activities~~ with covered executive branch officials with respect to ~~the a~~ a Department of Defense component in which such individual served within one year of retirement or separation.

(B*ii*) Lobbying contacts with covered executive branch officials described in subparagraphs (C) through (F) of section 3(3) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602(3)) in ~~the a~~ a Department of Defense component in which such individual served within one year of retirement or separation.

(B) Such term does not include communications and appearances described in section 207(j) of title 18, United States Code.

(2) The ~~terms~~ “lobbying activities” and term “lobbying contacts” ~~have~~ has the meaning given such ~~terms~~ term in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602)

(3) The term “covered executive branch official” has the meaning given that term in section 3(3) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602(3)).

(4) The term “Department of Defense component” means—

(A) an agency or bureau of the Department of Defense designated by the Director of the Office of Government Ethics as a separate department or agency under subsection (h) of section 207 of title 18, United States Code, for purposes of subsection (c) of such section; and

(B) an element of the Department of Defense that has not been so designated, except that all such elements shall be collectively treated as a single Department of Defense component.

Section 1042 would authorize the Secretary of the Army to provide goods and services, including inter-atoll transportation, at Kwajalein Atoll, Republic of the Marshall Islands (RMI), to the RMI government and other eligible patrons. This proposal will enable the Department of Defense (DoD) to accomplish its mission at this remote and isolated location where the economy is inadequate to provide the services needed.

Since July 1, 1964, the U.S. Army has operated a missile test range at a small, remote installation on Kwajalein Atoll in the RMI. U.S. Army Garrison-Kwajalein (USAG-KA) is located there and is home to the Ronald Reagan Ballistic Missile Defense Test Site (RTS). Command and responsibility for the installation was under the United States Army Space and Missile Defense Command/Army Forces Strategic Command (USASMDC/ARSTRAT) until October 1, 2013, when installation management responsibilities were transferred to the U.S. Army Installation Management Command (IMCOM) and the Army installation standardized garrison was established. The Commander, USASMDC/ARSTRAT remained the senior commander for USAG-KA and RTS. RTS is a premier asset within the DoD Major Range and Test Facility Base (MRTFB). The unquestioned value of RTS to the MRTFB is based upon its strategic geographical location, unique instrumentation, and unsurpassed capability to support ballistic missile testing and space operations. With more than 50 years of successful support, RTS provides a vital role in the research, development, test, and evaluation of America’s missile defense and space programs.

USAG-KA consists of 11 islands within Kwajalein Atoll, operated as Defense Sites per the Compact of Free Association, as amended (Public Law 108-188, 17 December 2003) with the RMI and the Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Republic of the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as amended. The workforce at USAG-KA consists of a small contingent of military and civilian personnel and their families and a larger contingent of contractor personnel, some of whom are also accompanied by family members. Personnel reside permanently on two of the islands, Kwajalein and Roi-Namur, with the larger population and majority of base operations functions residing on Kwajalein.

Due to the remote and isolated location of USAG-KA and the lack of infrastructure in the RMI, USAG-KA is responsible for all base operations functions—many that are normally provided by or procured from adjacent local metropolises by all other installations. Base operations, logistics, and other mission functions at USAG-KA are operated pursuant to a cost-

reimbursement base operations contract and funded by congressionally enacted appropriations. The contract includes maintenance and operations of base facilities, including an international airport, harbor, power plant, water treatment plant, schools, grocery store, recreational facilities, and many other facilities similar to those that would be found in a small town.

Ebeye has approximately 13,000 residents, approximately 800 of whom work on Kwajalein. These workers are transported daily by ferry to work on Kwajalein. Local national Marshallese workers also reside on the neighboring island of Ennubirr (also known as “Third Island”). Marshallese workers residing on Ennubirr are transported daily by ferry to work on Roi Namur. Ennubirr has approximately 800 residents of whom 100 work on Roi Namur. There is very limited infrastructure on Ennubirr, as such the local national Marshallese worker and their families purchase subsistence items from a small contractor operated store located on Roi Namur known as the “Third Island Store.” The Third Island Store usually operates at a break even or better profit margin comparable to like retail facilities at Kwajalein Island. Attempts have been made over the years to foster the establishment of a Marshallese owned and operated store located on Ennubirr but such efforts were never successful. Since that time, concern has grown over divesting U.S. control over the store because several similar retail facilities located on Ebeye are currently run by outside investors with ties to the People’s Republic of China.

Over the course of the last 50 years, the Army (and before that the Navy) provided logistical support through various contractors to the RMI. This support was done through various arrangements under the Compact of Free Association. Unless otherwise noted, these sales and services provide to the RMI by the Army are on a cost reimbursement basis. Such support includes the following:

- Health Care Services. To the extent possible, and on a reimbursable basis, USAG-KA provides emergency health care services, emergency medical evacuations, morgue services, laboratory work for cultures and biopsies, and emergency provisions of pharmaceuticals and medical supplies upon request by an authorized RMI official.
- Water Deliveries. To the extent possible, and on a reimbursable basis, USAG-KA provides water deliveries on a case-by-case basis within Kwajalein Atoll upon request by an authorized RMI official.
- Subsistence to Ennubirr (Third Island). To the extent possible, and on a reimbursable basis, USAG-KA provides cash sale of basic food and other subsistence provisions to Ennubirr residents. USAG-KA also provides for the sale of limited petroleum products.
- Emergency Services to RMI Ships. To the extent possible, and on a reimbursable basis, USAG-KA provides emergency services and supplies (limited to fuel, water, and small repair parts for essential equipment) to RMI flagged ships and local government vessels upon request by an authorized RMI official.
- Search and Rescue (SAR). To the extent possible, and within capability, on a reimbursable basis, USAG-KA provides SAR upon request by an authorized RMI official.

- Aircraft Landing and Ground Services to the Air Marshall Islands and other Air Services Utilizing Airfields located at USAG-KA (Airport Services). To the extent possible, and on a reimbursable basis, RMI aircraft and other aircraft requesting landing privileges at the behest of the RMI (or on a pro-rata basis on jointly utilized aircraft) may utilize USAG-KA controlled airfields.
- Bottled Gas Sales. To the extent possible, and on a reimbursable basis, USAG-KA provides sale of bottled gases (oxygen and propane) to RMI government agencies and businesses on Ebeye upon request by an authorized RMI official.
- Explosive Ordnance Disposal (EOD). To the extent possible, and on a reimbursable basis, USAG-KA provides EOD services to government agencies on Ebeye and throughout Kwajalein Atoll upon request by an authorized RMI official.
- Provision of Supplies, Services, and Equipment. To the extent possible, and on a reimbursable basis, USAG-KA provides supplies, services, and equipment to government agencies on Ebeye and throughout the Kwajalein Atoll upon request by an authorized RMI official.
- Provisions of Limited Food and other Supplies to a Limited Number of RMI Traditional and Elected Leadership (Distinguished Visitor “DV” shopping). A weekly allocation of up to \$250 worth of shopping privileges at the installation contractor run grocery store is allowed for a limited number (~4) of traditional and elected leaders of the RMI Government, as determined by an authorized Army official.
- Limited Retail Sales to Eligible RMI and other Designated Patrons for the Purchase of Retail Foodstuff and other Small Retail Items. As determined by an authorized Army official, patrons at USAG-KA are allowed to purchase retail food items such as bakery goods, prepared foods, and other retail items on a limited basis at contractor-run facilities.
- Transportation on USASMDC (USAG-KA) Vessels/Aircraft. USAG-KA provides non-reimbursable space required transportation for the local Marshallese workforce within Kwajalein Atoll and non-reimbursable space available transportation for eligible passengers on USAG-KA vessels/aircraft bound for Kwajalein, Roi-Namur, or other authorized destinations within the Kwajalein Atoll.
- Marshallese Cultural Center. A volunteer organization is made up of Kwajalein residents and local RMI traditional leaders who collectively contribute time and treasure in the oversight and operation of part time museum of a small but significant historical collection of Marshallese artifacts on display. These items are securely housed in an Army-owned building on Kwajalein Island. This museum represents the only reliable Western ideal of a properly curated Marshallese collection of artifacts in the Marshall Islands. There is no cost for admission to the center and no salaries paid to the volunteers. Utilities, maintenance, and upkeep of the building is borne by the Army on a non-reimbursable basis.

- Bank of Marshall Islands (BOMI). A RMI-chartered branch bank operating on USAG-KA is open to all customers living on USAG-KA and primarily for RMI workforce at USAG-KA. Authorization for the bank to operate at USAG-KA is, to the extent possible, on a reimbursable basis. USAG-KA provides maintenance and utilities to the U.S. Government owned building upon request by an authorized RMI official.
- RMI Post Office. A RMI-chartered post office operating on USAG-KA is open to all customers living on USAG-KA and primarily for RMI workforce at USAG-KA. Authorization for the post office to operate at USAG-KA is, to the extent possible, on a reimbursable basis. USAG-KA provides maintenance and utilities to the U.S. Government owned building upon request by an authorized RMI official.

The RMI’s political support to the United States is essential. Beyond access to USAG-KA under the Compact of Free Association, the United States is granted the right to foreclose access to or use of the RMI by foreign militaries. This ability to strategically deny access effectively gives the U.S. control of the land, airspace, and water area between the Philippines and Hawaii—in essence virtual control of the Central Pacific. Politically, the United States has come to count on the support of the RMI in international bodies like the United Nations.

Despite the political and strategic importance of providing sales and services and limited transportation to the RMI and eligible patrons, questions regarding the permissible scope of and authority for such activities have occasionally arisen, leading to bilateral concerns about the continued provision of these sales and services pending the resolution of those questions. There is a significant desire to clarify the authority for and to expand the scope of this activity.

While limiting or interrupting access to privileges at USAG-KA, such as those just described may seem innocuous, the potential political ramifications are significant. Interrupting or limiting RMI access to basic supplies and services such as transportation, search and rescue, or even RMI traditional leadership’s access to grocery shopping could have a ripple effect that could influence other U.S. Government entities, including the Department of State, in a very negative manner. Further, flexibility to expand the scope to other eligible patrons would allow the Army to ease certain logistical burdens and help promote continued goodwill towards the Army and the United States. Accordingly, legislation is requested to clarify and expand the U.S. Army’s authority to continue and expand the provision of sales, services, and transportation to the RMI and eligible patrons on a largely reimbursable basis.

This legislative proposal would clarify and expand the authority of the U.S. Army to continue providing the RMI and eligible patrons sales, services, and transportation within the capability of the Army at USAG-KA.

This proposal would enact the necessary authorities to provide the support/services with all reimbursements forwarded to the U.S. Treasury. In FY17, there was approximately \$4.6M of USAG-KA provided goods and services where the proceeds were forwarded to the U.S. Treasury. A summary of the receipts, in various categories, follows below.

FY17 Transfer of Receipts to U.S. Treasury—Categories	FY17 Receipts
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Aviation Services – Continental/United	\$695,502
Aviation Services – Air Marshall Islands	\$95,468
Aviation Services – Aero Micronesia/Asia Pacific	\$644
Landing Fees – Air Marshall Islands	\$12,140
Landing Fees – Aero Micronesia/Asia Pacific	\$332
Landing Fees – Continental/United	\$75,683
Monthly Facility Space Rent – Air Marshall Islands	\$15,552
Monthly Facility Space Rent – Continental/United	\$11,214
Monthly House/BQ Rent – Continental/United	\$10,400
Bakery	\$215,374
Beauty/Barber Shop	\$65,344
Catering Services	\$22,365
Laundry Services	\$2,010
Surfway Grocery Store	\$2,601,603
Roi Surfway Grocery Store	\$475,333
Vet Services	\$81
Dining Hall Collections (Non-Meal Card Residents & Visitors)	\$219,237
Land Services Charged	\$4,811
Reimbursable Material – RMI	\$1,813
Sale of Excess Property (Bid Sales or RMI Right of First Refusal)	\$5,227
Reimbursable Material – Retail Sales	\$1,901
Reimbursable Labor Sales	\$1,241
Reimbursable Material – Sale to Local Organizations	\$33,815
KAJUR Ebeye Power Plant	\$4,191
FY17 Total	\$4,571,281

It is presently expected that the mission and workforce size at USAG-KA will remain basically constant throughout Fiscal Years 2021 through 2025. With this expectation, it is reasonable to assume that, in constant year dollars, the scope of the U.S. Treasury receipts from USAG-KA will remain between \$4.7M to \$5.1M.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request. The table below reflects the estimated resources required to provide the support/services.

RESOURCE IMPACT(\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element
Army	\$4.7	\$4.8	\$4.9	\$5.0	\$5.1	Research, Development, Test and Evaluation, Army	06	156	0605301A
Total	\$4.7	\$4.8	\$4.9	\$5.0	\$5.1				

Changes to Existing Law: This proposal would add section 7596 to chapter 767 of title 10, United States Code, as previously shown.

Section 1043 will repeal the hardship exemption provision of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). The provision currently provides a waiver of the 45-day deadline for a State to transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter, if the State proves that the State cannot comply with the deadline due to an undue hardship created by (1) the date of the State's primary election; (2) a delay in generating ballots due to a legal contest; or (3) a prohibition in the State's constitution. The States must also provide a comprehensive plan that provides absent uniformed services voters and overseas voters (UOCAVA voters) sufficient time to receive and submit the absentee ballots they have requested in time to be counted in the Federal general election.. States must apply to the Secretary of Defense (who serves as the Presidential designee under Executive Order 12642) to receive this waiver. Then, in consultation with Department of Justice, the Department of Defense must expeditiously review and respond to the State's waiver application.

The recent experience of the Department of Defense with the hardship exemption provision shows that it provides marginal benefits for the Department to review the relative merits of a waiver request. In 2010, the States were first required to adjust respective election calendars to accommodate the 45-day ballot transmittal requirement to voters covered under UOCAVA. Today, approximately eight years after the enactment of the Military and Overseas Voter Empowerment Act, which amended UOCAVA to include this 45 day requirement, the Department of Justice is best positioned to monitor compliance with the requirement rather than consideration of a waiver to Federal law. Since 2010, 15 States have applied for a waiver, and a majority of them were denied. Experience has proven that the Department of Justice has the necessary tools and is better positioned ensure the intent of the law through their compliance role. The current process runs counter to the Department of Defense's overall mission of providing assistance to State and local election officials in complying with provisions in UOCAVA.

Repealing the hardship exemption provision would strengthen the protections of UOCAVA by ensuring that the 45-day deadline is the standard that all States must meet, even if it requires changing the date of their primary elections or experiencing unforeseen legal contests. A uniform, nationwide standard ensures that all uniformed services and overseas voters are afforded its benefits equally. It also will relieve the Department's direct engagement in the electoral process as the period for States to adjust respective election calendars in response to the initial requirement under the Military and Overseas Voter Empowerment Act has passed, leaving this as a compliance mechanism better suited for direct enforcement by the Department of Justice.

The Senate Rules Committee and the House Administration Committee oversee Federal elections legislation. These Committees should be informed should the proposal reach Congress.

Budget Implications: This proposal has insignificant budget impact. All incidental savings are accounted for within Fiscal Year (FY) 2021 President's Budget.

Changes to Existing Law: This proposal would make the following changes to section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. 20302):

SEC. 20302. STATE RESPONSIBILITIES.

(a) In general.—Each State shall-

* * * * *

(8) transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter-

(A) ~~except as provided in subsection (g),~~ in the case in which the request is received at least 45 days before an election for Federal office, not later than 45 days before the election; and

(B) in the case in which the request is received less than 45 days before an election for Federal office-

(i) in accordance with State law; and

(ii) if practicable and as determined appropriate by the State, in a manner that expedites the transmission of such absentee ballot;

* * * * *

~~(g) Hardship exemption~~

~~(1) In general.~~—If the chief State election official determines that the State is unable to meet the requirement under subsection (a)(8)(A) with respect to an election for Federal office due to an undue hardship described in paragraph (2)(B), the chief State election official shall request that the Presidential designee grant a waiver to the State of the application of such subsection. Such request shall include-

~~(A) a recognition that the purpose of such subsection is to allow absent uniformed services voters and overseas voters enough time to vote in an election for Federal office;~~

~~(B) an explanation of the hardship that indicates why the State is unable to transmit absent uniformed services voters and overseas voters an absentee ballot in accordance with such subsection;~~

~~(C) the number of days prior to the election for Federal office that the State requires absentee ballots be transmitted to absent uniformed services voters and overseas voters; and~~

~~(D) a comprehensive plan to ensure that absent uniformed services voters and overseas voters are able to receive absentee ballots which they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office, which includes-~~

~~(i) the steps the State will undertake to ensure that absent uniformed services voters and overseas voters have time to receive, mark, and submit their ballots in time to have those ballots counted in the election;~~

~~(ii) why the plan provides absent uniformed services voters and overseas voters sufficient time to vote as a substitute for the requirements under such subsection; and~~

~~(iii) the underlying factual information which explains how the plan provides such sufficient time to vote as a substitute for such requirements.~~

~~(2) Approval of waiver request.—After consulting with the Attorney General, the Presidential designee shall approve a waiver request under paragraph (1) if the Presidential designee determines each of the following requirements are met:~~

~~(A) The comprehensive plan under subparagraph (D) of such paragraph provides absent uniformed services voters and overseas voters sufficient time to receive absentee ballots they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office.~~

~~(B) One or more of the following issues creates an undue hardship for the State:~~

~~(i) The State's primary election date prohibits the State from complying with subsection (a)(8)(A).~~

~~(ii) The State has suffered a delay in generating ballots due to a legal contest.~~

~~(iii) The State Constitution prohibits the State from complying with such subsection.~~

~~(3) Timing of waiver.—~~

~~(A) In general.—Except as provided under subparagraph (B), a State that requests a waiver under paragraph (1) shall submit to the Presidential designee the written waiver request not later than 90 days before the election for Federal office with respect to which the request is submitted. The Presidential designee shall approve or deny the waiver request not later than 65 days before such election.~~

~~(B) Exception.—If a State requests a waiver under paragraph (1) as the result of an undue hardship described in paragraph (2)(B)(ii), the State shall submit to the Presidential designee the written waiver request as soon as practicable. The Presidential designee shall approve or deny the waiver request not later than 5 business days after the date on which the request is received.~~

~~(4) Application of waiver.—A waiver approved under paragraph (2) shall only apply with respect to the election for Federal office for which the request was submitted. For each subsequent election for Federal office, the Presidential designee shall only approve a waiver if the State has submitted a request under paragraph (1) with respect to such election.~~

(h) (g) Tracking marked ballots.—The chief State election official, in coordination with local election jurisdictions, shall develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot of the absent uniformed services voter or overseas voter has been received by the appropriate State election official.

(i) (h) Prohibiting refusal to accept applications for failure to meet certain requirements.—A State shall not refuse to accept and process any otherwise valid voter registration application or absentee ballot application (including the official post card form prescribed under section 20301 of this title) or marked absentee ballot submitted in any manner by an absent uniformed services voter or overseas voter solely on the basis of the following:

(1) Notarization requirements.

(2) Restrictions on paper type, including weight and size.

(3) Restrictions on envelope type, including weight and size.

Section 1044 would change the deadline to submit the annual report on the effectiveness of activities of the Federal Voting Assistance Program (FVAP) from March 31 of every year to September 30 of odd-numbered years. It also would clarify that the information submitted in the

report should cover the previous calendar year: the year in which the regularly scheduled elections for Federal office occurred.

The post-election survey results for even-numbered year reports and quadrennial analysis cannot be collected, processed, analyzed, and reported by the current March 31 deadline. Developing and publishing this report for odd-numbered calendar years, in which few Federal elections occur, does not provide sufficient information to warrant the time, effort, and expense expended in preparing the report. Few elections for Federal office occur in odd-numbered years. Analysis of odd-numbered year elections leads to poor policy decisions because the analysis is based upon incomplete data and conclusions. The use of such data with respect to elections in even-numbered years may not be valid, as these elections have greater public participation and FVAP activity.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request. This proposal will result in cost savings in manpower for the Department of Defense by discontinuing a requirement for administration of an annual report. The table below details resource requirements associated with this proposal.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (only for RDT&E programs)
FVAP Report Defense Human Resource Activity	(.08)	(.08)	(.08)	(.08)	(.08)	Operation and Maintenance, Defense Wide	4	4GT8	
Total	(.08)	(.08)	(.08)	(.08)	(.08)				

Changes to Existing Law: This proposal would make the following changes to section 105A of the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. 20308):

SEC. 105A. REPORTING REQUIREMENTS.

(b) ~~ANNUAL REPORT~~ BIENNIAL REPORT ON EFFECTIVENESS OF ACTIVITIES AND UTILIZATION OF CERTAIN PROCEDURES

Not later than ~~March 31 of each year~~ September 30 of each odd-numbered year, the Presidential designee shall transmit to the President and to the relevant committees of Congress a report containing ~~the following information~~ the following information with respect to the Federal elections held during the preceding calendar year:

(1) An assessment of the effectiveness of activities carried out under section 20305 of this title, including the activities and actions of the Federal Voting Assistance Program of the Department of Defense, a separate assessment of voter registration and participation by absent uniformed services voters, a separate assessment of voter registration and participation by overseas voters who are not members of the uniformed services, and a description of the cooperation between States and the Federal Government in carrying out such section.

(2) A description of the utilization of voter registration assistance under section 1566a of title 10, which shall include the following:

(A) A description of the specific programs implemented by each military department of the Armed Forces pursuant to such section.

(B) The number of absent uniformed services voters who utilized voter registration assistance provided under such section.

(3) ~~In the case of a report submitted under this subsection in the year following a year in which a regularly scheduled general election for Federal office is held, a description~~ A description of the utilization of the procedures for the collection and delivery of marked absentee ballots established pursuant to section 20304 of this title, which shall include the number of marked absentee ballots collected and delivered under such procedures and the number of such ballots which were not delivered by the time of the closing of the polls on the date of the election (and the reasons such ballots were not so delivered).

Section 1045 would change the reporting period for the annual report from fiscal to calendar year and 90 days after submission of the President's Budget to better align the CONLC3S Annual Report to the President's Budget and priorities. It also adds the Under Secretary of Defense for Research and Engineering to the Council membership to align with other Councils required by statute (e.g., the Nuclear Weapons Council). This update to the members was approved by the CONLC3S in March 2019.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President's Budget Request

Changes to Existing Law: This proposal would amend section 171a of title 10, United States Code, as follows:

**SEC. 171a. COUNCIL ON OVERSIGHT OF THE NATIONAL LEADERSHIP
COMMAND, CONTROL, AND COMMUNICATIONS SYSTEM.**

(a) Establishment.-There is within the Department of Defense a council to be known as the "Council on Oversight of the National Leadership Command, Control, and Communications System" (in this section referred to as the "Council").

(b) Membership.-The members of the Council shall be as follows:

- (1) The Under Secretary of Defense for Policy.
- (2) The Under Secretary of Defense for Acquisition and Sustainment.
- (3) The Under Secretary of Defense for Research and Engineering
- ~~(34)~~ The Vice Chairman of the Joint Chiefs of Staff.
- ~~(45)~~ The Commander of the United States Strategic Command.
- ~~(56)~~ The Director of the National Security Agency.
- ~~(67)~~ The Chief Information Officer of the Department of Defense.
- ~~(78)~~ Such other officers of the Department of Defense as the Secretary may designate.

(c) Co-Chair.-The Council shall be co-chaired by the Under Secretary of Defense for Acquisition and Sustainment and the Vice Chairman of the Joint Chiefs of Staff.

(d) Responsibilities.-

- (1) The Council shall be responsible for oversight of the command, control, and communications system for the national leadership of the United States, including nuclear command, control, and communications, and including with respect to the integrated tactical warning and attack assessment systems, processes, and enablers, and continuity of the governmental functions of the Department of Defense.

- (2) In carrying out the responsibility for oversight of the command, control, and communications system as specified in paragraph (1), the Council shall be responsible for the following:

- (A) Oversight of performance assessments (including interoperability).
- (B) Vulnerability identification and mitigation.
- (C) Architecture development (including space system architectures and associated user terminals and ground segments).
- (D) Resource prioritization.
- (E) Such other responsibilities as the Secretary of Defense shall

specify for purposes of this section.

(e) Annual Reports.-During the period preceding January 31, 2021, ~~at the same time each year that~~ not later than 90 days each year after the budget of the President is submitted to Congress pursuant to section 1105(a) of title 31, and from time to time after such period at the discretion of the Council, the Council shall submit to the congressional defense committees a report on the activities of the Council. Each report shall include the following:

- (1) A description and assessment of the activities of the Council during the previous ~~fiscal~~ calendar year.

- (2) A description of the activities proposed to be undertaken by the Council during the period covered by the current future-years defense program under section 221 of this title.

(3) Any changes to the requirements of the command, control, and communications system for the national leadership of the United States made during the previous year, along with an explanation for why the changes were made and a description of the effects of the changes to the capability of the system.

(4) A breakdown of each program element in such budget that relates to the system, including how such program element relates to the operation and sustainment, research and development, procurement, or other activity of the system.

(5) An assessment of the threats and vulnerabilities described in the reports and assessments collected under subsection (f) during the previous year, including any plans to address such threats and vulnerabilities.

(6) An assessment of the readiness of the command, control, and communications system for the national leadership of the United States and of each layer of the system, as that layer relates to nuclear command, control, and communications.

(f) Collection of Assessments on Certain Threats.-The Council shall collect and assess (consistent with the provision of classified information and intelligence sources and methods) all reports and assessments otherwise conducted by the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) regarding foreign threats, including cyber threats, to the command, control, and communications system for the national leadership of the United States and the vulnerabilities of such system to such threats.

(g) Budget and Funding Matters.- (1) Not later than 30 days after the President submits to Congress the budget for a fiscal year under section 1105(a) of title 31, the Commander of the United States Strategic Command shall submit to the Chairman of the Joint Chiefs of Staff an assessment of-

(A) whether such budget allows the Federal Government to meet the required capabilities of the command, control, and communications system for the national leadership of the United States during the fiscal year covered by the budget and the four subsequent fiscal years; and

(B) if the Commander determines that such budget does not allow the Federal Government to meet such required capabilities, a description of the steps being taken to meet such required capabilities.

(2) Not later than 30 days after the date on which the Chairman of the Joint Chiefs of Staff receives the assessment of the Commander of the United States Strategic Command under paragraph (1), the Chairman shall submit to the congressional defense committees-

(A) such assessment as it was submitted to the Chairman; and

(B) any comments of the Chairman.

(3) If a House of Congress adopts a bill authorizing or appropriating funds for the activities of the command, control, and communications system for the national leadership of the United States that, as determined by the Council, provides insufficient funds for such activities for the period covered by such bill, the Council shall notify the congressional defense committees of the determination.

(h) Notification of Anomalies.- (1) The Secretary of Defense shall submit to the congressional defense committees written notification of an anomaly in the nuclear command, control, and communications system for the national leadership of the

United States that is reported to the Secretary or the Council by not later than 14 days after the date on which the Secretary or the Council learns of such anomaly, as the case may be.

(2) In this subsection, the term "anomaly" means any unplanned, irregular, or abnormal event, whether unexplained or caused intentionally or unintentionally by a person or a system.

(i) Reports on Space Architecture Development.- (1) Not less than 90 days before each of the dates on which a system described in paragraph (2) achieves Milestone A or Milestone B approval, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees a report prepared by the Council detailing the implications of any changes to the architecture of such a system with respect to the systems, capabilities, and programs covered under subsection (d).

(2) A system described in this paragraph is any of the following:

(A) Advanced extremely high frequency satellites.

(B) The space-based infrared system.

(C) The integrated tactical warning and attack assessment system and its command and control system.

(D) The enhanced polar system.

(3) In this subsection, the terms "Milestone A approval" and "Milestone B approval" have the meanings given such terms in sections 2366(e) and 2366a(d) of this title.

(j) Notification of Reduction of Certain Warning Time.- (1) None of the funds authorized to be appropriated or otherwise made available to the Department of Defense for any fiscal year may be used to change any command, control, and communications system described in subsection (d)(1) in a manner that reduces the warning time provided to the national leadership of the United States with respect to a warning of a strategic missile attack on the United States unless-

(A) the Secretary of Defense notifies the congressional defense committees of such proposed change and reduction; and

(B) a period of one year elapses following the date of such notification.

(2) Not later than March 1, 2017, and each year thereafter, the Council shall determine whether the integrated tactical warning and attack assessment system and its command and control system have met all warfighter requirements for operational availability, survivability, and endurability. If the Council determines that such systems have not met such requirements, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff shall jointly submit to the congressional defense committees-

(A) an explanation for such negative determination;

(B) a description of the mitigations that are in place or being put in place as a result of such negative determination; and

(C) the plan of the Secretary and the Chairman to ensure that the Council is able to make a positive determination in the following year.

(k) Status of Acquisition Programs.- (1) On a quarterly basis, each program manager of a covered acquisition program shall transmit to the co-chairs of the

Council, acting through the senior steering group of the Council, a report that identifies-

- (A) the covered acquisition program;
- (B) the requirements of the program;
- (C) the development timeline of the program; and
- (D) the status of the program, including whether the program is delayed

and, if so, whether such delay will result in a program schedule delay.

(2) Not later than seven days after the end of each semiannual period, the co-chairs of the Council shall submit to the congressional defense committees a report that identifies, with respect to the reports transmitted to the Council under paragraph (1) for the two quarters in such period-

- (A) each covered acquisition program that is delayed more than 180 days;

and

- (B) any covered acquisition program that should have been included in such reports but was excluded, and the reasons for such exclusion.

(3) In this subsection, the term "covered acquisition program" means each acquisition program of the Department of Defense that materially contributes to-

- (A) the nuclear command, control, and communications systems of the United States; or
- (B) the continuity of government systems of the United States.

(1) National Leadership of the United States Defined.-In this section, the term "national leadership of the United States" means the following:

- (1) The President.
- (2) The Vice President.
- (3) Such other civilian officials of the United States Government as the

President shall designate for purposes of this section.

Section 1046 is critical to support the safeguarding of personnel and resources located outside of the perimeter of Marine Corps Installations National Capital Region - Marine Corps Base Quantico, the Military District of Washington – Fort Belvoir, and the future site of the National Museum of the United States Navy outside Naval Support Activity Washington – Washington Navy Yard and would allow the Department of Navy (DON), the Department of the Army (DA), and the Department of the Air Force to use their funds to procure contract security-guard services for locations open to the public 364 days a year, occupied by Department of Defense (DoD) personnel, and not currently provided sufficient security by DoD or Federal Protective Service law enforcement or security personnel.

Recent events have indicated a need for provision of on-site protection for smaller DoD activities. Violence has gradually crept into conventionally civil and secure settings. The Holocaust Museum shooting of 2009, the shooting of the National Museum of the Marine Corps' building in 2010, the Jewish Museum of Belgium shooting in 2014, the public assassination of a Russian ambassador at a museum in Turkey in 2016, and the Chattanooga shootings at military recruiting stations in 2015 all illustrate the need for protection at these types of facilities. The National Museum of the Marine Corps, a stand-alone facility on a 135-acre campus which opened to the public in 2006, and the National Museum of the United States Army, a stand-alone facility on an 84 acre campus which will be open to the public in 2020, are located in areas

readily accessible to the public where DoD service members and civilian employees are able to interact more readily with the public to best perform their functions. The National Museum of the Marine Corps usually has limited numbers of DoD personnel working within the facility, and it is not occupied around the clock. The National Museum of the United States Army will also have limited DoD personnel working within the facility when it opens to the public in 2020. Additionally, the personnel working in these spaces are not trained or equipped to perform security functions. Assigning such personnel secondary duties to provide dedicated on-site security would detract from performance of their primary assigned functions. Marine Corps Installations National Capital Region - Marine Corps Base Quantico security is understaffed and is unable to provide sufficient security support to the off-installation facility. The Military District of Washington – Fort Belvoir similarly lacks adequate staff to provide sufficient security support to the National Museum of the United States Army located outside the secure perimeter of the installation.

Budget Implications: The assignment of security personnel to a particular facility is a matter for the discretion of the Secretary of Defense. This proposal has no significant budgetary impact. The funding profile below reflects the projected resource requirement for the current National Museum of the Marine Corps and National Museum of the United States Army unarmed security/alarm monitors, which is not anticipated to change if the contractors are armed. The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget.

RESOURCE IMPACT (\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation(s)	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
National Museum of the Marine Corps	\$2.62	\$2.78	\$2.94	\$3.03	\$3.09	Operation and Maintenance, Marine Corps	04	4A4G	NA
National Museum of the United States Navy					\$3.09	Operation and Maintenance, Navy	04		NA
National Museum of the United States Army	\$2.39	\$2.48	\$2.55	\$2.61	\$2.66	Operation and Maintenance, Army	04	PE:43521 2 VMUS Dash 1 Line Item:435	NA
National Museum of the United States Air Force	NA	NA	NA	NA	NA	NA	NA	NA	NA

Total	\$5.01	\$5.26	\$5.49	\$5.64	\$5.75				
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Changes to Existing Law: This proposal would make the following change to 10 U.S.C. 2465(b):

§ 2465. Prohibition on contracts for performance of firefighting or security-guard functions

(a) Except as provided in subsection (b), funds appropriated to the Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of firefighting or security-guard functions at any military installation or facility.

(b) The prohibition in subsection (a) does not apply to the following contracts:

(1) A contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which members of the armed forces would have to be used for the performance of a function described in subsection (a) at the expense of unit readiness.

(2) A contract to be carried out on a Government-owned but privately operated installation.

(3) A contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983.

(4) A contract for the performance of firefighting functions if the contract is—

(A) for a period of one year or less; and

(B) covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

(5) A contract for the performance of on-site armed security guard functions to be performed—

(A) at the Marine Corps Heritage Center at Marine Corps Base Quantico, Virginia, including the National Museum of the Marine Corps;

(B) at the Heritage Center for the National Museum of the United States Army at Fort Belvoir, Virginia;

(C) at the Heritage Center for the National Museum of the United States Navy at Washington, District of Columbia; or

(D) at the Heritage Center for the National Museum of the Air Force at Wright-Patterson Air Force Base, Ohio.

Section 1047 would remove the statutory requirement to submit an unclassified Future-Years Defense Program (FYDP) to the Congress, the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service. It would also remove the requirement to certify the accuracy of the input to the FYDP. The proposal retains delivery of a classified FYDP to the Congress and other offices.

The FYDP, by its design, is a comprehensive, detailed, classified display over a five-to seven year time horizon of all of the forces, manpower, and funding required to resource the U.S. defense strategy. The FYDP is designed as an internal Department of Defense (DoD) decision tool. It presents a coherent view of the Department's program, and to be of use the FYDP must integrate classified and unclassified information and make their relationships explicit.

The Department is concerned that attempting publication of unclassified FYDP data might inadvertently reveal sensitive information. With the ready availability of data mining tools and techniques, and the large volume of data on the Department's operations and resources already available in the public domain, additional unclassified FYDP data, if it were released, potentially allows adversaries to derive sensitive information by compilation about the Department's weapons development, force structure, and strategic plans. Due to the lack of knowledge about the information that adversaries already possess, the Department seeks to limit release of additional unclassified information in this format. Even aside from exposing vulnerabilities, additional unclassified FYDP data may allow adversaries to target additional intelligence exploitation efforts.

The Department is also concerned about the potential harm to its interactions with commercial interests by release of FYDP information prior to the budget year. Exposing resources allocated to future acquisition plans may encourage bids and other development activities not beneficial to the Government. The Department has long-standing policies that are designed to prevent the release of FYDP information to prevent commercial interests from gaining an unfair advantage in future acquisition actions. These policies require that Department of Defense contractor personnel must have a valid "need to know" before being permitted to access any planning, programming, budgeting, or execution information, including the FYDP, whether classified or unclassified.

The breadth and depth of the data that would be contained in an unclassified FDYP, as a compilation, would be greater than any other document the Department produces. The conclusions and inferences that could be drawn from the data it would contain could cause serious risk to the national defense. However, because of that very depth and breadth, it is difficult, if not impossible, to know up front what those conclusions and inferences would be, especially when combined with information from other sources. Unfortunately, the current Federal processes for protecting sensitive but unclassified information are much weaker than those for classified data, and so the risk of inadvertent disclosure of all or part of an unclassified FYDP is much higher than the Department considers prudent.

Under this proposal, the Department would continue to provide the Congress with the full classified FYDP as a combined representation of classified and unclassified data. The Department would welcome discussions on an alternative that would provide the Congress with the information they require to satisfy their oversight requirements.

The proposal would also strike the requirement that Department of Defense officials certify that the data used to construct the FYDP is accurate. This requirement is unnecessary as information from these systems is already used to provide the President's Budget.

Budget Implications: The resources required to implement the current statutory requirement are included within the Fiscal Year (FY) 2021 President's Budget request. If CAPE's legislative proposal is enacted, the estimated savings shown in the table below would be applied to the next highest priority within CAPE's budget. CAPE already builds the FYDP and is currently required to provide to Congress the full, classified FYDP. This language does not relieve DoD of that

requirement. This proposal would simply avoid additional workload in terms of coordination, certification, and review of classification markings, information, and displays.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element
	(.15)	(.15)	(.05)	(.05)	(.05)	Operation and Maintenance, Defensewide	Multiple	Multiple	Multiple
Total	(.15)	(.15)	(.05)	(.05)	(.05)	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to section 221 of title 10, United States Code:

§221. Future-years defense program: submission to Congress; consistency in budgeting

(a) The Secretary of Defense shall submit to Congress each year, not later than five days after the date on which the President's budget is submitted to Congress that year under section 1105(a) of title 31, a future-years defense program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years defense program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

(b)(1) The Secretary of Defense shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Secretary in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31 for any fiscal year, as shown in the future-years defense program submitted pursuant to subsection (a).

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress under that section for any fiscal year.

(c) Nothing in this section shall be construed to prohibit the inclusion in the future-years defense program of amounts for management contingencies, subject to the requirements of subsection (b).

~~(d)(1) The Secretary of Defense shall also make each future-years defense program available to the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service. The Secretary of Defense shall make available to Congress, the Congressional Budget Office, the Comptroller General of the United States, and the~~

~~Congressional Research Service each future years defense program under this section as follows:~~

~~(A) By making such program available electronically in the form of an unclassified electronic database.~~

~~(B) By delivering printed copies of such program to the congressional defense committees.~~

~~(2) In the event inclusion of classified material in a future years defense program would otherwise render the totality of the program classified for purposes of this subsection—~~

~~(A) such program shall be made available to Congress in unclassified form, with such material attached as a classified annex; and~~

~~(B) such annex shall be submitted to the congressional defense committees, the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service.’’.~~

~~(e) Each future years defense program under this subsection shall be accompanied by a certification by the Under Secretary of Defense (Comptroller), in the case of the Department of Defense, and the comptroller of each military department, in the case of such military department, that any information entered into the Standard Data Collection System of the Department of Defense, the Comptroller Information System, or any other data system, as applicable, for purposes of assembling such future years defense program was accurate.~~

Subtitle F—Other Matters

Section 1061 would amend section 130e of title 10, United States Code (U.S.C.), to authorize the Department of Defense to withhold sensitive, but unclassified, military tactics, techniques, or procedures; rules for the use of force; and military rules of engagement, from release to the public under section 552 of title 5, U.S.C. (known as the Freedom of Information Act (FOIA)), if public disclosure could reasonably be expected to provide an operational military advantage to an adversary.

The decision of the Supreme Court in *Milner v. Department of the Navy*, 131 S. Ct. 1259 (2011), significantly narrowed the long-standing administrative understanding of the scope of Exemption 2 of the FOIA (5 U.S.C. 552(b)(2)). Before that decision, the Department was authorized to withhold sensitive information on critical infrastructure and military tactics, techniques, and procedures from release under FOIA pursuant to Exemption 2. Section 130e of title 10, U.S.C., was established in the National Defense Authorization Act for Fiscal Year 2012 to reinstate protection from disclosure of critical infrastructure security information. This proposal similarly would amend section 130e to add protections for military tactics, techniques, and procedures (TTPs); rules for the use of force; and rules of engagement that, if publicly disclosed, could reasonably be expected to provide an operational or tactical military advantage to an adversary such that the adversary could potentially use the information to circumvent or negatively impact military operations or actions in whole or in part. Military TTPs, rules for the use of force; and rules of engagement are analogous to law enforcement techniques and procedures, which Congress has afforded protection under FOIA Exemption 7(E).

The effectiveness of U.S. military operations is dependent upon adversaries, or potential adversaries, not obtaining advance knowledge of sensitive TTPs, rules for the use of force; or rules of engagement that will be employed in such tactical operations. If an adversary or potential adversary obtains knowledge of this sensitive information, the adversary would gain invaluable knowledge on how our forces operate in given tactical military situations. This knowledge could then, in turn, enable the adversary to counter the TTPs, rules for use of force, or rules of engagement by identifying and exploiting any weaknesses. From this, the defense of the homeland, success of the operation, and the lives of U.S. military forces would be seriously jeopardized. Furthermore, the probability of successful cyber operations would be limited with the public release of cyber-related TTPs. This proposal would add a layer of mission assurance to unclassified cyber operations and enhance the Department of Defense's ability to project cyber effects while protecting national security resources.

This proposal additionally would make minor amendments in section 130e to: (1) clarify the citation for the purposes of the OPEN FOIA Act of 2009; (2) remove references to reflect the merger of the Director of Administration and Management with the Deputy Chief Management Officer of the Department of Defense; and (3) remove the prohibition on further delegation.

It is important to note that the terms tactics, techniques, and procedures, as used in the context of this proposal, will not be applied in an overly broad manner to withhold from public disclosure information related to the handling of disciplinary matters, investigations, acquisitions, intelligence oversight, oversight of contractors, allegations of sexual harassment or sexual assault, allegations of prisoner and detainee maltreatment, installation management activities, etc. However, depending on the nature of the information, other provisions of law may require that such information not be released publicly in whole or in part.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request. Exemptions for the release of certain information under FOIA would generate minimal savings to the Administration by avoiding the preparation of select materials for release.

Changes to Existing Law: The proposal would make the following changes to section 130e of title 10, United States Code:

~~§130e. Treatment under Freedom of Information Act of critical infrastructure security information~~ Nondisclosure of certain sensitive military information

(a) EXEMPTION.—The Secretary of Defense may exempt Department of Defense ~~critical infrastructure security~~ information from disclosure ~~pursuant to section 552(b)(3) of title 5~~, upon a written determination that—

(1) the information is—

(A) Department of Defense critical infrastructure security information;

(B) covered information pertaining to military tactics, techniques, or procedures; or

(C) covered information pertaining to rules of engagement or rules for the use of force; and

(2) the public interest consideration in the disclosure of such information does not outweigh preventing the disclosure of such information.

(b) DESIGNATION OF DEPARTMENT OF DEFENSE ~~CRITICAL INFRASTRUCTURE SECURITY~~ INFORMATION.—In addition to any other authority or requirement regarding protection from dissemination of information, the Secretary may designate information as being ~~Department of Defense critical infrastructure security identified~~ information identified in subsection (a)(1), including during the course of creating such information, to ensure that such 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) Department of Defense ~~critical infrastructure security~~ information covered by a written determination under subsection (a) or designated under subsection (b) that is provided to a State or local government shall remain under the control of the Department of Defense.

(2)(A) A State or local law authorizing or requiring a State or local government to disclose Department of Defense ~~critical infrastructure security~~ information that is covered by a written determination under subsection (a) shall not apply to such information.

(B) 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 critical infrastructure security information exempt from disclosure~~ under subsection (b), the State or local government shall provide the Secretary an opportunity to carry out the determination process under subsection (a) to determine whether to exempt such information from disclosure pursuant to subparagraph (A).

~~(d) DELEGATION.—The Secretary of Defense may delegate the authority to make a determination under subsection (a) to the Director of Administration and Management.~~

~~(e-d) TRANSPARENCY.—Each determination of the Secretary, or the Secretary's designee, under subsection (a) shall be made in writing and accompanied by a statement of the basis for the determination. All such determinations and statements of basis shall be available to the public, upon request, though the Office of the Director of Administration and Management in accordance with guidelines prescribed by the Secretary.~~

(e) CITATION FOR PURPOSES OF OPEN FOIA ACT OF 2009.—This section shall be treated as a statute that specifically exempts certain matters from disclosure under section 552 of title 5, as described in subsection (b)(3) of that section.

(f) DEFINITIONS.—In this section, ~~the term:~~

(1) ADVERSARY.—The term “adversary” means a party acknowledged as potentially hostile to a friendly party and against which the use of force may be envisaged.

(2) COVERED INFORMATION PERTAINING TO MILITARY TACTICS, TECHNIQUES, OR PROCEDURES.—The term ‘covered information pertaining to military tactics, techniques,

or procedures’ means information pertaining to military tactics, techniques, or procedures that identifies a method for using equipment or personnel to accomplish a specific mission under a particular set of operational or exercise conditions (including offensive, defensive, force protection, cyberspace, stability, civil support, freedom of navigation, operations security, counter intelligence, and intelligence collection operations) the public disclosure of which could reasonably be expected to provide a military advantage to an adversary.

(3) COVERED INFORMATION PERTAINING TO RULES OF ENGAGEMENT OR RULES FOR THE USE OF FORCE.—The term ‘covered information pertaining to rules of engagement or rules for the use of force’ means information pertaining to rules of engagement or rules for the use of force the public disclosure of which could reasonably be expected to provide an operational military advantage to an adversary.

(4) DEPARTMENT OF DEFENSE CRITICAL INFRASTRUCTURE SECURITY INFORMATION.—The term “Department of Defense critical infrastructure security information” means sensitive but unclassified information that, if disclosed, would reveal capabilities or vulnerabilities in Department of Defense critical infrastructure that, if exploited, would likely result in the significant disruption, destruction, or damage of or to Department of Defense operations, property, or facilities, including—

(A) information regarding the securing and safeguarding of explosives, hazardous chemicals, or pipelines, related to critical infrastructure or protected equipment and systems owned or operated by or on behalf of the Department of Defense;

(B) ~~including~~ vulnerability assessments prepared by or on behalf of the Department of Defense;

(C) explosives safety information, (including storage and handling information); and

(D) other site-specific information on or relating to installation security.

(5) MILITARY TACTICS, TECHNIQUES, AND PROCEDURES.—The terms ‘military tactics, techniques, and procedures’ means—

(A) the employment and ordered arrangement of military forces in relation to each other;

(B) a non-prescriptive way or method used to perform a mission, function, or task that is—

(i) related to or incidental to combat missions or contingency operations; or

(ii) directly related to preparing for, going to, or returning from combat missions or contingency operations; or

(C) detailed steps that prescribe how to perform a specific task that is—

(i) related to, or incidental to, a combat mission, force protection operation, or contingency operation; or

(ii) directly related to preparing for, going to, or returning from combat missions, force protection operations, or contingency operations.

(6) RULES FOR THE USE OF FORCE.—The term “rules for the use of force” means directives issued to guide United States forces on the use of force during various operations.

(7) RULES OF ENGAGEMENT.—The term “rules of engagement” means directives issued by a competent military authority that delineate the circumstances and limitations under which the armed forces will initiate or continue combat engagement with other forces encountered.

Section 1062 concludes the termination of the Lake Eufaula Advisory Committee (LEAC) authorized under section 3133 of the Water Resources Development Act of 2007. The LEAC’s objective was to maximize the use of available Lake Eufaula storage in a balanced approach that incorporates advice from representatives from all the project purposes to ensure that the full value of the reservoir is realized by the United States. The LEAC held its last meeting on January 29, 2018, and presented three recommendations to the Tulsa District Commander of the Army Corps of Engineers (USACE) on April 13, 2018. The USACE has implemented two of those recommendations. The Secretary of the Army, as the Department of Defense Sponsor for this advisory committee, believes that the committee has met its statutory objectives with its final report and recommendations.

The sense of Congress as identified in FACA (Public Law 92-463) is that “advisory committees should be terminated when they are no longer carrying out the purposes for which they are established.” Current DoD policy is to “continually evaluate advisory committee requirements and, when appropriate, request termination when the advisory committee’s objectives have been accomplished ...”.

Since its last meeting in 2018, the LEAC has not met, and the Army has determined that there is no further need for it to meet, agreeing to its administrative suspension and termination via email on October 24, 2018. The DoD, in consultation with the General Services Administration, made the LEAC administratively inactive on November 8, 2018, pending final termination, which requires this statutory language change. Congress was also notified of this status change via letter on November 8, 2018.

Finalizing the LEAC’s termination removes any administrative burden from DoD for an advisory committee that has accomplished its objectives.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2021 President's Budget.

Changes to Existing Law: This proposal would amend section 3133(b) of the Water Resources Development Act of 2007 (Public Law 110–114; 121 Stat. 1141) as follows:

(b) LAKE EUFAULA ADVISORY COMMITTEE.—

(1) IN GENERAL.— In accordance with the [Federal Advisory Committee Act](#) (5 U.S.C. App.), the Secretary shall establish an advisory committee for the Lake Eufaula, Canadian River, Oklahoma project authorized by the first section of the River and Harbor Act of July 24, 1946 ([60 Stat. 635](#)).

(2) PURPOSE.— The purpose of the committee shall be advisory only.

(3) DUTIES.— The committee shall provide information and recommendations to the Corps of Engineers regarding the operations of Lake Eufaula for the project purposes for Lake Eufaula.

(4) COMPOSITION.— The Committee shall be composed of members that equally represent the project purposes for Lake Eufaula.

(5) TERMINATION.—The Committee shall terminate 30 days after submitting its final recommendations to the Corps of Engineers.

Section 1063 repeals the language authorizing the Missouri River (North Dakota) Task Force (“the North Dakota Task Force”), authorized under section 705 of the Water Resources Development Act of 2000 (Public Law 106-541). The objective of the North Dakota Task Force was to advise the Secretary of the Army on a plan to reduce Missouri River siltation in North Dakota and assist the Government in meeting the objectives of the Pick-Sloan program (formerly called the Missouri River Basin Project) which approved the plan for the conservation, control, and use of water resources in the Missouri River Basin. The North Dakota Task Force was to develop and recommend, to the Secretary of the Army, critical restoration projects that promoted conservation practices in the Missouri River watershed, the general control and removal of sediment from the Missouri River, the protection of recreation on the Missouri River from sedimentation, the protection of Native American and non-Native American historical and cultural sites along the Missouri River from erosion, erosion control along the Missouri River, or any combination of these activities.

The sense of Congress, as identified in the Federal Advisory Committee Act (Public Law 92-463), is that “advisory committees should be terminated when they are no longer carrying out the purposes for which they are established.”

Since its establishment, the North Dakota Task Force has not had a sufficient number of members appointed by the Governor of North Dakota to reach quorum and, thus, has not held a single meeting. It has submitted zero recommendations to the Department of Defense (DoD), including the required report and plan. The lack of work by the North Dakota Task Force has made its objectives obsolete by the passage of time. Therefore, the DoD, in consultation with the General Services Administration, administratively suspended the North Dakota Task Force on October 7, 2016 due to inactivity.

Terminating the North Dakota Task Force removes any administrative burden from DoD for this administratively suspended advisory committee. Termination of the North Dakota Task Force does not eliminate Government work on protecting the Missouri River as the Army Corps of Engineers and Department of Interior continue to hold these vital conversations in an agency-to-agency working group and work directly with State, local, tribal, and territorial members to enable engagement.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year 2021 President's Budget.

Changes to Existing Law: This proposal would amend the Water Resources Development Act of 2000 (Public Law 106-541; 114 Stat. 2696) as follows:

~~Sec. 705. MISSOURI RIVER TASK FORCE~~

~~(a) ESTABLISHMENT.— There is established the Missouri River Task Force.~~

~~(b) MEMBERSHIP.— The Task Force shall be composed of—~~

- ~~(1) the Secretary (or a designee), who shall serve as Chairperson;~~
- ~~(2) the Secretary of Agriculture (or a designee);~~
- ~~(3) the Secretary of Energy (or a designee);~~
- ~~(4) the Secretary of the Interior (or a designee); and~~
- ~~(5) the Trust.~~

~~(c) DUTIES.— The Task Force shall—~~

- ~~(1) meet at least twice each year;~~
- ~~(2) vote on approval of the plan, with approval requiring votes in favor of the plan by a majority of the members;~~
- ~~(3) review projects to meet the goals of the plan; and~~
- ~~(4) recommend to the Secretary critical projects for implementation.~~

~~(d) ASSESSMENT.—~~

~~(1) IN GENERAL.— Not later than 18 months after the date on which funding authorized under this title becomes available, the Secretary shall transmit to the other members of the Task Force a report on—~~

~~(A) the impact of the siltation of the Missouri River in the State, including the impact on—~~

- ~~(i) the Federal, State, and regional economies;~~
- ~~(ii) recreation;~~
- ~~(iii) hydropower generation;~~
- ~~(iv) fish and wildlife; and~~
- ~~(v) flood control;~~

~~(B) the status of Indian and non-Indian historical and cultural sites along the Missouri River;~~

~~(C) the extent of erosion along the Missouri River (including tributaries of the Missouri River) in the State; and~~

~~(D) other issues, as requested by the Task Force.~~

~~(2) CONSULTATION.— In preparing the report under paragraph (1), the Secretary shall consult with—~~

- ~~(A) the Secretary of Energy;~~
- ~~(B) the Secretary of the Interior;~~
- ~~(C) the Secretary of Agriculture;~~
- ~~(D) the State; and~~
- ~~(E) Indian tribes in the State.~~

~~(e) PLAN FOR USE OF FUNDS MADE AVAILABLE BY THIS TITLE.—~~

~~(1) IN GENERAL.— Not later than 3 years after the date on which funding authorized under this title becomes available, the Task Force shall prepare a plan for the use of funds made available under this title.~~

~~(2) CONTENTS OF PLAN.— The plan shall provide for the manner in which the Task Force shall develop and recommend critical restoration projects to promote—~~

- ~~(A) conservation practices in the Missouri River watershed;~~
- ~~(B) the general control and removal of sediment from the Missouri River;~~

~~(C) the protection of recreation on the Missouri River from sedimentation;~~
~~(D) the protection of Indian and non-Indian historical and cultural sites along the Missouri River from erosion;~~
~~(E) erosion control along the Missouri River; or~~
~~(F) any combination of the activities described in subparagraphs (A) through (E).~~

~~(3) PLAN REVIEW AND REVISION.—~~

~~(A) IN GENERAL.— The Task Force shall make a copy of the plan available for public review and comment before the plan becomes final in accordance with procedures established by the Task Force.~~

~~(B) REVISION OF PLAN.—~~

~~(i) IN GENERAL.— The Task Force may, on an annual basis, revise the plan.~~

~~(ii) PUBLIC REVIEW AND COMMENT.— In revising the plan, the Task Force shall provide the public the opportunity to review and comment on any proposed revision to the plan.~~

~~(f) CRITICAL RESTORATION PROJECTS.—~~

~~(1) IN GENERAL.— After the plan is approved by the Task Force under subsection (c)(2), the Secretary, in coordination with the Task Force, shall identify critical restoration projects to carry out the plan.~~

~~(2) AGREEMENT.— The Secretary may carry out a critical restoration project after entering into an agreement with an appropriate non-Federal interest in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b) and this section.~~

~~(3) INDIAN PROJECTS.— To the maximum extent practicable, the Secretary shall ensure that not less than 30 percent of the funds made available for critical restoration projects under this title shall be used exclusively for projects that are—~~

~~(A) within the boundary of an Indian reservation; or~~

~~(B) administered by an Indian tribe.~~

~~(g) COST SHARING.—~~

~~(1) ASSESSMENT.—~~

~~(A) FEDERAL SHARE.— The Federal share of the cost of carrying out the assessment under subsection (d) shall be 75 percent.~~

~~(B) NON-FEDERAL SHARE.— The non-Federal share of the cost of carrying out the assessment may be provided in the form of services, materials, or other in-kind contributions.~~

~~(2) PLAN.—~~

~~(A) FEDERAL SHARE.— The Federal share of the cost of preparing the plan shall be 75 percent.~~

~~(B) NON-FEDERAL SHARE.— Not more than 50 percent of the non-Federal share of the cost of preparing the plan may be provided in the form of services, materials, or other in-kind contributions.~~

~~(3) CRITICAL RESTORATION PROJECTS.—~~

~~(A) IN GENERAL.— A non-Federal cost share shall be required to carry out any project under subsection (f) that does not primarily benefit the Federal Government, as determined by the Task Force.~~

~~(B) FEDERAL SHARE.—The Federal share of the cost of carrying out a project under subsection (f) for which the Task Force requires a non-Federal cost share under subparagraph (A) shall be 65 percent, not to exceed \$5,000,000 for any project.~~

~~(C) NON-FEDERAL SHARE.—~~

~~(i) IN GENERAL.—Not more than 50 percent of the non-Federal share of the cost of carrying out a project described in subparagraph (B) may be provided in the form of services, materials, or other in-kind contributions.~~

~~(ii) REQUIRED NON-FEDERAL CONTRIBUTIONS.—For any project described in subparagraph (B), the nonfederal interest shall—~~

~~(I) provide all land, easements, rights-of-way, dredged material disposal areas, and relocations;~~

~~(II) pay all operation, maintenance, replacement, repair, and rehabilitation costs; and~~

~~(III) hold the United States harmless from all claims arising from the construction, operation, and maintenance of the project.~~

~~(iii) CREDIT.—The Secretary shall credit the non-Federal interest for all contributions provided under clause (ii)(I).~~

Section 1064 repeals the language authorizing the Missouri River (South Dakota) Task Force (“the South Dakota Task Force”), authorized under section 905 of the Water Resources Development Act of 2000 (Public Law 106-541). The objective of the South Dakota Task Force was to advise the Secretary of the Army on a plan to reduce Missouri River siltation in South Dakota and assist the Government in meeting the objectives of the Pick-Sloan program (formerly called the Missouri River Basin Project) which approved the plan for the conservation, control, and use of water resources in the Missouri River Basin. The South Dakota Task Force was to develop and recommend, to the Secretary of the Army, critical restoration projects that promoted conservation practices in the Missouri River watershed, the general control and removal of sediment from the Missouri River, the protection of recreation on the Missouri River from sedimentation, the protection of Native American and non-Native American historical and cultural sites along the Missouri River from erosion, erosion control along the Missouri River, or any combination of these activities.

The sense of Congress, as identified in the Federal Advisory Committee Act (Public Law 92-463), is that “advisory committees should be terminated when they are no longer carrying out the purposes for which they are established.”

Since its establishment, the South Dakota Task Force has not had a sufficient number of members appointed by the Governor of South Dakota to reach quorum and, thus, has not held a single meeting. It has submitted zero recommendations to the Department of Defense (DoD), including the required report and plan. The lack of work by the South Dakota Task Force has made its objectives obsolete by the passage of time. Therefore, the DoD, in consultation with the General Services Administration, administratively suspended the South Dakota Task Force on October 7, 2016, due to inactivity.

Terminating the South Dakota Task Force removes any administrative burden from DoD for this administratively suspended advisory committee. Termination of the South Dakota Task Force does not eliminate Government work on protecting the Missouri River, as the Army Corps of Engineers and Department of Interior continue to hold these vital conversations in an agency-to-agency working group and work directly with State, local, tribal, and territorial members to enable engagement.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year 2021 President's Budget.

Changes to Existing Law: This proposal would amend the Water Resources Development Act of 2000 (Public Law 106–541; 114 Stat. 2709) as follows:

~~SEC. 905. MISSOURI RIVER TASK FORCE.~~

~~(a) ESTABLISHMENT.—There is established the Missouri River Task Force.~~

~~(b) MEMBERSHIP.—The Task Force shall be composed of—(1) the Secretary (or a designee), who shall serve as Chairperson;~~

~~(2) the Secretary of Agriculture (or a designee);~~

~~(3) the Secretary of Energy (or a designee);~~

~~(4) the Secretary of the Interior (or a designee); and~~

~~(5) the Trust.~~

~~(c) DUTIES.—The Task Force shall—~~

~~(1) meet at least twice each year;~~

~~(2) vote on approval of the plan, with approval requiring votes in favor of the plan by a majority of the members;~~

~~(3) review projects to meet the goals of the plan; and~~

~~(4) recommend to the Secretary critical projects for implementation.~~

~~(d) ASSESSMENT.—~~

~~(1) IN GENERAL.—Not later than 18 months after the date on which funding authorized under this title becomes available, the Secretary shall submit to the other members of the Task Force a report on—~~

~~(A) the impact of the siltation of the Missouri River in the State, including the impact on—~~

~~(i) the Federal, State, and regional economies;~~

~~(ii) recreation;~~

~~(iii) hydropower generation;~~

~~(iv) fish and wildlife; and~~

~~(v) flood control;~~

~~(B) the status of Indian and non-Indian historical and cultural sites along the Missouri River;~~

~~(C) the extent of erosion along the Missouri River (including tributaries of the Missouri River) in the State; and~~

~~(D) other issues, as requested by the Task Force.~~

~~(2) CONSULTATION.—In preparing the report under paragraph (1), the Secretary shall consult with—~~

- (A) the Secretary of Energy;
- (B) the Secretary of the Interior;
- (C) the Secretary of Agriculture;
- (D) the State; and
- (E) Indian tribes in the State.

~~(e) PLAN FOR USE OF FUNDS MADE AVAILABLE BY THIS TITLE.—~~

~~(1) IN GENERAL.—~~Not later than 3 years after the date on which funding authorized under this title becomes available, the Task Force shall prepare a plan for the use of funds made available under this title.

~~(2) CONTENTS OF PLAN.—~~The plan shall provide for the manner in which the Task Force shall develop and recommend critical restoration projects to promote—

- ~~(A) conservation practices in the Missouri River watershed;~~
- ~~(B) the general control and removal of sediment from the Missouri River;~~
- ~~(C) the protection of recreation on the Missouri River from sedimentation;~~
- ~~(D) the protection of Indian and non-Indian historical and cultural sites along the Missouri River from erosion;~~

~~(E) erosion control along the Missouri River; or~~

~~(F) any combination of the activities described in subparagraphs (A) through (E).~~

~~(3) PLAN REVIEW AND REVISION.—~~~~(A) IN GENERAL.—~~The Task Force shall make a copy of the plan available for public review and comment before the plan becomes final, in accordance with procedures established by the Task Force.

~~(B) REVISION OF PLAN.—~~

~~(i) IN GENERAL.—~~The Task Force may, on an annual basis, revise the plan.

~~(ii) PUBLIC REVIEW AND COMMENT.—~~In revising the plan, the Task Force shall provide the public the opportunity to review and comment on any proposed revision to the plan.

~~(f) CRITICAL RESTORATION PROJECTS.—~~

~~(1) IN GENERAL.—~~After the plan is approved by the Task Force under subsection ~~(e)(2)~~, the Secretary, in coordination with the Task Force, shall identify critical restoration projects to carry out the plan.

~~(2) AGREEMENT.—~~The Secretary may carry out a critical restoration project after entering into an agreement with an appropriate non-Federal interest in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b) and this section.

~~(3) INDIAN PROJECTS.—~~To the maximum extent practicable, the Secretary shall ensure that not less than 30 percent of the funds made available for critical restoration projects under this title shall be used exclusively for projects that are—

~~(A) within the boundary of an Indian reservation; or~~

~~(B) administered by an Indian tribe.~~

~~(g) COST SHARING.—~~

~~(1) ASSESSMENT.—~~

~~(A) FEDERAL SHARE.—~~The Federal share of the cost of carrying out the assessment under subsection ~~(d)~~ shall be 75 percent.

~~(B) NON-FEDERAL SHARE.—~~The non-Federal share of the cost of carrying out the assessment may be provided in the form of services, materials, or other in-kind contributions.

~~(2) PLAN.—~~

~~(A) FEDERAL SHARE.—~~The Federal share of the cost of preparing the plan under subsection ~~(e)~~ shall be 75 percent.

~~(B) NON-FEDERAL SHARE.— Not more than 50 percent of the non-Federal share of the cost of preparing the plan may be provided in the form of services, materials, or other in-kind contributions.~~

~~(3) CRITICAL RESTORATION PROJECTS.—~~

~~(A) IN GENERAL.— A non-Federal cost share shall be required to carry out any critical restoration project under subsection (f) that does not primarily benefit the Federal Government, as determined by the Task Force.~~

~~(B) FEDERAL SHARE.— The Federal share of the cost of carrying out a project under subsection (f) for which the Task Force requires a non-Federal cost share under subparagraph (A) shall be 65 percent, not to exceed \$5,000,000 for any critical restoration project.~~

~~(C) NON-FEDERAL SHARE.— (i) IN GENERAL.— Not more than 50 percent of the non-Federal share of the cost of carrying out a project described in subparagraph (B) may be provided in the form of services, materials, or other in-kind contributions.~~

~~(ii) REQUIRED NON-FEDERAL CONTRIBUTIONS.— For any project described in subparagraph (B), the non-Federal interest shall— (I) provide all land, easements, rights-of-way, dredged material disposal areas, and relocations;~~

~~(II) pay all operation, maintenance, replacement, repair, and rehabilitation costs; and~~

~~(III) hold the United States harmless from all claims arising from the construction, operation, and maintenance of the project.~~

~~(iii) CREDIT.— The Secretary shall credit the non-Federal interest for all contributions provided under clause (ii)(I).~~

TITLE XI—CIVILIAN PERSONNEL MATTERS

Section 1101 would extend through Fiscal Year (FY) 2022 the discretionary authority of the head of an agency to provide to an individual employed by, or assigned or detailed to, such agency, allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3973; 4081 et seq.), if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

This authority has been granted since 2006 to provide certain allowances, benefits, and gratuities to individuals on official duty in Pakistan or a combat zone. The extension of the authority would ensure employees receive benefits promptly and for the periods of time when the conditions warrant the designation of a combat zone. This is a provision that applies to all Federal agencies, not just the Department of Defense (DoD), and is necessary to incentivize and support all Federal civilian employees taking assignments in Pakistan or a combat zone.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget request. Only Defense Agencies that anticipate having employees assigned to areas covered by this authority are identified in the budget table below. The costing methodology for this legislative proposal is based on the number of DoD civilian employees currently deployed to Pakistan or a combat zone, times the cost associated with each allowance, benefit, and gratuity under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (i.e., death gratuity equal to EX-II (\$192,300 in 2019); and payment of commercial roundtrip travel for Rest and Recuperation (R&R) breaks (up to three per

year for employees deployed for 12 consecutive months and home leave). Specifically, the total cost for the death gratuity is calculated based on the assumption that there is one civilian death per Component during the two-year period. Payment of commercial roundtrip travel for R&R is based on the estimated number of currently deployed civilians who will remain deployed for 12 consecutive months, and thus are entitled to up to three R&R breaks and home leave. Estimates of the number of employees are: Army – 503; Navy – 333; Air Force – 55; Defense Agencies – 109. The average cost for each roundtrip travel for R&R is \$18,000.

Program	FY 2021	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	\$27.16	Operation and Maintenance, Army OCO	Multiple	Multiple	
Navy	\$17.98	Operation and Maintenance, Navy OCO	Multiple	Multiple	
Air Force	\$2.97	Operation and Maintenance, Air Force OCO	Multiple	Multiple	
Defense-Wide Agencies	\$5.8	Operation and Maintenance, Defense Working Capital Funds, Defense-Wide (OCO)	Multiple	Multiple	
Total	\$53.91				

Program	FY 2021	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Army	503	Operation and Maintenance, Army OCO	Multiple	Multiple	
Navy	333	Operation and Maintenance, Navy OCO	Multiple	Multiple	
Air Force	55	Operation and Maintenance, Air Force OCO	Multiple	Multiple	
Defense-Wide Agencies	109	Operation and Maintenance, Defense Working	Multiple	Multiple	

		Capital Funds, Defense-Wide (OCO)			
Total	1,000				

Changes to Existing Law: This proposal would make the following change to section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234; 120 Stat. 443):

SEC. 1603. (a) IN GENERAL.—(1) During fiscal years 2006 (including the period beginning on October 1, 2005, and ending on June 15, 2006), 2007, and 2008 the head of an agency may, in the agency head's discretion, provide to an individual employed by, or assigned or detailed to, such agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3973; 4081 et seq.), if such individual is on official duty in Iraq or Afghanistan.

(2) During fiscal years 2009 through ~~2024~~ 2022, the head of an agency may, in the agency head's discretion, provide to an individual employed by, or assigned or detailed to, such agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980, if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

(b) CONSTRUCTION.—Nothing in this section shall be construed to impair or otherwise affect the authority of the head of an agency under any other provision of law.

(c) APPLICABILITY OF CERTAIN AUTHORITIES.—Section 912(a) of the Internal Revenue Code of 1986 shall apply with respect to amounts received as allowances or otherwise under this section in the same manner as section 912 of the Internal Revenue Code of 1986 applies with respect to amounts received by members of the Foreign Service as allowances or otherwise under chapter 9 of title I of the Foreign Service Act of 1980.

Section 1102 amends title 10, U.S.C., by adding a section that would extend and enhance authority to ensure transportation parity with military members and civilian employees. It is the Department of Defense's intent to provide similar assistance for its civilian employees. Enhancement of this authority would afford the Secretaries of the military departments, the heads of Defense Agencies and Department of Defense Field Activities, and the Secretary of Homeland Security to provide transportation to eligible family members to transfer ceremonies of civilian employees who die overseas. Civilian employees are an integral part of the DoD team and are at risk of losing their lives while serving their country alongside the military team members.

Currently, section 481f(d) of title 37, U.S.C, authorizes transportation to specified family members of service members who die while serving overseas. This amendment would remedy an inequity among survivors of members of the Armed Forces and survivors of civilian employees who may die while conducting the same mission together.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget.

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG
Army	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04	Operation and Maintenance, Army	04	434
Navy	\$0.004	\$0.004	\$0.004	\$0.004	\$0.004	Operation and Maintenance, Navy	04	4M
Marine Corps	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	Operation and Maintenance	04	BA
Air Force	\$0.004	\$0.004	\$0.004	\$0.004	\$0.004	Operation and Maintenance, Air Force	04	2A
Coast Guard	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Operation and Support	PPA2	AFC-08
4th Estate	\$0.01	\$0.01	\$0.01	\$0.01	\$0.01	Operation and Maintenance, Defense wide	04	04D
Total	\$0.078	\$0.078	\$0.078	\$0.078	\$0.078	--	-	--

The table above details resource requirements associated with the proposal based on the projected number of civilian deaths required to go to Dover Air Force Base for a medical legal investigation, with three family members per decedent traveling at an estimated cost of approximately \$930 each. We anticipate that this will impact an additional 84 family members each year based on casualty statistics of civilian employees who die overseas and are transported to the Dover Port Mortuary.

The following personnel table reflects the estimated number of family members per Service who may use the proposed travel costs based on prior year expenditures. This is only an estimate as the number of civilian deaths and the numbers of family members who would require travel are unable to be determined.

Army	43
Navy	4
Marine Corps	22
Air Force	4
Coast Guard	0
4th Estate	11
Total	84

Changes to Existing Law: This proposal would add a new section to title 10, United States Code, as set forth above. In addition, this proposal would make the following changes to title 37, United States Code:

§481f. Travel and transportation allowances: transportation for survivors of deceased member to attend member's burial ceremonies; transportation for survivors of member dying overseas to attend transfer ceremonies

(d) ~~TRANSPORTATION TO~~ TRAVEL AND TRANSPORTATION ALLOWANCES IN CONNECTION WITH TRANSFER CEREMONIES OF MEMBERS OF THE ARMED FORCES WHO DIE OVERSEAS.-(1) The Secretary of the military department concerned may provide round trip ~~transportation to travel~~ and transportation allowances in connection with ceremonies for the transfer of a member of the armed forces who dies while located or serving overseas (including during a humanitarian relief operation) to the following:

- (A) The primary next of kin of the member.
- (B) Two family members (other than primary next of kin) of the member.
- (C) One or more additional family members of the member, at the discretion of

the Secretary.

(2)(A) For purposes of this subsection, the primary next of kin of a member of the armed forces shall be the eligible relatives of the member specified in subparagraphs (A) through (D) of subsection (c)(1).

(B) The Secretaries of the military departments shall prescribe in regulations the family members of a member of the armed forces who shall constitute family members for purposes of subparagraphs (B) and (C) of paragraph (1). The Secretary of Defense shall ensure that such regulations are uniform across the military departments.

(3) Transportation shall be provided under this subsection by means of Invitational Travel Authorizations.

(4) The Secretary of a military department may, upon the request of the primary next of kin covered by paragraph (1)(A) and at the discretion of the Secretary, provide for the accompaniment of such next of kin in travel under this subsection by a casualty assistance officer or family liaison officer of the military department who shall act as an escort in such accompaniment.

Section 1103 would enact the same change to each of three existing statutory provisions. The proposal would afford the Secretaries of the Army, the Navy, and the Air Force the same flexibility in prescribing work schedules for civilian faculty at the Army War College, the United States Army Command and General Staff College, the Army University, the Naval War College, the Marine Corps University, and the Air University as now exists for the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy. The proposed subsection (c) in each of the three provisions replicates the language found in

subsection (c) of section 6952 of title 10, United States Code, referring to professors, instructors and lecturers at the Naval Academy. The added flexibility will enable the respective Secretary, or the Secretary's designee, to accommodate the highly cyclical academic workload at the Naval War College and the Marine Corps University, as well as at the Army War College, the United States Army Command and General Staff College, the Army University, and the Air University in the same manner as it may now be accommodated at the Naval Academy. The variable teaching requirements of the academic year and the irregular demands of scholarly research are not easily addressed by the timekeeping model applicable to the General Schedule workforce. The proposal would enable the respective Secretary to apply timekeeping procedures at the included institutions that will permit civilian faculty members the latitude to accomplish their academic mission while properly accounting for their public duties. The goal of this proposal is to make the civilian faculty work experience as similar to that at a civilian academic institution as possible. Faculty at civilian institutions receive an annual salary. They are required to be present for scheduled classroom instruction and office hours with students. They are free to accomplish curriculum development, assigned research, and personal research scholarship without reference to a tour of duty schedule. Alternative work schedules authorized by the Office of Personnel Management under the authority of section 6133 of title 5, United States Code, do not permit this flexibility because they all require a specific tour of duty. This proposal would give the military departments the same authority to manage civilian faculty schedules as is now available to the Superintendent of the United States Naval Academy. This authority could be used to place civilian faculty on a straight-salary pay system. Civilian faculty would report leave to a timekeeper. Supervisors would certify that faculty members were in good standing and entitled to pay for the current pay period.

This proposal would affect approximately 275 civilian faculty members at the Naval War College and the Marine Corps University, and approximately 109 civilian faculty members at the Army War College, the United States Army Command and General Staff College, and the Army University.

Budget Implications: This authority has no budgetary impact and would apply only to civilian faculty at the Naval War College, the Marine Corps University, the Army War College, the United States Army Command and General Staff College, the Army University, and the Air University. It is not applicable to other Department of Defense institutions. As the proposal would authorize flexibility only in the work schedule, without any change in full-time equivalents, no additional budget authority is required. Work schedules implemented under this proposal would not authorize overtime or compensatory time.

Changes to Existing Law: This proposal would make the following changes to sections 7371, 8748, and 9371 of title 10, United States Code:

§ 7371. Army War College, and United States Army Command and General Staff College, and Army University: civilian faculty members

(a) **AUTHORITY OF SECRETARY.**—The Secretary of the Army may employ as many civilians as professors, instructors, and lecturers at the Army War College, or the United States Army

Command and General Staff College, or the Army University as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

~~(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—(1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at the Army War College or the United States Army Command and General Staff College after the end of the 90-day period beginning on November 29, 1989.~~

~~(2) This section shall not apply with respect to professors, instructors, and lecturers employed at the Army War College or the United States Army Command and General Staff College if the duration of the principal course of instruction offered at the college involved is less than 10 months.~~

(c) WORK SCHEDULE.—The Secretary of the Army may, notwithstanding subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed under this section the work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(d) AGENCY RIGHTS.—Notwithstanding chapter 71 of title 5, the authority conferred by this section shall be exercised at the sole and exclusive discretion of the Secretary of the Army, or the Secretary's designee.

* * * * *

§ 8748. Naval War College and Marine Corps University: civilian faculty members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Navy may employ as many civilians as professors, instructors, and lecturers at a school of the Naval War College or of the Marine Corps University as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

~~(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Naval War College or of the Marine Corps University if the duration of the principal course of instruction offered at the school or college involved is less than 10 months.~~

(c) WORK SCHEDULE.—The Secretary of the Navy may, notwithstanding subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed under this section the work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(d) AGENCY RIGHTS.—Notwithstanding chapter 71 of title 5, the authority conferred by this section shall be exercised at the sole and exclusive discretion of the Secretary of the Navy, or the Secretary’s designee.

* * * * *

§ 9371. Air University: civilian faculty members

(a) **AUTHORITY OF SECRETARY.**—The Secretary of the Air Force may employ as many civilians as professors, instructors, and lecturers at a school of the Air University as the Secretary considers necessary.

(b) **COMPENSATION OF FACULTY MEMBERS.**—The compensation of persons employed under this section shall be as prescribed by the Secretary.

~~(c) **APPLICATION TO CERTAIN FACULTY MEMBERS.**—(1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at a school of the Air University after February 27, 1990.~~

~~(2) This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Air University if the duration of the principal course of instruction offered at that school is less than 10 months.~~

(c) **WORK SCHEDULE.**—The Secretary of the Air Force may, notwithstanding subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed under this section the work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(d) **AGENCY RIGHTS.**—Notwithstanding chapter 71 of title 5, the authority conferred by this section shall be exercised at the sole and exclusive discretion of the Secretary of the Air Force, or the Secretary’s designee.

Section 1104 would amend section 5314 of title 5, United States Code, to set the pay for the Director of the National Security Agency and the Director of the National Reconnaissance Office at Level III of the Executive Schedule. This legislation is required to correct the omission of the positions under the provisions of title 5, United States Code, governing the pay for Presidentially-appointed, Senate-confirmed positions. This level of pay would be consistent with the stature and responsibilities of each of the positions.

The National Security Agency was established by President Truman in 1952 and was given specific administrative authorities by the National Security Agency Act of 1959 (50 U.S.C. 3602 et seq.). Section 401 of the Intelligence Authorization Act for Fiscal Year 2014 (Public Law 113–126) amended section 2 of the National Security Agency Act of 1959 to specify that “the Director of the National Security Agency shall be appointed by the President, by and with the advice and consent of the Senate.” Section 401 established in statute the position of the Director of the National Security Agency as a presidentially-appointed and Senate confirmed

position, but did not place the position in a level of the Executive Service. This position has typically been filled by a general or flag officer who has been appointed to head the National Security Agency and the Central Security Service, and has concurrently served as Commander of United States Cyber Command. The proposed legislation is required in anticipation that a future civilian Director of the National Security Agency may be appointed.

As specified in DoD Directive 5100.20, the Director of the National Security Agency, under the authority, direction, and control of the Under Secretary of Defense for Intelligence, serves as the principal advisor to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and the Combatant Commanders on signals intelligence (SIGINT), advises the Director of National Intelligence (DNI) and the Director of Defense Intelligence on all matters under the purview of the DNI concerning SIGINT and serves as the SIGINT Functional Manager. In the exercise of these responsibilities, the Director of the National Security Agency plans, organizes, directs, and manages the agency and all assigned resources to provide peacetime, contingency, crisis, and combat SIGINT and information assurance support to the operational Armed Forces of the United States.

The National Reconnaissance Office was established in September of 1961 in response to the Soviet launch of the Sputnik satellite. Section 411 of the Intelligence Authorization Act for FY 2014 (Public Law 113-125, July 7, 2014) amended the National Security Act of 1947 (50 U.S.C 3001 et seq), adding Section 106A to specify that “the Director of the National Reconnaissance Office shall be appointed by the President, by and with the advice and consent of the Senate.” Section 411 established in statute the position of the Director of the National Reconnaissance Office as presidentially-appointed and Senate confirmed, but did not place the position in a level of the Executive Service. The position has previously been held by a general or flag officer, a civilian appointee on a term executive appointment, or by a career intelligence executive.

As specified in DoD Directive 5105.23, the Director of the National Reconnaissance Office, under the authority, direction, and control of the Under Secretary of Defense for Intelligence, serves as the principal advisor on overhead reconnaissance to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Combatant Commanders, the Secretary of the Air Force, and the DoD Executive Agent for Space. The Director is responsible for the management and operations of the National Reconnaissance Office, its program activities, and the acquisition of its systems. The position directs and manages all assigned resources to provide peacetime, contingency, crisis, and combat overhead reconnaissance support to the Armed Forces of the United States, and delivers intelligence, surveillance, and reconnaissance capabilities, information products, services, and tools in response to national-level tasking in coordination with the Functional Managers.

Budget Implications: The Department of Defense estimates this proposal would cost approximately \$0.230 million for FY 2021 if the Director, NSA were a civilian appointee. The Director, NRO position would be cost-neutral as this change converts an existing Defense Intelligence Senior Executive Service Position to a Presidentially- Appointed, Senate Confirmed position This proposal would be funded from National Intelligence Program accounts. This is funded in the FY 2021 President's Budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
NRO						National Intelligence Program			
NSA	\$0.23	\$0.232	\$0.234	\$0.236	\$0.239	National Intelligence Program			
Total	\$0.230	\$0.232	\$0.234	\$0.236	\$0.239				

Cost Methodology: The costs reflects the proposed salary and benefits load of the Executive Schedule for each position, with a 1.0% projected increase each year.

Changes to Existing Law: This proposal would amend section 5314 of title 5, United States Code, as follows:

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

Executive Secretary, National Space Council.
Director, National Security Agency.
Director, National Reconnaissance Office.

TITLE XII—MATTERS RELATING TO FOREIGN NATIONS

Subtitle A—Assistance and Training

Section 1201. would 1) extend the length of the straight bona fide need exception for programs under 10 U.S.C. 333 from two to four years, and 2) strike the provision that provides a conditions-based bona fide need exception to achieve full operational capability (FOC). By extending the period covered by the straight exception for an additional two years, it achieves the

same effect as provided by the FOC authority, without the need to meet the conditions imposed by the FOC language.

1) Cross Fiscal Year Authority

This proposal simplifies program planning by extending the period covered by the cross fiscal year authority provision from two years to four years to match the maximum period covered under the existing FOC provision. Programs planned using cross fiscal year authority have a clearly defined start and end point for training and defense services, which promotes synchronization of effort among all stakeholders and streamlines execution across the Department of Defense (DoD). Due to the clearly defined timelines associated with the cross fiscal year authority, DoD prefers to rely solely on this provision but proposes to extend the period covered from two years to four years to facilitate careful and comprehensive program planning, in line with the requirements of 10 U.S.C. 333.

2) Removal of FOC

DoD does not rely on the FOC provision, and therefore proposes its removal. The FOC provision does not establish a consistent start and end to the permissible period for training and services, which creates ambiguity and execution risk. FOC timelines depend upon two highly variable key planning milestones, project delivery to the Government (USG) and delivery to the partner. Further, the FOC provision is only available if all the equipment from the program is delivered to the USG in the fiscal year after the program begins. Given constraints in production timelines, this is often not possible.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Defense Security Cooperation Agency	\$1,036	\$1,068	\$1,089	\$1,120	\$1,132	O&M DW (0100)	4	4GT	1002200T
Total	\$1,036	\$1,068	\$1,089	\$1,120	\$1,132	---	---	---	---

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

§333. Foreign security forces: authority to build capacity

(g) FUNDING.—

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

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

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

Section 1202 would allow funds to be made available for foreign assistance to reimburse the pay and allowances of reserve component personnel (i.e., National Guard and non-National Guard Reserve personnel) while they are training foreign forces as part of foreign assistance activities at the request of the Secretary of State. The National Guard and Reserves, unlike U.S. active duty forces, have no authority to fund the cost of pay and allowances when on active duty in support of foreign assistance activities. The consequence of this lack of funds is that the National Guard and Reserves are not available to conduct such training for Foreign Military Financing (FMF)-funded cases.

Allowing the Department of State to fund National Guard and Reserve pay and allowances would provide more flexible and cost-effective options to the Department of State in conducting many funded training programs. Currently, when active-duty military personnel are not available to conduct training under an FMF-funded case, the training is contracted out to private contractors at a significant cost – typically at least 50 percent more than active-duty personnel. Moreover, relying on contract support precludes the establishment of a lasting relationship between U.S. and foreign partner forces. The National Guard and Reserves have considerable experience conducting training as part of security assistance programs, as they provide support regularly under traditional FMS cases that are funded by the FMS customer.

If this proposal is enacted, the Department of State and the Department of Defense (DoD) would develop standards to govern its use. In particular, Department of State and DoD intend to limit its use to only those circumstances where 1) active-duty military are not available to conduct the required training and/or 2) it is otherwise in the interest of foreign policy for National Guard or Reserve personnel to provide the training. The latter circumstance is likely to arise where a National Guard or Reserve unit has an ongoing relationship with a particular foreign security force.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Defense Security Cooperation Agency	\$3.20	\$3.26	\$3.32	\$3.40	\$3.47	Foreign Military Financing- (FMF) 1082 – Pay & Allowances	N/A	N/A	N/A
Total	\$3.20	\$3.26	\$3.32	\$3.40	\$3.47	---	---	---	---

Changes to Existing Law: This proposal would amend section 503 of the Foreign Assistance Act of 1961 (22 U.S.C. 2311) as follows:

SEC. 503. GENERAL AUTHORITY.—(a)(1) The President is authorized to furnish military assistance, on such terms and conditions as he may determine, to any friendly country or international organization, the assisting of which the President finds will strengthen the security of the United States and promote world peace and which is otherwise eligible to receive such assistance, by—

(1A) acquiring from any source and providing (by loan or grant) any defense article or defense service;

(2B) assigning or detailing members of the Armed Forces of the United States and other personnel of the Department of Defense to perform duties of a non-combatant nature; or

(3C) transferring such of the funds appropriated or otherwise made available under this chapter as the President may determine for assistance to a recipient country, to the account in which funds for the procurement of defense articles and defense services under section 21 and section 22 of the Arms Export Control Act have been deposited for such recipient, to be merged with such deposited funds, and to be used solely to meet obligations of the recipient for payment for sales under that Act.

(2) Sales ~~which~~ that are wholly paid from funds transferred under ~~paragraph (3)~~ paragraph (1)(C) or from funds made available on a non-repayable basis under section 23 of the Arms Export Control Act shall be priced to exclude the costs of salaries of members of the Armed Forces of the ~~United States (other than the Coast Guard)~~. United States other than members of—

(A) the Coast Guard; and

(B) the reserve components of the Army, Navy, Air Force, and Marine Corps who are ordered to active duty pursuant to chapter 1209 of title 10, of United States Code, and at the request of the Secretary of State.

* * * * *

Section 1203 would extend through December 31, 2021, the authorization for the Commanders' Emergency Response Program (CERP) in Afghanistan under section 1201 of the National Defense Authorization Act for Fiscal Year 2012 and would authorize \$2,500,000 for that program for use during calendar year 2021. CERP remains an important tool for military commanders for battle damage, condolence payments, and small-scale projects that enhance local conditions and contribute to force protection. CERP is essential for commanders in Afghanistan.

Budget Implications: The resources reflected in the table below are funded within the FY 2021 President's Overseas Contingency Operations (OCO) Budget.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
CERP	\$2.5					Operation and Maintenance, Army OCO	01	136	0201195A
Total	\$2.5								

Changes to Existing Law: This proposal would make the following changes to section 1201 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81):

SEC. 1201. COMMANDERS' EMERGENCY RESPONSE PROGRAM IN AFGHANISTAN.

(a) **AUTHORITY.**—During the period beginning on October 1, 2019, and ending on ~~December 31, 2020~~ December 31, 2021, from funds made available to the Department of Defense for operation and maintenance, not to exceed \$2,500,000 may be used by the Secretary of Defense in such period to provide funds for the Commanders' Emergency Response Program in Afghanistan.

(b) **SEMI-ANNUAL REPORTS.**—

(1) **SEMI-ANNUAL REPORTS.**—Not later than 45 days after the end of each half fiscal year of fiscal years 2017 through ~~2020~~ 2021, the Secretary of Defense shall submit to the congressional defense committees a report regarding the source of funds and the allocation and use of funds during that half fiscal year that were made available pursuant to the authority provided in this section or under any other provision of law for the purposes of the program under subsection (a).

(2) **FORM.**—Each report required under paragraph (1) shall be submitted, at a minimum, in a searchable electronic format that enables the congressional defense committees to sort the report by amount expended, location of each project, type of project, or any other field of data that is included in the report.

(c) SUBMISSION OF GUIDANCE.—

(1) INITIAL SUBMISSION.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a copy of the guidance issued by the Secretary to the Armed Forces concerning the allocation of funds through the Commanders' Emergency Response Program in Afghanistan.

(2) MODIFICATIONS.—If the guidance in effect for the purpose stated in paragraph (1) is modified, the Secretary shall submit to the congressional defense committees a copy of the modification not later than 15 days after the date on which the Secretary makes the modification.

(d) WAIVER AUTHORITY.—For purposes of exercising the authority provided by this section or any other provision of law making funding available for the Commanders' Emergency Response Program in Afghanistan, the Secretary of Defense may waive any provision of law not contained in this section that would (but for the waiver) prohibit, restrict, limit, or otherwise constrain the exercise of that authority.

(e) RESTRICTION ON AMOUNT OF PAYMENTS.—Funds made available under this section for the Commanders' Emergency Response Program in Afghanistan may not be obligated or expended to carry out any project if the total amount of funds made available for the purpose of carrying out the project, including any ancillary or related elements of the project, exceeds \$500,000.

(f) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense may accept cash contributions from any person, foreign government, or international organization to provide funds for the Commanders' Emergency Response Program in Afghanistan during the period beginning on October 1, 2019, and ending on ~~December 31, 2020~~ December 31, 2021. Funds received by the Secretary may be credited to the operation and maintenance account from which funds are made available to provide such funds, and may be used for such purpose until expended in addition to the funds specified in subsection (a).

(g) NOTIFICATION.—Not less than 15 days before obligating or expending funds made available under this section for the Commanders' Emergency Response Program in Afghanistan for a project in Afghanistan with a total anticipated cost of \$500,000 or more, the Secretary of Defense shall submit to the congressional defense committees a written notice containing the following information:

(1) The location, nature, and purpose of the proposed project, including how the project is intended to directly benefit the security or stability of the people of Afghanistan.

(2) The budget and implementation timeline for the proposed project, including any other funding under the Commanders' Emergency Response Program in Afghanistan that has been or is anticipated to be contributed to the completion of the project.

(3) A plan for the sustainment of the proposed project, including any written agreement with either the Government of Afghanistan, an entity owned or controlled by the Government of Afghanistan, a department or agency of the United States Government other than the Department of Defense, or a third party contributor to finance the

sustainment of the activities and maintenance of any equipment or facilities to be provided through the proposed project.

(h) **COMMANDERS' EMERGENCY RESPONSE PROGRAM IN AFGHANISTAN DEFINED.**—In this section, the term “Commanders' Emergency Response Program in Afghanistan” means the program that—

(1) authorizes United States military commanders in Afghanistan to carry out small-scale projects designed to meet urgent humanitarian relief requirements or urgent reconstruction requirements within their areas of responsibility; and

(2) provides an immediate and direct benefit to the people of Afghanistan.

(i) **CONFORMING AMENDMENT.**—Section 1202 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 119 Stat. 3455), as most recently amended by section 1212 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 124 Stat. 4389), is hereby repealed.

Section 1204 would amend section 346 of title 10, United States Code (title 10), to authorize the Secretary of Defense to utilize mission training through distributed simulation (MTDS) activities in military training with friendly foreign forces. MTDS seeks to incorporate live friendly foreign forces into a virtual training environment in lieu of simulated or contractor representation of those forces to enhance interoperability and encourage further strategic partnerships with key allies and partners.

The modification to this authority is consistent with the consolidation of security cooperation authorities into chapter 16 of title 10. These modifications also are consistent with updates to existing authorities accounting for emergent technological capabilities and requirements for high-end systems training activities with partners and allies seeking to increase interoperability and to familiarize themselves with systems procured from the United States. These changes modernize section 346 of title 10 to account for emergent requirements not captured by the original authority.

This authority is necessary because training is recognized as a defense service, and direct or incidental training will be provided by U.S. forces to military forces of friendly foreign countries during this type of activity. These training and exercise events will normally be executed during U.S. forces' combat readiness training events. MTDS, in effect, broadens the training audience available through networked activities, thus increasing the fidelity and depth of training for U.S. and friendly foreign forces. Allowing for this type of virtual integration may also reduce the cost of training and exercises by bringing dissimilar forces together in distributed events, requiring fewer travel expenses and reducing the wear and tear on actual weapon systems. Conducting this type of training through MTDS would be even more critical for training and exercise support as we, and our allies and partners, increasingly rely on advanced weapons systems like the F-35 fighter. At least 50 percent of the training for the F-35 can only be conducted in advanced networked environments.

History: U.S. Air Forces in Europe (USAFE) has temporarily executed MTDS activities under authority granted in section 350 of title 10 (Inter-European Air Forces Academy –

IEAFA), as part of a “Simulation and Exercise Management Training Activity.” The primary purpose of section 350 is for training of foreign nations’ forces in professional military education and technical skills training activities, not persistent advanced networked training and exercises focused mainly on U.S. forces.

Section 321 of title 10 allows for training with allies and partners, but it only allows for the payment of incremental expenses for “developing” countries in most circumstances. Section 333 of title 10 also has a broad training authority, but it is tied to institutional capacity-building requirements, which are unnecessary for many of our partners that would be involved in MTDS. Section 346 of title 10 closely mirrors the intent of MTDS, both for facilitating high-end partners and allowing the payment of incremental expenses; however, to be used effectively, section 346 must be modified to account for the emergent requirements for “live” training in complex environments, increasingly utilized with the F-35.

Discussion: As MTDS activities and emerging technologies supporting synthetic and blended live, virtual, and constructive (LVC) environments continue to expand rapidly, more training and exercises will be conducted in these environments. For many weapon systems, outside of actual combat, MTDS provides the only environment to conduct training in anti-access/area-denial (A2/AD) operations. By supporting the inclusion of friendly foreign forces into the virtual training, we will be providing U.S. forces more realistic training on interoperability and will be doing it in a cost-effective manner—obviating the need either to: 1) program simulated allied or partnered forces into the scenario; or 2) conduct the training in the real-world environment, when possible. The scale, rapidity, and importance of this type of training activity with friendly foreign forces necessitate a flexible global authority, as well as specified authorization to allow for the inclusion of the types of partner activities that MTDS requires.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)								
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG
MTDS	15.0	15.0	15.0	15.0	15.0	Operation and Maintenance, Air Force	01	3400
Total	15.0	15.0	15.0	15.0	15.0			

Changes to Existing Law: This proposal would amend section 346 of title 10, United States Code, as follows

~~§346. Distribution to certain foreign personnel of education and training materials and information technology to enhance military interoperability with the armed forces~~

§346. Mission training of United States and foreign forces through distributed simulation and networked technology

(a) Training and Distribution Authorized.-To enhance ~~interoperability~~ interoperability and integration between the armed forces and military forces of friendly foreign countries, the Secretary of Defense, with the concurrence of the Secretary of State, may-

(1) provide to personnel referred to in subsection (b) persistent advanced networked training and exercise activities, also referred to as mission training through distributed simulation, and other electronically distributed learning content for the education and training of such personnel for the development or enhancement of allied and friendly military and civilian capabilities for multinational operations, including joint exercises and coalition operations; and

(2) provide information technology, including ~~computer software~~ hardware and software developed for such purpose, but only to the extent necessary to support the use of such learning content for the education and training of such personnel.

(b) Authorized Recipients.-The personnel to whom learning content and information technology may be provided under subsection (a) are military and civilian personnel of a friendly foreign government, with the permission of that government.

(c) Education and Training.-Any education and training provided under subsection (a) ~~shall include~~ may include the following:

(1) Internet-based education and training.

(2) Advanced distributed learning and similar Internet learning tools, as well as distributed training and computer-assisted exercises.

(3) Advanced distributed network training events and computer-assisted exercises.

(d) Applicability of Export Control Regimes.-The provision of learning content and information technology under this section shall be subject to the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.) and any other export control regime under law relating to the transfer of military technology to foreign countries.

(e) Guidance on Utilization of Authority.-

(1) Guidance required.-The Secretary of Defense shall develop and issue guidance on the procedures for the use of the authority in this section.

(2) Modification.-If the Secretary modifies the guidance issued under paragraph (1), the Secretary shall submit to the appropriate committees of Congress a report setting forth the modified guidance not later than 30 days after the date of such modification.

Section 1205 would authorize the Secretary of the Air Force and Combatant Commanders to provide military education and training in the EUCOM area of responsibility (AOR) at the Inter-European Air Forces Academy (IEAFA) to additional partner nations when schoolhouse capacity permits.

Specifically, the amendment would modify the “purpose” of section 350 of title 10, United States Code, to read: “The purpose of the Academy shall be to provide military education and training to military personnel of countries that are members of the North Atlantic Treaty Organization or signatories to the Partnership for Peace Framework Documents, or that are eligible for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.).”.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request

Changes to Existing Law: This proposal would amend section 350 of title 10, United States Code, as follows:

§ 350. Inter-European Air Forces Academy

(a) Operation.-The Secretary of the Air Force may operate the Air Force education and training facility known as the Inter-European Air Forces Academy (in this section referred to as the "Academy").

(b) Purpose.-The purpose of the Academy shall be to provide military education and training to military personnel of countries that are members of the North Atlantic Treaty Organization or signatories to the Partnership for Peace Framework Documents, or that are eligible for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.).

(c) Limitations.-

(1) Concurrence of secretary of state.-Military personnel of a country may be provided education and training under this section only with the concurrence of the Secretary of State.

(2) Assistance otherwise prohibited by law.-Education and training may not be provided under this section to the military personnel of any country that is otherwise prohibited from receiving such type of assistance under any other provision of law.

(d) Supplies and Clothing.-The Secretary of the Air Force may, under such conditions as the Secretary may prescribe, provide to a person receiving education and training under this section the following:

(1) Transportation incident to such education and training.

(2) Supplies and equipment to be used during such education and training.

(3) Billeting, food, and health services in connection with the receipt of such education and training.

(e) Living Allowance.-The Secretary of the Air Force may pay to a person receiving education and training under this section a living allowance at a rate to be prescribed by the Secretary, taking into account the rates of living allowances authorized for a member of the Armed Forces under similar circumstances.

(f) Funding.-Amounts for the operations and maintenance of the Academy, and for the provision of education and training through the Academy, may be paid from funds available for the Air Force for operation and maintenance.

Subtitle B— Matters Relating to Afghanistan and Pakistan

Section 1211 would authorize \$4,015,612,000 for the Afghanistan Security Forces Fund (ASFF) for fiscal year (FY) 2021 and continue certain established provisions applicable to the ASFF. This proposal would also expand the group of eligible recipients of ASFF funds to include all of the security forces of Afghanistan.

ASFF funding is necessary to attain U.S. national security objectives in Afghanistan and to provide the United States' contribution to an international effort to meet the funding

requirements of the Afghan forces. At the NATO Summit in Brussels in July 2018, participating donor nations agreed to extend assistance for financial sustainment of the Afghan forces - about \$1 billion per year - through 2024, and the Afghan government continues to increase the amount of funding it provides consistent with its commitment at the 2012 NATO Summit in Chicago. The ASFF appropriation and the expanded eligibility group supports the United States strategy in Afghanistan to work with Allies and partners to enable well-trained, well-equipped, and sustainable Afghan security forces to provide security in Afghanistan. It also enables all Afghan security forces to continue efforts to defeat the remnants of al Qaeda, the Islamic State, and other terrorist organizations in order to ensure that Afghanistan does not again become a safe haven for terrorist groups to plan and execute attacks against United States interests. Effective Afghan forces minimize the need to reintroduce U.S. and coalition forces to conduct counterinsurgency operations. We will continue to execute ASFF through Financial and Activity Plans with statutory oversight by the Afghanistan Resources Oversight Council to ensure the Department of Defense and Congress maintain control and oversight over these funds.

This funding supports operations by and sustainment of Afghan National Defense and Security Forces at an authorized level of 352,000, plus 30,000 Afghan Local Police, to enhance the security and stability of Afghanistan by protecting the population, fostering the rule of law, preventing the establishment of terrorist safe havens, and developing a reliable long-term counterterrorism partnership with the United States.

Budget Implications: The resources reflected in the table below are funded within the FY 2021 President's Overseas Contingency Operations (OCO) Budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
ASFF	\$1,235.1					Afghanistan Security Forces Fund	BA6	Multiple	
ASFF	\$602.2					Afghanistan Security Forces Fund	BA7	Multiple	
ASFF	\$835.9					Afghanistan Security Forces Fund	BA8	Multiple	
ASFF	\$1,342.5					Afghanistan Security Forces Fund	BA9	Multiple	

Total	\$4,015								
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Changes to Existing Law: This proposal would amend section 1513(b) of the National Defense Authorization Act for Fiscal Year 2008 as follows:

SEC. 1513. AFGHANISTAN SECURITY FORCES FUND.

* * * * *

(b) USE OF FUNDS.—

(1) IN GENERAL.—Funds authorized to be appropriated by subsection (a) shall be available to the Secretary of Defense to provide assistance to the security forces of Afghanistan ~~security forces of the Ministry of Defense and the Ministry of the Interior of the Government of the Islamic Republic of Afghanistan.~~

(2) TYPES OF ASSISTANCE AUTHORIZED.—Assistance provided under this section may include the provision of equipment, supplies, services, training, facility and infrastructure repair, renovation, construction, and funds.

(3) SECRETARY OF STATE CONCURRENCE.—Assistance may be provided under this section only with the concurrence of the Secretary of State.

* * * * *

Subtitle C—Matters Relating to Syria, Iraq, and Iran

Section 1221 would extend the authority to provide assistance to vetted Iraq Security Forces (ISF) with a national mission to counter the Islamic State of Iraq and Syria (ISIS) and associated groups, together with assistance to coalition partners that are enabling the capabilities of said forces to counter and defeat any re-emergence of ISIS or similar extremist groups. Extension of this authority will serve as the principal means for countering ISIS and associated terrorist groups, and returning security and stability to the region while protecting the United States and U.S. interests. The authority extension reflects the operational environment and the need to enable appropriately vetted elements of the ISF eligible for support under current law to ensure the defeat of ISIS and prevent its re-emergence. The proposal is in line with the National Defense Strategy and the need to protect the United States and lasting defeat of ISIS.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year 2021 President’s Budget.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (only for RDT&E programs)
Counter ISIS Train & Equip	\$645					Overseas Contingency			

(CTEF) Iraq						Operations (OCO) CTEF			
Total	\$645								

Changes to Existing Law: This proposal would make the following changes to section 1236 of the National Defense Authorization Act for Fiscal Year 2015:

SEC. 1236. AUTHORITY TO PROVIDE ASSISTANCE TO COUNTER THE ISLAMIC STATE OF IRAQ AND SYRIA.

(a) **IN GENERAL.**—The Secretary of Defense is authorized, in coordination with the Secretary of State, to provide assistance, including training, equipment, logistics support, supplies, and services, stipends, infrastructure repair and renovation, small-scale construction of temporary facilities necessary to meet urgent operational or force protection requirements with a cost less than \$4,000,000, and sustainment, to military and other security forces of or associated with the Government of Iraq, including Kurdish and tribal security forces or other local security forces, with a national security mission, and facilitate Coalition efforts to build capacity in our partner forces to counter and defeat any re-emergence of ISIS, through ~~December 31, 2020~~ December 31, 2021, for the following purposes:

- (1) Defending Iraq, its people, allies, and partner nations from the threat posed by the Islamic State of Iraq and Syria (ISIS) and groups supporting ISIS.
- (2) Securing the territory of Iraq.

* * * * *

(g) **FUNDING.**—Of the amounts authorized to be appropriated for the Department of Defense for Overseas Contingency Operations for ~~fiscal year 2020~~ fiscal year 2021, there are authorized to be appropriated \$645,000,000 to carry out this section.

* * * * *

Section 1222 would extend the authority to provide assistance to vetted Syrian opposition (VSO) forces. Extension of this authority will continue to serve as the principal means for continuing counterterrorism operations “by, with, and through” local Syrian partners and achieving the enduring defeat of the Islamic State of Iraq and Syria (ISIS) in Syria. The authority extension reflects the operational environment and the continuing need to enable VSO elements to ensure the defeat of ISIS and prevent its re-emergence. The proposal is in-line with the National Defense Strategy and the need to protect the United States, U.S. allies and partners, and U.S. interests, and achieve the lasting defeat of ISIS.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year 2021 President’s Budget.

RESOURCE IMPACT (\$MILLIONS)

Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (only for RDT&E programs)
Counter ISIS Train & Equip (CTEF) Syria	\$200					Overseas Contingency Operations (OCO) CTEF			
Total	\$200								

Changes to Existing Law: This proposal would make the following changes to section 1209 of the National Defense Authorization Act for Fiscal Year 2015:

SEC. 1209. AUTHORITY TO PROVIDE ASSISTANCE TO THE VETTED SYRIAN OPPOSITION.

(a) IN GENERAL.—The Secretary of Defense is authorized, in coordination with the Secretary of State, to provide assistance, including training, equipment, supplies, stipends, construction and repair of training and associated facilities or other facilities necessary to meet urgent military operational requirements of a temporary nature and sustainment to appropriately vetted Syrian groups and individuals through ~~December 31, 2020~~ December 31, 2021, for the following purposes:

- (1) Defending the Syrian people from attacks by the Islamic State of Iraq and Syria.
- (2) Securing territory formerly controlled by the Islamic State of Iraq and Syria.
- (3) Protecting the United States and its partners and allies from the threats posed by the Islamic State of Iraq and Syria, al Qaeda, and associated forces in Syria.
- (4) Providing appropriate support to vetted Syrian groups and individuals to conduct temporary and humane detention and repatriation of Islamic State of Iraq and Syria foreign terrorist fighters in accordance with all laws and obligations related to the conduct of such operations, including, as applicable—
 - (A) the law of armed conflict;
 - (B) internationally recognized human rights;
 - (C) the principle of non-refoulement;
 - (D) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (done at New York on December 10, 1984); and
 - (E) the United Nations Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).

* * * * *

Section 1223 would extend through fiscal year 2021 the authorization for the Department of Defense (DoD) to provide funds to support the operations and activities of the Office of

Security Cooperation in Iraq (OSCI) and security assistance teams in Iraq, including life support, transportation and personal security, and facilities renovation and construction. This proposal would also extend the authorization for OSCI to conduct activities in support of defense institution building for Iraqi defense institutions and professionalization, strategic planning and reform, financial management, manpower management, and logistics management for military and other security forces with a national security mission in Iraq.

This proposal is an extension of an existing authority and reflects the importance of a responsible transition from a DoD focus on the international coalition-assisted effort to defeat the Islamic State in Iraq and Syria (ISIS) to focus on establishing a normalized and nationally integrated Iraqi security force capable of conducting counterterrorism, border security, and critical infrastructure protection. Continuing this authority demonstrates and continues our reliable partnership with unique Iraqi security organizations and forces performing a national security mission. These authorities are intended to transition U.S. security assistance and cooperation responsibly as ISIS is defeated.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year 2021 President’s Budget.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (only for RDT&E programs)
Office of Security Cooperation – Iraq	\$30.0					Operation & Maintenance, Air Force OCO	04		
Total	\$30.0								

Changes to Existing Law: This proposal would make the following changes to section 1215 of the NDAA for FY 2012 (Public Law 112–81; 10 U.S.C. 113 note):

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

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

(b) **TYPES OF SUPPORT.**—The operations and activities for which the Secretary may provide funds under the authority in subsection (a) may include life support and transportation and personal security.

(c) LIMITATION ON AMOUNT.—The total amount of funds provided under the authority in subsection (a) in fiscal year ~~2020~~ 2021 may not exceed \$30,000,000.

(d) SOURCE OF FUNDS.—Funds for purposes of subsection (a) for fiscal year ~~2020~~ 2021 shall be derived from amounts available for that fiscal year for operation and maintenance for the Air Force.

(e) COVERAGE OF COSTS IN CONNECTION WITH SALES OF DEFENSE ARTICLES OR DEFENSE SERVICES TO IRAQ.—The President shall ensure that any letter of offer for the sale to Iraq of any defense articles or defense services issued after the date of the enactment of this Act includes appropriate administrative charges, consistent with the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(f) ADDITIONAL AUTHORITY FOR ACTIVITIES OF OSCI.—

(1) IN GENERAL.—During fiscal year 2019, the Secretary of Defense, with the concurrence of the Secretary of State, may authorize the Office of Security Cooperation in Iraq to conduct activities to support the following:

(A) Defense institution building to mitigate capability gaps and promote effective and sustainable defense institutions.

(B) Professionalization, strategic planning and reform, financial management, manpower management, and logistics management of military and other security forces with a national security mission.

(2) REQUIRED ELEMENTS OF TRAINING.—The training conducted under paragraph (1) shall include elements that promote the following:

(A) Observance of and respect for human rights and fundamental freedoms.

(B) Military professionalism.

(C) Respect for legitimate civilian authority within Iraq.

(3) SUNSET.—The authority provided in this subsection shall terminate on the date that is 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020

(g) REPORTS.—

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

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

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

(B) A description of the activities of the Office of Security Cooperation in Iraq and the extent, if any, to which United States security assistance and security

cooperation activities are intended to address the capability gaps described pursuant to subparagraph (A).

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

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

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

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

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

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

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

(h) LIMITATION ON AVAILABILITY OF FUNDS.—Of the amount made available for fiscal year 2020 to carry out section 1215 of the National Defense Authorization Act for Fiscal Year 2012, not more than \$20,000,000 may be obligated or expended for the Office of Security Cooperation in Iraq until the date on which the Secretary of Defense certifies to the congressional defense committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate, that each of the following reforms relating to that Office has been completed:

(1) The appointment of a Senior Defense Official/Defense Attache to oversee the Office.

(2) The development of a staffing plan to reorganize the Office in a manner similar to that of other security cooperation offices in the region that emphasizes the placement of personnel with regional or security cooperation expertise in key leadership positions and closes duplicative or extraneous sections.

(3) The initiation of bilateral engagement with the Government of Iraq with the objective of establishing a joint mechanism for security assistance planning, including a five-year security assistance roadmap for developing sustainable military capacity and capabilities and enabling defense institution building and reform.

Subtitle D—Other Matters

Section 1231. The Department of Defense currently relies heavily on the Air Force to provide both inter- and intra-theater airlift for patient movement purposes. Contingency operations during the last 18 years have significantly taxed Air Force assets, and the lack of

dedicated aircraft for patient movement purposes makes the patient movement enterprise, of which U.S. Transportation Command (USTRANSCOM) is the global manager, dependent on available cargo aircraft. Several U.S. allies and partners fly the same or similar cargo aircraft (specifically the C-17 and C-130), use similar equipment, and train their patient movement personnel similarly to the Air Force. Currently, there is a very laborious, ill-defined, and time-intensive waiver process that has to be undertaken each time patient movement personnel fly on a partner country's aircraft. In addition, to the extent the Department of Defense (DoD) or a partner country provides patient movement services to another, it currently must be accomplished in the context of a bilateral acquisition and cross-servicing agreement (ACSA) concluded under section 2342 of title 10, United States Code, which involves complex request and accounting procedures and reimbursement. The required request and accounting procedures under an ACSA severely limits the ability to use an ACSA just to move patients on another partner country's aircraft in a timely fashion. The bilateral or multilateral exchange of patient movement personnel or equipment under such agreements is all but impossible. The proposed legislation would enable the use of comparable patient movement assets on DoD and partner country aircraft, vessels, or vehicles, thereby expanding the pool of available assets for time-critical and mass casualty patient movement at little to no cost to the DoD.

This proposal authorizes memoranda of understanding (or other formal agreements) addressing three major hurdles to patient movement interoperability: the ability to practice medicine on aircraft by formally recognizing and accepting the credentialing and licensure of patient movement personnel as outlined in NATO STANAG 3204 and the Air Force Interoperability Council; the approval, standardization, and utilization of medical equipment on aircraft; and, to the extent allowed by law, the harmonization of patient treatment standards and procedures. A requirement that the Secretary of Defense, or designee, continually review and recertify partner country patient movement equipment and personnel meet or exceed U.S. standards, and provide a standard of care comparable to or greater than that provided by the DoD, will ensure DoD and partner country patients are provided the same high-quality level of care as that currently provided by the DoD.

The proposed legislation will facilitate interoperability among key partner countries and, in a resource-constrained environment, provide a quick and safe expansion of patient movement capacity at little to no cost to the DoD and its partners. The timely expansion of capacity will be critical if there is a need for large-scale movement of casualties, from either contingency operations or humanitarian disaster relief operations, and will ultimately save lives.

Issues such as claims adjudication, reporting requirements, the standardization of equipment, the issuance of prescription medicine, and the return of medical equipment used in patient movement to the country of origin will be expanded upon in implementing arrangements or agreements with any participating partner country.

Although most patient movement occurs using aircraft, the possibility of using vessels and vehicles to perform this function exists. Consequently, the proposed legislation has been drafted to address the potential for using all modes for patient movement.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President’s Budget request.

Changes to Existing Law: This proposal would add a new section to chapter 138 of title 10, United States Code. The new section is shown in full in the legislative text above.

Section 1232 would extend the authority under section 1251 of the National Defense Authorization Act for Fiscal Year (FY) 2016 from December 31, 2020, to December 31, 2023. Without this amendment, the Secretary of Defense would lose this authority to provide training to our most vulnerable European allies and partners.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request. Substantively, the proposal would simply extend section 1251. The limitations in section 1251 with regard to expenditures for incremental expenses and the sources of funds would remain unchanged. Accordingly, this proposal would not increase U.S. Government expenditures.

RESOURCE REQUIREMENTS (\$MILLIONS)								
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG
Warsaw Initiative Fund	7	7	7	0	0	Operation and Maintenance, Defense-Wide	01	0100
Building Partner Capacity	1	1	1	0	0	Operation and Maintenance, Army	01	2020
NATO Response Force	8	8	8	0	0	Operation and Maintenance, Army	01	2020
Traditional Commander Activities	3	3	3	0	0	Operation and Maintenance, Army	01	2020
Partnership Development Program	6	6	6	0	0	Operation and Maintenance, Army	01	2020
Additional Activities/European Deterrence Initiative	0	0	0	0	0	Operation and Maintenance, Army, OCO	01	2020
Total	25	25	25	0	0			

Changes to Existing Law: This proposal would make the following changes to section 1251 of the National Defense Authorization Act for Fiscal Year 2016:

SEC. 1251. TRAINING FOR EASTERN EUROPEAN NATIONAL SECURITY FORCES IN THE COURSE OF MULTILATERAL EXERCISES.

(a) Authority.-The Secretary of Defense may provide the training specified in subsection (b), and pay the incremental expenses incurred by a country as the direct result of participation in such training, for the national security forces provided for under subsection (c).

(b) Types of Training.-The training provided to the national security forces of a country under subsection (a) shall be limited to training that is-

- (1) provided in the course of the conduct of a multilateral exercise in which the United States Armed Forces are a participant;
- (2) comparable to or complimentary of the types of training the United States Armed Forces receive in the course of such multilateral exercise; and
- (3) for any purpose as follows:
 - (A) To enhance and increase the interoperability of the security forces to be trained to increase their ability to participate in coalition efforts led by the United States or the North Atlantic Treaty Organization (NATO).
 - (B) To increase the capacity of such security forces to respond to external threats.
 - (C) To increase the capacity of such security forces to respond to hybrid warfare.
 - (D) To increase the capacity of such security forces to respond to calls for collective action within the North Atlantic Treaty Organization.

(c) Eligible Countries.-

(1) In general.-Training may be provided under subsection (a) to the national security forces of the countries determined by the Secretary of Defense, with the concurrence of the Secretary of State, to be appropriate recipients of such training from among the countries as follows:

- (A) Countries that are a signatory to the Partnership for Peace Framework Documents, but not a member of the North Atlantic Treaty Organization.
- (B) Countries that became a member of the North Atlantic Treaty Organization after January 1, 1999.

(2) Eligible countries.-Before providing training under subsection (a), the Secretary of Defense shall, in coordination with the Secretary of State, submit to the Committees on Armed Services of the Senate and the House of Representatives a list of the countries determined pursuant to paragraph (1) to be eligible for the provision of training under subsection (a).

(d) Funding of Incremental Expenses.-

(1) Annual funding.-Of the amounts specified in paragraph (2) for a fiscal year, up to a total of \$28,000,000 may be used to pay incremental expenses under subsection (a) in that fiscal year.

(2) Amounts.-The amounts specified in this paragraph are as follows:

- (A) Amounts authorized to be appropriated for a fiscal year for operation and maintenance, Army, and available for the Combatant Commands Direct Support Program for that fiscal year.
- (B) Amounts authorized to be appropriated for a fiscal year for operation and maintenance, Defense-wide, and available for the Wales Initiative Fund for that fiscal year.

(C) Amounts authorized to be appropriated for a fiscal year for overseas contingency operations for operation and maintenance, Army, and available for additional activities for the European Deterrence Initiative for that fiscal year.

(3) Availability of funds for activities across fiscal years.-Amounts available in a fiscal year pursuant to this subsection may be used for incremental expenses of training that begins in that fiscal year and ends in the next fiscal year.

(4) Regulations.—

(A) In general.—The Secretary of Defense shall prescribe regulations for payment of incremental expenses under subsection (a). Not later than 120 days after the date of the enactment of this paragraph, the Secretary shall submit the regulations to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(B) Procedures to be included.—The regulations required under subparagraph (A) shall include procedures—

(i) to require reimbursement of incremental expenses from non-developing countries determined pursuant to subsection (c) to be eligible for the provision of training under subsection (a); and

(ii) to provide for a waiver of the requirement of reimbursement of incremental expenses under clause (i), on a case-by case basis, if the Secretary of Defense determines special circumstances exist to provide for the waiver.

(C) Quarterly report.—The Secretary of Defense shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, on a quarterly basis, a report that includes a description of each waiver of the requirement of reimbursement of incremental expenses under subparagraph (B)(i) that was in effect at any time during the preceding calendar quarter.

(D) Non-developing country defined.—In this paragraph, the term ‘non-developing country’ means a country that is not a developing country, as such term is defined in section 301(4) of title 10, United States Code.

(e) Briefing to Congress on Use of Authority.-Not later than 90 days after the end of each fiscal year in which the authority in subsection (a) is used, the Secretary shall brief the Committees on Armed Services of the Senate and the House of Representatives on the use of the authority during such fiscal year, including each country with which training under the authority was conducted and the types of training provided.

(f) Construction of Authority.-The authority provided in subsection (a) –

(1) is in addition to any other authority provided by law authorizing the provision of training for the national military forces of a foreign country, including Chapter 16 of title 10, United States Code; and

(2) shall not be construed to include authority for the training of irregular forces, groups, or individuals.

(g) Incremental Expenses Defined.-In this section, the term 'incremental expenses' has the meaning given such term in section 301(5) of title 10, United States Code.

(h) Termination of Authority.-The authority under this section shall terminate on ~~December 31, 2020~~ December 31, 2023. Any activity under this section initiated before that date may be completed, but only using funds available for the period beginning on October 1, 2015, and ending on ~~December 31, 2020~~ December 31, 2023.

Section 1233 would grant the authority to establish a U.S. Indo-Pacific Command (USINDOPACOM)-specific shared airlift mechanism that will be known as the Movement Coordination Center Pacific (MCC-P). The MCC-P is a multinational operation that aims to synchronize lift capabilities of partner nations in the USINDOPACOM area of responsibility, thereby expanding the overall reach capacity of mobility operations. In the USINDOPACOM area of responsibility, coordinating effective logistics operations and support to both joint and combined forces warrants a dedicated mechanism that focuses on effective and efficient employment of combined lift assets. The Movement Coordination Center-Europe, under the control of the U.S. European Command, is responsible for coordinating employment of multinational lift in the European theater. Likewise, a Movement Coordination Center Pacific would similarly enhance the efficient use of available transportation assets in the Pacific theater. The MCC-P concept will maximize efforts to provide lift solutions for bilateral and multilateral operations, including exercises as well as Humanitarian Assistance/Disaster Relief (HADR) operations.

The USINDOPACOM area of responsibility currently has no dedicated mechanism in place to coordinate collectively the use of available transportation assets of multiple lift capable nations in the region. There is a growing demand to establish such an organization to leverage the combined lift capacity available from the many nations within the USINDOPACOM area of responsibility for mutual cost savings. The MCC-P concept is designed to manage such a requirement effectively, which incorporates a coalition of participating nations and their respective movement coordination centers into a communications network that focuses on optimum use of lift capability according to the priorities of USINDOPACOM and member nations.

Cargo and passenger airlift requirements often exceed U.S. airlift capabilities. This is especially true of organic capability, which is costly considering the relatively small amount of cargo space available on an airlift platform versus that of a single sealift vessel. When such a lift shortfall occurs, costly commercial augmentation is frequently procured to help offset the organic shortfall. Logistics planners should also consider other preferred sources of lift capability (rather than focusing solely on commercial augmentation), not only to satisfy the specific movement requirement, but also to conserve valuable mobility funding (e.g., Transportation Working Capital Fund dollars). The savings can be quite substantial when more alternatives are available for optimizing the movements and achieving timely closure of requirements. This strikes at the very essence of the MCC-P concept and overall need to communicate effectively with respective movement coordination centers within the Indo-Pacific region to coordinate required support for moving people and cargo in theater.

The MCC-P will synchronize multinational lift capabilities of U.S. allies and partner nations, which has the potential for significantly expanding the overall reach and capacity of mobility operations in the USINDOPACOM area of responsibility. The benefits are

considerable, and the MCC-P is the solution. The major benefits are: the expansion of the U.S. deployment and distribution capabilities — another option for increasing lift support, fostering theater engagement plans with partners and allies, improved effectiveness and efficient use of lift assets through sharing lift information, and providing security cooperation and expanding the interface among MCC-P lift-sharing nations.

Budget Implications: The resources required are reflected in the table below and are funded within the Fiscal Year (FY) 2021 President’s Budget.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Navy USINDOPACOM Core Operations	\$1.12	\$1.18	\$1.24	\$1.30	\$1.36	Operation & Maintenance, Navy	01	1CCH	
Total	\$1.12	\$1.18	\$1.24	\$1.30	\$1.36				

Note: Total resource requirements plus personnel requirement total \$6.2M 2021-2025

Changes to Existing Law: Not applicable: This proposal does not amend an existing law.

TITLE XIII— COOPERATIVE THREAT REDUCTION

Sections 1301 and 1302 would amend sections 1321 and 1325 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (50 U.S.C. 3711 and 50 USC 3715) to allow for the DoD Cooperative Threat Reduction (CTR) Program to provide funds to threat-reduction programs of foreign governments and international organizations that are consistent with the authorities of the DoD CTR Program. Current authorities allow the DoD CTR Program to accept the contribution of funds from other entities for program activities, but it does not allow the Program to make financial contributions to the programs of other foreign governments or international organizations.

It is critical to gain this authority because it would enable DoD to address threat reduction requirements that, due to political reasons, DoD cannot accomplish independently. Many weapons of mass destruction (WMD) threat reduction priorities for DoD are within the territories of nations that are currently unfriendly towards or suspicious of working with the U.S. Government on these particular matters. Being able to contribute funding to a third-party nation or international organization that has the access required to conduct threat-reduction activities effectively would allow DoD to address urgent threat-reduction goals that it is not able to accomplish on its own.

Further, this authority would allow DoD to coordinate and de-conflict threat-reduction efforts more effectively. Many allied and partner nations and international organizations carry out similar threat reduction programs that occasionally overlap with DoD CTR Program activities. By acquiring the authority to contribute funding towards these programs, DoD could use its resources more efficiently to satisfy outstanding threat-reduction goals by contributing to efforts of other nations or international organizations that DoD was considering undertaking without having to dedicate DoD time and effort for program management and oversight.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget. We cannot estimate past the Future Years Defense Program the exact scope or amount of DoD contributions to other countries’ Cooperative Threat Reduction-like activities. The amounts below reflect “up to” estimates based on our current understanding of other countries’ current and anticipated CTR-like activities, all of which are subject to change based on those countries’ decisions.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
DoD Cooperative Threat Reduction Program	\$10.0	\$10.0	\$10.0	\$10.0	\$10.0	Cooperative Threat Reduction Account	01	0134D	N/A
Total	\$10.0	\$10.0	\$10.0	\$10.0	\$10.0	--			

Changes to Existing Law: This proposal would make the following changes to sections 1321 and 1325 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (50 U.S.C. 3711) and (50 U.S.C. 3715):

SEC. 1321. AUTHORITY TO CARRY OUT DEPARTMENT OF DEFENSE COOPERATIVE THREAT REDUCTION PROGRAM.

(a) **AUTHORITY.**—The Secretary of Defense may carry out a program, referred to as the “Department of Defense Cooperative Threat Reduction Program”, with respect to foreign countries to do the following:

(1) Facilitate the elimination and the safe and secure transportation and storage of chemical, biological, or other weapons, weapons components, weapons-related materials, and associated delivery vehicles.

(2) Facilitate—

(A) the safe and secure transportation and storage of nuclear weapons, nuclear weapons-usable or high-threat radiological materials, nuclear weapons components, and associated delivery vehicles; and

(B) the elimination of nuclear weapons, nuclear weapons components, and nuclear weapons delivery vehicles.

(3) Prevent the proliferation of nuclear and chemical weapons, weapons components, and weapons-related materials, technology, and expertise.

(4) Prevent the proliferation of biological weapons, weapons components, and weapons-related materials, technology, and expertise, which may include activities that facilitate detection and reporting of highly pathogenic diseases or other diseases that are associated with or that could be used as an early warning mechanism for disease outbreaks that could affect the Armed Forces of the United States or allies of the United States, regardless of whether such diseases are caused by biological weapons.

(5) Prevent the proliferation of weapons of mass destruction- related materials, including materials, equipment, and technology that could be used for the design, development, production, or use of nuclear, chemical, and biological weapons and the means of delivery of such weapons.

(6) Carry out military-to-military and defense contacts for advancing the mission of the Program, subject to subsection (f).

(7) Subject to subsection (c), contribute funds to a program of a foreign government or international organization intended to accomplish goals described in paragraphs (1) through (6).

(b) CONCURRENCE OF SECRETARY OF STATE.—The authority under subsection (a) to carry out the Program is subject to any concurrence of the Secretary of State or other appropriate agency head required under section 1322 or 1323 (unless such concurrence is otherwise exempted pursuant to section 1352 with respect to activities or determinations carried out or made before the date of the enactment of this Act).

(c) SCOPE OF AUTHORITY.—The authority to carry out the Program in subsection (a) includes authority to provide equipment, goods, ~~and services,~~ and other support, but does not include authority to provide funds directly ~~for a project or activity carried out to a country receiving assistance~~ under the Program.

* * * * *

SEC. 1325. USE OF CONTRIBUTIONS TO PROMOTE THE GOALS OF THE DEPARTMENT OF DEFENSE COOPERATIVE THREAT REDUCTION PROGRAM.

(a) AUTHORITY TO ENTER INTO AGREEMENTS.—

(1) AUTHORITY.—Subject to paragraph (2), the Secretary of Defense may enter into one or more agreements with—

(A) any person (including a foreign government, international organization, multinational entity, or any other entity) that the Secretary considers appropriate under which the person contributes funds for activities conducted under the Program; and

(B) a foreign government or international organization under which the Department of Defense may contribute to a program of such foreign government or international organization that is intended to accomplish goals described in section 1321(a).

(2) CONCURRENCE BY SECRETARY OF STATE.—The Secretary may enter into an agreement under paragraph (1) only with the concurrence of the Secretary of State.

(b) RETENTION AND USE OF FUNDS.—Notwithstanding section 3302 of title 31, United States Code, and subject to subsections (c) and (d), the Secretary of Defense may retain and obligate or expend funds contributed pursuant to subsection (a)(1)(A) for purposes of the Program. Funds so contributed shall be retained in a separate fund established in the Treasury for such purposes and shall be available to be obligated or expended without further appropriation.

(c) RETURN OF FUNDS NOT OBLIGATED OR EXPENDED WITHIN THREE YEARS.—If the Secretary does not obligate or expend funds contributed pursuant to subsection (a)(1)(A) by the date that is three years after the date on which the contribution was made, the Secretary shall return the amount to the person who made the contribution.

(d) NOTICE.—

(1) IN GENERAL.—Not later than 30 days after receiving or contributing funds ~~contributed~~ pursuant to subsection (a), the Secretary shall submit to the appropriate congressional committees a notice—

(A) specifying the value of the contribution and the purpose for which the contribution was made; and

(B) identifying the person who made the contribution or identifying the foreign government or international organization who received the contribution, as the case may be.

(2) LIMITATION ON USE OF AMOUNTS.—The Secretary may not obligate funds contributed pursuant to subsection (a)(1)(A) until a period of 15 days elapses following the date on which the Secretary submits the notice under paragraph (1).

(e) IMPLEMENTATION PLAN.—The Secretary shall submit to the congressional defense committees—

(1) an implementation plan for the authority provided under this section prior to obligating or expending any funds contributed pursuant to subsection (a)(1)(A); and

(2) any updates to such plan that the Secretary considers appropriate.

(f) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means the following:

(1) The congressional defense committees.

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

TITLE XIV—OTHER AUTHORIZATIONS

Subtitle A—Military Programs

Section 1401 would authorize appropriations for the Defense Working Capital Funds in the amount equal to the budget authority requested in the President’s Budget for fiscal year 2021.

Section 1402 would authorize appropriations for Chemical Agents and Munitions Destruction, Defense in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2021.

Section 1403 would authorize appropriations for Drug Interdiction and Counter-Drug Activities, Defense-wide in the amount equal to the budget authority requested in the President’s Budget for fiscal year 2021.

Section 1404 would authorize appropriations for the Defense Inspector General in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2021.

Section 1405 would authorize appropriations for the Defense Health Program in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2021.

Subtitle B—Other Matters

Section 1411, within the funds authorized for operation and maintenance under section 1405, would authorize funds to be transferred to the Joint Department of Defense–Department of Veterans Affairs Medical Facility Demonstration Fund established by section 1704(a) of the National Defense Authorization Act for Fiscal Year 2010.

Section 1412 would authorize appropriations for fiscal year 2021 for the Armed Forces Retirement Home in the amount equal to the budget authority requested in the President’s Budget for fiscal year 2021.

TITLE XVI—STRATEGIC PROGRAMS, CYBER, AND INTELLIGENCE MATTERS

Subtitle A—[RESERVED]

Subtitle B—[RESERVED]

Subtitle C—Cyberspace-Related Matters

Section 1621 would allow the Secretaries of military departments to use money appropriated for Operation and Maintenance (O&M) to develop cyber operations-peculiar capabilities up to \$3,000,000. The Department of Defense (DoD) could use its O&M funds for rapid creation, testing, fielding, and operation of cyber capabilities that would be developed and used within the one year appropriation period.

Cyberspace threats are a continuing concern for the DoD. While the services are working to develop agile teams to respond to cyberspace threats and opportunities, cyber capability development is hamstrung by an acquisition funding process that is often incompatible with real-time operations and innovation. Cyber threats and opportunities must be addressed quickly; however, to address these threats, current law often requires coordinated use of up to three

different types of funding: Research Development Testing and Evaluation (RDT&E), O&M, and Procurement. Additionally, the appropriate type of funds for any given project is not always clear, and coordinated use of multiple types of funds can lead to bureaucratic requirements and reviews that ultimately hamper cyber capability development within operationally relevant timeframes.

Cyber operations-peculiar capabilities are often urgently needed in hours to days for both offensive and defensive purposes. These types of capabilities can be fleeting in nature and often do not have a useful lifecycle of more than a few months after creation. Due to their short life-cycle and operational nature, funding these types of cyber capabilities with O&M funds could be determined to be appropriate. Additionally, using O&M funds increases operational flexibility and reduces planning and budgeting overhead.

Because creation of these types of cyber capabilities can include generation of new applications and tools, the use of RDT&E funding could be determined to be more appropriate in some situations. Unfortunately, the planning and programming timeline for RDT&E funds can make use of RDT&E funds to develop and field a new capability in days or weeks impossible. Moreover, operational units requiring rapid cyber capability development generally have primarily O&M funds available and must coordinate with research labs for developmental work. Such coordination takes time and may delay operations.

Finally, if a cyber operations-peculiar capability is considered to be an investment, then the use of procurement funds is required. Generally, capabilities expected to last more than a year and cost in excess of \$250,000 are considered “investments” and funded with procurement funds. Investments are the costs that result in the acquisition of or additions to end items. However, unlike traditional investment items, low-cost cyber capabilities are often created and become obsolete within a one-year period. They may or may not require maintenance and they are often not incorporated into a weapon system. For all these reasons, low-cost cyber capabilities are more properly accounted as O&M expenses.

Contributing to the difficulty of determining appropriate funds for cyber-capability development is a fundamental terminology difference between fiscal law and cyberspace operations. For fiscal law purposes, “development” is the “systematic use of the knowledge and understanding gained from research, for the production of useful materials, devices, systems, or methods, including the design and development of prototypes and processes.” However, software developers call all creation of code “development” whether it falls within the fiscal law definition or not. This terminology difference often creates confusion and complicates the fiscal analysis necessary to determine proper funds for cyber operations-peculiar capability development.

The fiscal gray area between situations where it is appropriate to use different types of funds causes delays and places artificial limitations on cyber operators’ ability to quickly meet cyber needs. For example, current Air Force real-time operations and innovation guidance permits the use of O&M funds in certain situations where a capability “enhances and/or is linked to an existing operational system, platform[,] or capability.” This limitation is intended solely to ensure that spending of O&M funds is appropriate as the modifications are considered

maintenance of an existing system. Artificial limitations such as this reduce otherwise responsive and creative efforts to address real-world threats or to develop exploits of adversary vulnerabilities.

Moreover, the DoD has recently increased its use of Other Transaction Authorities (OTA) to acquire innovative technologies from non-traditional sources. Through OTA agreements, the DoD has been able to acquire innovative technologies in a fraction of the time generally necessary for traditional government acquisitions. However, the services do not agree whether and in what circumstances O&M can be used to fund activities under OTA agreements. For these reasons, operational commanders are often not able to use OTA agreements for rapid prototyping efforts with immediate operational benefits. This proposal would permit use of O&M to fund OTA agreements for cyber operations-peculiar capabilities up to \$3,000,000.

Current law also creates an environment where development is halted before a capability is ready for transition to an operational user. For example, where a DoD laboratory has completed a prototype but there is no existing acquisition program available to fund the final stages of development and transition. This problem is known colloquially as the “valley of death.” For small-scale cyber capabilities, often the technology could be transitioned directly from the developing DoD laboratory to the warfighter in the field if operational commanders were able to dedicate O&M funds to the final testing and transition of the capability. Accordingly, while there are many contributing factors to the technology transition problem, permitting operational commanders to dedicate O&M funds to transition promising low-cost cyber operations-peculiar capabilities needed for a rapid response would be beneficial.

This proposal would address the above concerns by permitting the use of O&M funds for the development of cyber operations-peculiar capabilities up to \$3,000,000. The language of this proposal is based on a similar exception permitting the use of O&M funds for minor military construction projects under section 2805(c) of title 10, United States Code. Additionally, this proposal would increase efficiency by decreasing complex funding coordination between units and decreasing artificial limitations on cyberspace innovation. Permitting the use of O&M funds for low-cost cyber capabilities would increase operational flexibility as commanders could more efficiently re-prioritize funding as needs or opportunities arise and provide operational commanders the ability to commit O&M funds to promising technologies.

Note: This proposal uses the term “cyber operations-peculiar” consistent with the use of that term in Fiscal Year 2016 National Defense Authorization Act Section 807.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Air Force	20	21	22	23	24	Air Force	01	01050000	N/A

						Operation and Maintenance		015E	
Army	20	20	20	20	20	Army Operation and Maintenance	01	151	N/A
Navy	3	3	3	3	3	Navy Operation and Maintenance	01	1CCY	N/A
Marine Corps	3	3	3	3	3	USMC Operation and Maintenance	01	1CCY	N/A
Total	46	47	48	49	50				

Changes to Existing Law: This proposal would add a new section to chapter 134 of title 10, United States Code, the full text of which is shown in the legislative language above.

Subtitle D—[RESERVED]

Subtitle E—Missile Defense Programs

Section 1641. Section 1676(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (P.L. 115-91; 10 U.S.C. 2431 note) enacted on December 12, 2017, as amended by section 1679 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), requires the Secretary of Defense to transfer the acquisition authority and the total obligational authority for certain missile defense programs from the Missile Defense Agency (MDA) to a military department no later than the date on which the budget of the President for FY 2021 will be submitted under 31 U.S.C. § 1105. That date is approaching (est. Feb/Mar 2020). Section 1676(b) also requires the Secretary of Defense to submit a report on the plans of the Department of Defense (DoD) for the transition of the referenced missile defense programs from MDA to a military department. The submission deadline for the report to the congressional defense committees was not later than one year after the enactment of the NDAA for FY 2018. To date, the Department has not submitted that report.

Section 1676(b) applies to MDA programs that, as of the date the President's budget is submitted for FY 2021, have received Milestone C or equivalent approval. While most discussions within the Department and with the Congressional defense committees have been focused on the Terminal High Altitude (THAAD) program, application of the requirement was not limited to a particular Ballistic Missile Defense System (BMDS) program.

This proposal would, if enacted, repeal the section 1676(b) requirements for transfer of acquisition authority and total obligational authority for covered programs and would repeal the reporting requirement. The rationale for repeal:

- Existing Departmental Processes Include Successful Cost-Sharing Arrangements. Before and after a proposed transfer:
 - MDA funds BMDS-unique system sustainment support, multi-domain integration, configuration management, operational feedback for development and modernization, FMS, manufacturing and production, MDS Testing, new mission functional allocation, and BMDS-unique training, logistics, and spares.
 - Services fund manning, institutional training, multi-mission operations and sustainment of common associated support items of equipment, base operations, site or system security forces, CCMD deployment options, and warfighter quality of life.
 - Cost-sharing arrangements based upon this model have been successfully implemented between MDA and the Military Departments and have resulted in sufficient funding across the spectrum of development, test, fielding, and sustainment activities necessary for life-cycle operation of a covered program.
 - The repeal of section 1676(b) will eliminate the requirement to transfer based upon milestone approval and permit each transfer to be proposed and executed within the existing statutory requirements and Departmental guidance and in accordance with these successful cost-sharing arrangements between MDA and Services.
- Statutory Requirements and Departmental Processes Exist and have Served Well. Guided by 10 U.S.C. § 224 and existing Departmental processes to include the

10 June 2011 DEPSECDEF Memo, Funding Responsibilities for Ballistic Missile Defense System (BMDS) Elements, MDA has successfully transferred PATRIOT Advanced Capability, Phase 3 to the Army in March 2003, COBRA DANE to the Air Force in February 2009, and Upgraded Early Warning Radar (UEWR) BMD capabilities to the Air Force in October 2013. The repeal of section 1676(b) will eliminate the requirement to transfer based upon milestone approval and permit each transfer to be proposed and executed within the existing statutory requirements and Departmental guidance.

- Program Funding will be Placed at Risk. Transfer of a Ballistic Missile Defense program from MDA where funding for the covered program is dedicated to the development, testing, fielding, and sustainment of BMDS programs, to a Military Department where the covered program must compete service-wide with other service priorities is expected to result in the realignment of covered program funding to other requirements. Repeal of section 1676(b) will eliminate the requirement to transfer based upon milestone approval and permit each transfer to be proposed and executed based upon detailed transfer agreements between MDA and the Military Department. Prominent among the interests served through the agreed terms will be the protection of program funding.
- Enactment of this proposal will result in the Missile Defense Agency retaining the responsibilities for development, integration, procurement, fielding, modernization, and sustainment of BMDS-unique equipment.
- The Secretary of Defense, the Military Departments, and the Missile Defense Agency all recommend that future transfers be executed in accordance with 10 U.S.C. § 224 and the 10 June 2011 DEPSECDEF Memo, Funding Responsibilities for Ballistic Missile Defense System (BMDS) Elements.

More than a decade of BMDS Operations has demonstrated that the system's greatest strength is its integration. The MDA's expertise and experience at integrating a wide array of sensors, communications, and engagement systems is unsurpassed within DoD. Transferring procurement to the Services presents the potential for budgetary impediments to maintaining BMDS interoperability and integrity.

MDA's ability to pursue in-stride spiral and block developments, such as those to Ground Based Interceptors, Command and Control, Battle Management and Communications (C2BMC) and Aegis BMD software, or the SM-3 Blk IB Threat Upgrade interceptor, has resulted in steady increases in capability with essentially no interruptions or adjustment phases for the warfighter. Here again, the MDA believes that transferring BMD program elements to the Services would introduce organizational impediments that would slow the pace of necessary upgrades the warfighter will depend on.

MDA is sensitive to the spirit and intent of the NDAA direction, and believes that efforts should be made, where appropriate, to shift some acquisition authority and obligational authority from MDA to the Services. Specifically, MDA offers this proposed amendment to shift

operations and sustainment authority in accordance with agreed criteria and schedules as called for under 10 U.S.C. § 224 and in accordance with the O&S cost-sharing arrangement described above. MDA would retain Research, Development, Test, and Evaluation (RDT&E), procurement and BMD specific military construction responsibilities of the BMD programs that do transfer to a Lead Military Department (MILDEP). MDA would also retain configuration management and systems engineering responsibilities for the BMD programs.

Consensus of this proposal has been reached across the Secretary of Defense, the Military Departments, and the Missile Defense Agency.

Budget Implications: Enactment of the proposed amendment would leave program responsibility, to include Procurement, RDT&E, and MILCON funding, unchanged—with the Missile Defense Agency.

Changes to Existing Law: This proposal would amend section 1676(b) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2431 note) as follows:

SEC. 1676. ADMINISTRATION OF MISSILE DEFENSE AND DEFEAT PROGRAMS.

(a) MAJOR FORCE PROGRAM.— [added section 239a to title 10, United States Code]

~~(b) TRANSITION OF BALLISTIC MISSILE DEFENSE PROGRAMS TO MILITARY DEPARTMENTS.—~~

~~(1) REQUIREMENT.— Not later than the date on which the budget of the President for fiscal year 2021 is submitted under section 1105 of title 31, United States Code, the Secretary of Defense shall transfer the acquisition authority and the total obligational authority for each missile defense program described in paragraph (2) from the Missile Defense Agency to a military department.~~

~~(2) MISSILE DEFENSE PROGRAM DESCRIBED.— A missile defense program described in this paragraph is a missile defense program of the Missile Defense Agency that, as of the date specified in paragraph (1), has received Milestone C approval (as defined in section 2366 of title 10, United States Code) or equivalent approval.~~

~~(3) REPORT.—~~

~~(A) IN GENERAL.— Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the plans of the Department of Defense for the transition of missile defense programs from the Missile Defense Agency to the military departments pursuant to paragraph (1).~~

~~(B) SCOPE.— The report under subparagraph (A) shall cover the period covered by the future-years defense program that is submitted under section 221 of title 10, United States Code, in the year in which such report is submitted.~~

~~(C) MATTERS INCLUDED.— The report under subparagraph~~

~~(A) shall include the following:~~

~~(i) An identification of—~~

~~(I) the missile defense programs planned to be transitioned from the Missile Defense Agency to the military departments; and~~

- ~~(H) the missile defense programs, if any, not planned for transition to the military departments.~~
- ~~(ii) The schedule for transition of each missile defense program planned to be transitioned to a military department, and an explanation of such schedule.~~
- ~~(iii) A description of—~~
 - ~~(I) the status of the plans of the Missile Defense Agency and the military departments for the transition of missile defense programs from that agency to the military departments; and~~
 - ~~(II) the status of any agreement between the Missile Defense Agency and one or more of the military departments on the transition of any such program from that agency to the military departments, including any agreement on the operational test criteria that must be achieved before such transition.~~
- ~~(iv) An identification of the element of the Department of Defense (whether the Missile Defense Agency, a military department, or both) that will be responsible for funding each missile defense program to be transitioned to a military department, and at what date.~~
- ~~(v) A description of the type of funds that will be used (whether funds for research, development, test, and evaluation, procurement, military construction, or operation and maintenance) for each missile defense program to be transitioned to a military department.~~
- ~~(vi) An explanation of the number of systems planned for procurement for each missile defense program to be transitioned to a military department, and the schedule for procurement of each such system.~~
- ~~(vii) A description of how the Missile Defense Agency will continue the responsibility for the research and development of improvements to missile defense programs.~~

(c) ROLE OF MISSILE DEFENSE AGENCY.—[

(1) IN GENERAL.— [added section 205 to title 10, United States Code]

(3) APPLICATION.—

(A) TERMS.—Subsection (a) of section 205 of title 10, United States Code, as added by paragraph (1), shall apply the day following the date on which the present incumbent in the office of the Director of the Missile Defense Agency, as of the date of the enactment of this Act, ceases to serve as such.

(B) REPORTING.—Subsection (b) of such section 205 shall apply beginning on February 1, 2018. In carrying out such subsection, the Missile Defense Agency shall be under the authority, direction, and control of the Under Secretary of Defense for Research and Engineering in the same manner as the Missile Defense Agency was under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics pursuant to Department of Defense Directive 5134.09. Any reference in such Instruction to the Under Secretary of Defense for Acquisition, Technology, and Logistics shall be deemed to be a reference to the Under Secretary of Defense for Research and Engineering, including with respect to the Under Secretary serving as the chairman of the Missile Defense Executive Board.

Section 1642 would relieve the Department of Defense from Congressional direction to designate a Service or Agency with acquisition authority to develop capabilities to: 1) defend the

homeland from cruise missiles (CMD-H); 2) conduct left of launch ballistic missile defeat operations (LoL). The Department is examining both issues as tasked in the 2019 Missile Defense Review (MDR), aligned with National Defense Strategy priorities and objectives. The MDR direction has a wider scope than the original Congressional language. The MDR directs the Department to consider requirements determination, technology maturation, capability development, and integration along with acquisition authorities as the basis for a recommendation to the Secretary of Defense. In both instances, the Department is conducting analyses to determine future operational requirements as the basis for technology maturation and capability development. These studies will be the basis for a recommendation to the Secretary of Defense for designation of a lead organization for CMD-H and LoL capabilities as directed in the MDR.

This proposal repeals subsections (e), which directs the designation of an acquisition authority for CMD-H and LoL. This would allow the Department to be in compliance with the law until the analysis is completed, required capabilities are identified and an understanding of potential options and the Service or Agency that has the most expertise in developing a cost effective solution(s).

Budget Implications: This proposal has no budgetary effect since there are no programs or additional manpower identified.

Changes to Existing Law: This proposal would amend subsections (e) and (f) of section 1684 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2624; 10 U.S.C. 2431 note) as follows:

SEC. 1684. REVIEW OF THE MISSILE DEFEAT POLICY AND STRATEGY OF THE UNITED STATES.

(a) NEW REVIEW.—The Secretary of Defense and the Chairman of the Joint Chiefs of Staff shall jointly conduct a new review of the missile defeat capability, policy, and strategy of the United States, with respect to—

(1) left- and right-of-launch ballistic missile defense for—

(A) both regional and homeland purposes; and

(B) the full range of active, passive, kinetic, and non-kinetic defense measures across the full spectrum of land-, air-, sea-, and space-based platforms;

(2) the integration of offensive and defensive forces for the defeat of ballistic missiles, including against weapons initially deployed on ballistic missiles, such as hypersonic glide vehicles; and

(3) cruise missile defense of the homeland.

(b) ELEMENTS.—The review under subsection (a) shall address the following:

(1) The missile defeat policy, strategy, and objectives of the United States in relation to the national security strategy of the United States and the military strategy of the United States.

- (2) The role of deterrence in the missile defeat policy and strategy of the United States.
- (3) The missile defeat posture, capability, and force structure of the United States.
- (4) With respect to both the five- and ten-year periods beginning on the date of the review, the planned and desired end-state of the missile defeat programs of the United States, including regarding the integration and interoperability of such programs with the joint forces and the integration and interoperability of such programs with allies, and specific benchmarks, milestones, and key steps required to reach such end states.
- (5) The process for determining requirements, force structure, and inventory objectives for missile defeat capabilities under such programs, including input from the joint military requirements process.
- (6) The organization, execution, and oversight of acquisition for the missile defeat programs of the United States.
- (7) The roles and responsibilities of the Office of the Secretary of Defense, Defense Agencies, combatant commands, the Joint Chiefs of Staff, the military departments, and the intelligence community in such programs and the process for ensuring accountability of each stakeholder.
- (8) Standards for the military utility, operational effectiveness, suitability, and survivability of the missile defeat systems of the United States.
- (9) The method in which resources for the missile defeat mission are planned, programmed, and budgeted within the Department of Defense.
- (10) The near-term and long-term costs and cost effectiveness of such programs.
- (11) The options for affecting the offense-defense cost curve.
- (12) The role of international cooperation in the missile defeat policy and strategy of the United States and the plans, policies, and requirements for integration and interoperability of missile defeat capability with allies.
- (13) Options for increasing the frequency of the co-development of missile defeat capabilities with allies of the United States in the near-term and far-term.
- (14) Declaratory policy governing the employment of missile defeat capabilities and the military options and plans and employment options of such capabilities.
- (15) The role of multi-mission defense and other assets of the United States, including space and terrestrial sensors and plans to achieve multi-mission capability in current, planned, and other future assets and acquisition programs.
- (16) The indications and warning required to meet the missile defeat strategy and objectives of the United States described in paragraph (1) and the key enablers and programs to achieve such indications and warning.
- (17) The impact of the mobility, countermeasures, and denial and deception capabilities of adversaries on the indications and warning described in paragraph (16) and the consequences on the missile defeat capability, objectives, and military options of the United States and the plans of the combatant commanders.
- (18) Any other matters the Secretary determines relevant.

(c) REPORTS.—

(1) RESULTS.—Not later than January 31, 2018, the Secretary shall submit to the congressional defense committees a report setting forth the results of the review under subsection (a).

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

(3) ANNUAL IMPLEMENTATION UPDATES.—During the five year period beginning on the date of the submission of the report under paragraph (1), the Director of Cost Assessment and Program Evaluation shall submit to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and the congressional defense committees annual status updates detailing the progress of the Secretary in implementing the missile defeat strategy of the United States.

(4) THREAT REPORT.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional defense committees, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate a report containing an unclassified summary, consistent with the protection of intelligence sources and methods, of—

(A) as of the date of the report required by this paragraph, the ballistic and cruise missile threat to the United States, deployed forces of the United States, and friends and allies of the United States from short-, medium-, intermediate-, and long-range nuclear and non-nuclear ballistic and cruise missile threats; and

(B) an assessment of such threat in 2026.

(5) DECLARATORY POLICY, CONCEPT OF OPERATIONS, AND EMPLOYMENT GUIDELINES FOR LEFT-OF-LAUNCH CAPABILITY.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff shall jointly submit to the congressional defense committees the following:

(A) The unclassified declaratory policy of the United States regarding the use of the left-of-launch capability of the United States against potential targets.

(B) Both the classified and unclassified concept of operations for the use of such capability across and between the combatant commands.

(C) Both the classified and unclassified employment strategy, plans, and options for such capability.

(d) NOTIFICATION.—

(1) LIMITATION.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2017 or fiscal year 2018 for the Secretary of Defense may be obligated or expended to change the non-standard acquisition processes and responsibilities described in paragraph (2) until—

(A) the Secretary notifies the congressional defense committees of such proposed change; and

(B) a period of 180 days has elapsed following the date of such notification.

(2) NON-STANDARD ACQUISITION PROCESSES AND RESPONSIBILITIES

DESCRIBED.—The non-standard acquisition processes and responsibilities described in this paragraph are such processes and responsibilities described in—

(A) the memorandum of the Secretary of Defense titled “Missile Defense Program Direction” signed on January 2, 2002; and

(B) Department of Defense Directive 5134.09, as in effect on the date of the enactment of this Act.

(e) DESIGNATION REQUIRED.—

~~(1) AUTHORITY.—Not later than March 31, 2018, the Secretary of Defense shall designate a military department or Defense Agency with acquisition authority with respect to—~~

~~(A) the capability to defend the homeland from cruise missiles; and~~

~~(B) left of launch ballistic missile defeat capability.~~

~~(2) DISCRETION.—The Secretary may designate a single military department or Defense Agency with the acquisition authority described in paragraph (1) or designate a separate military department or Defense Agency for each function specified in such paragraph.~~

~~(3) VALIDATION.—In making a designation under paragraph (1), the Secretary shall include a description of the manner in which the military requirements for such capabilities will be validated.~~

(fe) DEFINITIONS.—In this section:

(1) The term “Defense Agency” has the meaning given that term in section 101(a)(11) of title 10, United States Code.

(2) The term “intelligence community” has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

Subtitle F—Other Matters

Section 1651. The proliferation and operation of unmanned aircraft are a rapidly increasing risk to the installations, activities, and personnel of the Department of Defense (DoD). This proposal would make several amendments to section 130i of title 10, U.S. Code, to clarify and strengthen this authority to mitigate the threat that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered DoD facility or asset.

The proposal would amend subsection (a) by authorizing the Secretary of Defense to take such actions described in subsection (b)(1), as developed in coordination with the Secretary of Transportation, that are necessary to mitigate the threat (as defined by the Secretary of Defense, in consultation with the Secretary of Transportation) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a temporarily covered facility or asset. A DoD facility or asset that is not directly associated with a covered mission can temporarily be at

high risk of loss due to a specific, highly significant vulnerability or specific indications that such a facility or asset is a target for hostile action. The authority to mitigate the threat to a temporarily covered facility or asset would enable the Secretary of Defense to adapt to emerging vulnerabilities and threats in a timely manner, but only for the duration of the emerging high risk.

This proposal would amend subsection (j)(3)(C) by updating the definition of a covered facility or asset to include a facility or asset that relates to four additional DoD missions that are critical to national security.

Clause (x) would add “organizing, training, equipping, and other functions at Department of Defense installations necessary to prepare the armed forces to deploy and conduct military operations in support of a contingency operation.” The Secretaries of the Army, Navy, and Air Force (pursuant to sections 3013(b), 5013(b), and 8013(b) of title 10, U.S. Code) are responsible for, and have the authority necessary to conduct, all affairs of their Military Departments to prepare military units and personnel to deploy in order to conduct contingency operations in support of the national security interests of the United States. The Secretaries are also responsible for the safety and security of their installations and the personnel and activities that are present at their installations. The proliferation of UAS in the United States is a flight hazard to the conduct of these affairs. In addition, the conduct of these affairs would be a high-value target for future adversaries for surveillance – a threat to operations security – or, potentially, to facilitate attacks on such units and personnel before they can deploy to the address a contingency.

Clause (xi) would add “deployment and sustainment of the armed forces in support of a contingency operation.” Certain facilities and assets are critical to the ability of the United States to deploy and sustain the armed forces during a contingency. These include, for example, ports and airfields at which personnel, equipment, and supplies are aggregated and shipped; airfields at which transport and air refueling aircraft are located; and ports at which vessels of the Military Sealift Command and the National Defense Reserve Fleet are based. All are essential components of the Department’s ability to project power and sustain the armed forces once deployed, and all are potentially vulnerable to threats posed by unmanned aircraft.

Clause (xii) would add “a military training route (as defined in section 183a(h)(6) of this title).” In accordance with section 183a(h)(6), the term “military training route” means “a training route developed as part of the Military Training Route Program, carried out jointly by the Federal Aviation Administration and the Secretary of Defense, for use by the armed forces for the purpose of conducting low-altitude, high-speed military training.” The proliferation of UAS in the United States is a clear and present flight hazard to low-altitude, high-speed military training.

Clause (xiii) would add “an Army arsenal (as defined in section 7541(d)(1) of this title).” In accordance with section 7541(d)(1), the term “army arsenal” means “a Government-owned, Government-operated defense plant of the Department of the Army that manufactures weapons, weapon components, or both.”

Clause (xiv) would add DoD “production, storage, transportation, or decommissioning of chemical and biological materials.” Clause (xiii) would permit DoD to mitigate the threat posed by unmanned aircraft of the limited number of facilities responsible for the highly sensitive function of producing, storing, transporting, or decommissioning chemical and biological materials. This would include specialized DoD laboratories.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Air Force	61	77	74	56	56	Operation and Maintenance, Air Force, Procurement, Air Force, Research, Development, Test and Evaluation, Air Force	03	31 (BLI) 12C (SAG)	64287F
Navy	14.18	5.55	6.00	5.89	6.01	Research, Development, Test and Evaluation, Navy	Various	Various	0604636N
Navy	13.95	9.91	9.91	12.71	33.18	Operation and Maintenance, Navy	Various	Various	
Navy	21.78	7.10	26.21	30.00	10.36	Other Procurement, Navy	Various	Various	Various
USMC	0.02	0.03	0.03	0.03	0.02	USMC O&M, Procurement, RDT&E	01 03 07	1A2A 3006 0206313 M	0206626M 0206211M 0206313M
Army	0	0	0	0	0	Army does not intend to use this authority.			
Total	110.93	99.59	116.15	104.63	105.57				

*Air Force, Army, and Navy assert that FY 2025 budget data is not releasable prior to the FY 2021 PBR.

Changes to Existing Law: This proposal would amend section 130i of title 10, United States Code, as follows:

§ 130i. Protection of certain facilities and assets from unmanned aircraft

(a) **AUTHORITY.**—Notwithstanding section 46502 of title 49, or any provision of title 18, the Secretary of Defense may take, and may authorize members of the armed forces and officers, ~~and~~ civilian employees, and contract personnel of the Department of Defense with assigned duties that include safety, security, or protection of personnel, facilities, or assets, to take, such actions described in subsection (b)(1) that are necessary to mitigate the threat (as defined by the Secretary of Defense, in consultation with the Secretary of Transportation) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered facility or asset or a temporarily covered facility or asset for the duration of the period for which the Secretary determines there is a high risk of loss to the facility or asset.

(b) **ACTIONS DESCRIBED.**—(1) The actions described in this paragraph are the following:

(A) Detect, identify, monitor, and track the unmanned aircraft system or unmanned aircraft, without prior consent, including by means of intercept or other access of a wire communication, an oral communication, or an electronic communication used to control the unmanned aircraft system or unmanned aircraft.

(B) Warn the operator of the unmanned aircraft system or unmanned aircraft, including by passive or active, and direct or indirect physical, electronic, radio, and electromagnetic means.

(C) Disrupt control of the unmanned aircraft system or unmanned aircraft, without prior consent, including by disabling the unmanned aircraft system or unmanned aircraft by intercepting, interfering, or causing interference with wire, oral, electronic, or radio communications used to control the unmanned aircraft system or unmanned aircraft.

(D) Seize or exercise control of the unmanned aircraft system or unmanned aircraft.

(E) Seize or otherwise confiscate the unmanned aircraft system or unmanned aircraft.

(F) Use reasonable force to disable, damage, or destroy the unmanned aircraft system or unmanned aircraft.

(2) The Secretary of Defense shall develop the actions described in paragraph (1) in coordination with the Secretary of Transportation.

(c) **FORFEITURE.**—Any unmanned aircraft system or unmanned aircraft described in subsection (a) that is seized by the Secretary of Defense is subject to forfeiture to the United States.

(d) **REGULATIONS AND GUIDANCE.**—(1) The Secretary of Defense and the Secretary of Transportation may prescribe regulations and shall issue guidance in the respective areas of each Secretary to carry out this section.

(2)(A) The Secretary of Defense and the Secretary of Transportation shall coordinate in the development of guidance under paragraph (1).

(B) The Secretary of Defense shall coordinate with the Secretary of Transportation and the Administrator of the Federal Aviation Administration before issuing any guidance or otherwise implementing this section if such guidance or implementation might affect aviation safety, civilian aviation and aerospace operations, aircraft airworthiness, or the use of airspace.

(e) PRIVACY PROTECTION.—The regulations prescribed or guidance issued under subsection (d) shall ensure that—

(1) the interception or acquisition of, or access to, communications to or from an unmanned aircraft system under this section is conducted in a manner consistent with the fourth amendment to the Constitution and applicable provisions of Federal law;

(2) communications to or from an unmanned aircraft system are intercepted, acquired, or accessed only to the extent necessary to support a function of the Department of Defense;

(3) records of such communications are not maintained for more than 180 days unless the Secretary of Defense determines that maintenance of such records—

(A) is necessary to support one or more functions of the Department of Defense; or

(B) is required for a longer period to support a civilian law enforcement agency or by any other applicable law or regulation; and

(4) such communications are not disclosed outside the Department of Defense unless the disclosure—

(A) would fulfill a function of the Department of Defense;

(B) would support a civilian law enforcement agency or the enforcement activities of a regulatory agency of the Federal Government in connection with a criminal or civil investigation of, or any regulatory action with regard to, an action described in subsection (b)(1); or

(C) is otherwise required by law or regulation.

(f) BUDGET.—The Secretary of Defense shall submit to Congress, as a part of the defense budget materials for each fiscal year after fiscal year 2018, a consolidated funding display that identifies the funding source for the actions described in subsection (b)(1) within the Department of Defense. The funding display shall be in unclassified form, but may contain a classified annex.

(g) SEMIANNUAL BRIEFINGS.—(1) On a semiannual basis during the five-year period beginning March 1, 2018, the Secretary of Defense and the Secretary of Transportation, shall jointly provide a briefing to the appropriate congressional committees on the activities carried out pursuant to this section. Such briefings shall include—

(A) policies, programs, and procedures to mitigate or eliminate impacts of such activities to the National Airspace System;

(B) a description of instances where actions described in subsection (b)(1) have been taken;

(C) how the Secretaries have informed the public as to the possible use of authorities under this section; and

(D) how the Secretaries have engaged with Federal, State, and local law enforcement agencies to implement and use such authorities.

(2) Each briefing under paragraph (1) shall be in unclassified form, but may be accompanied by an additional classified briefing.

(h) RULE OF CONSTRUCTION.—Nothing in this section may be construed to—

(1) vest in the Secretary of Defense any authority of the Secretary of Transportation or the Administrator of the Federal Aviation Administration under title 49; and

(2) vest in the Secretary of Transportation or the Administrator of the Federal Aviation Administration any authority of the Secretary of Defense under this title.

~~(i) PARTIAL TERMINATION.—(1) Except as provided by paragraph (2), the authority to carry out this section with respect to the covered facilities or assets specified in clauses (iv) through (viii) of subsection (j)(3)(C) shall terminate on December 31, 2023.~~

~~(2) The President may extend by 180 days the termination date specified in paragraph (1) if before November 15, 2023, the President certifies to Congress that such extension is in the national security interests of the United States.~~

(j) DEFINITIONS.—In this section:

(1) The term “appropriate congressional committees” means—

(A) the congressional defense committees;

(B) the Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Commerce, Science, and Transportation of the Senate; and

(C) the Permanent Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) The term “budget”, with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(3) The term “covered facility or asset” means any facility or asset that—

(A) is identified by the Secretary of Defense, in consultation with the Secretary of Transportation with respect to potentially impacted airspace, through a risk-based assessment for purposes of this section;

(B) is located in the United States (including the territories and possessions of the United States); and

(C) directly relates to the missions of the Department of Defense pertaining to—

(i) nuclear deterrence, including with respect to nuclear command and control, integrated tactical warning and attack assessment, and continuity of government;

(ii) missile defense;

(iii) national security space;

(iv) assistance in protecting the President or the Vice President (or other officer immediately next in order of succession to the office of the President) pursuant to the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note);

(v) air defense of the United States, including air sovereignty, ground-based air defense, and the National Capital Region integrated air defense system;

(vi) combat support agencies (as defined in paragraphs (1) through (4) of section 193(f) of this title);

(vii) special operations activities specified in paragraphs (1) through (9) of section 167(k) of this title;

(viii) production, storage, transportation, or decommissioning of high-yield explosive munitions, by the Department; or

(ix) a Major Range and Test Facility Base (as defined in section 196(i) of this title);

(x) organizing, training, equipping, and other functions at Department of Defense installations necessary to prepare the armed forces to deploy and conduct military operations in support of a contingency operation;

(xi) deployment and sustainment of the armed forces in support of a contingency operation;

(xii) a military training route (as defined in section 183a(h)(6) of this title);

(xiii) an Army arsenal (as defined in section 7541(d)(1) of this title); or

(xiv) production, storage, transportation, or decommissioning of chemical or biological materials by the Department.

(4) The term “defense budget materials”, with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(5) The terms “electronic communication”, “intercept”, “oral communication”, and “wire communication” have the meanings given those terms in section 2510 of title 18.

(6) The term “temporarily covered facility or asset” means a facility or asset determined by the Secretary of Defense to be temporarily at high risk of loss due to a specific, highly significant vulnerability or due to specific indications that such a facility or asset is a target for hostile action.

(67) The terms “unmanned aircraft” and “unmanned aircraft system” have the meanings given those terms in section 44801 of title 49.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

TITLE XXI— ARMY MILITARY CONSTRUCTION

TITLE XXII— NAVY MILITARY CONSTRUCTION

TITLE XXIII— AIR FORCE MILITARY CONSTRUCTION

TITLE XXIV– DEFENSE AGENCIES MILITARY CONSTRUCTION

TITLE XXV– INTERNATIONAL PROGRAMS

TITLE XXVI– GUARD AND RESERVE FORCES FACILITIES

TITLE XXVII– BASE REALIGNMENT AND CLOSURE ACTIVITIES

TITLE XXVIII–MILITARY CONSTRUCTION GENERAL PROVISIONS

Section 2801 relieves the Department of Defense (DoD) of the congressional reporting requirement specified in section 2859(c) of title 10, United States Code (U.S.C.). DoD will monitor Service investment in urban-range capabilities, but will not certify military construction projects if this legislative change is adopted. This proposal is based on recent and future programming actions not requiring large urban facilities; the focus of DoD will be on modest improvements to existing urban facilities. Over the past 15 years, DoD has generated the needed urban facilities to meet the operational demand for urban training. Since DoD no longer generates large urban facilities, USD(P&R) recommends relief from this certification requirement.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President’s Budget request.

Changes to Existing Law: This proposal would make the following changes to section 2859 of title 10, U.S.C.:

§2859. Construction requirements related to antiterrorism and force protection or urban-training operations

(a) Antiterrorism and Force Protection Guidance and Criteria.-The Secretary of Defense shall develop common guidance and criteria to be used by each Secretary concerned-

(1) to assess the vulnerability of military installations located inside and outside of the United States to terrorist attack;

(2) to develop construction standards that, taking into consideration other security or force-protection measures available for the facility or military installation concerned, are designed to reduce the vulnerability of structures to terrorist attack and improve the security of the occupants of such structures;

(3) to prepare and carry out military construction projects, such as gate and fenceline construction, to improve the physical security of military installations; and

(4) to assist in prioritizing such projects within the military construction budget of each of the armed forces.

(b) Vulnerability Assessments.-The Secretary of Defense shall require vulnerability assessments of military installations to be conducted, at regular intervals, using the criteria developed under subsection (a).

~~(c) Certification Required for Military Construction Projects Designed to Provide Training in Urban Operations.-(1) Except as provided in paragraph (3), the Secretary concerned may not carry out a military construction project to construct a facility designed to provide training in urban operations for members of the armed forces or personnel of the Department of Defense or other Federal agencies until-~~

~~(A) the Secretary of Defense approves a strategy for training and facility construction for operations in urban terrain; and~~

~~(B) the Under Secretary of Defense for Personnel and Readiness evaluates the project and certifies to the appropriate committees of Congress that the project-~~

~~(i) is consistent with the strategy; and~~

~~(ii) incorporates the appropriate capabilities for joint and interagency use in accordance with the strategy.~~

~~(2) This subsection shall not apply with respect to a military construction project carried out under the authority of section 2803, 2804, or 2808 of this title or section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723).~~

Section 2802. Naval Support Activity was established in 1945 and consists of 657 acres, including a 1.23-acre parcel that was withdrawn from the public domain. This parcel is an “inholding” within the installation under the administrative jurisdiction of the BLM while the remainder of the installation is under the administrative jurisdiction of DON.

Subsection (a) directs the Secretary of the Interior to transfer the parcel to the Secretary of the Navy. Subsection (b) determines the status of lands as military lands once transfer is complete. Subsection (c) directs the Secretary of the Navy to reimburse the Secretary of the Interior for certain administrative costs associated with the transfer.

This proposal directs the Department of the Interior to transfer this parcel of land to the Department of the Navy. The transfer would allow more rational and uniform management of the land involved so that this “inholding” is managed in the same manner as the surrounding land under the administrative jurisdiction of the Department of the Navy.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request.

Changes to Existing Law: This proposal does not make any changes to existing law.

Section 2803 would withdraw certain public lands in New Mexico from application of the public land laws and reserve the airspace above 50 feet for use by the Department of Defense’s testing and training activities at White Sands Missile Range (WSMR) for 25 years. The proposal would make no change to existing land uses.

WSMR is the Army's premier testing range and an essential element of the DoD's Major Range and Test Facility Base. This proposal would withdraw the Northern Call-up Area and the Western Call-up Area (also known as the Northern and Western Extension Areas (NEA and WEA)) from operation of the public land laws. In particular, it would prevent structures being emplaced that would interfere with the use of the airspace by DoD testing activities. The nature of modern weapons testing is that they require increasingly large areas of airspace. The Army currently has evacuation agreements with the private users of the NEA and WEA to pay them to evacuate the areas during those times when the Army is conducting testing overhead. This is a standard safety measure. The evacuation generally lasts for less than a day.

The utility of the NEA and WEA are contingent, however, on their having unobstructed airspace. There is an increasing danger of structures, particularly wind turbines, being placed in the NEA and the WEA. The presence of such structures would severely degrade, if not destroy, the utility of WSMR as a testing range. This proposal is designed to prevent the emplacement of such structures while not interfering with the current land uses by the local citizens. Consequently, while the proposal would withdraw the public lands from operation of the public land laws, it would only reserve the airspace above 50 feet for use by the DoD, with an exception for structures above 50 feet with the concurrence of the Secretary of the Army on a case-by-case basis, for 25 years. The DoD would obtain no reservation of use of the surface estate and the lands would continue to be managed by the Bureau of Land Management in accordance with its standard procedures.

This proposal is essential to protect a premier DoD testing area in support of the National Defense Strategy. It protects the existing livelihoods of the local residents by preventing encroachment on their current land uses while safeguarding the ability of DoD to protect the Nation.

Budget Implications: This proposal has no budget impact. The proposal would protect current operations, not expand them. DoD gains no additional management obligations for the lands in the proposal.

Changes to Existing Law: This proposal would amend the Military Land Withdrawals Act of 2013 (title XXIX of Public Law 113–66), as contained in the National Defense Authorization Act for Fiscal Year 2014, as follows:

Section 2804 would extend the statutory timeframe of the annual Guam Realignment reporting requirement under section 2835(e)(1) of the National Defense Authorization Act for FY 2010 (Public Law 111-84; 10 U.S.C. 2687 note) based on modifications to the number of projects and relocated personnel involved in the realignment initiative. Extension of the annual reporting requirement to a biennial basis would afford the Department of Defense Office of Inspector General (DoD OIG) greater ability to effectively provide substantive oversight as head of the Interagency Coordination Group of Inspectors General for Guam Realignment.

Section 2835 requires the chairperson of the Interagency Coordination Group (ICG) of Inspectors General for Guam Realignment, led by the DoD OIG, to prepare and submit annual reports summarizing the activities of the ICG during the past year and the programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam. Pursuant to section 2835, the annual reports are submitted to the congressional defense committees, the Secretary of Defense, and the Secretary of the Interior.

The requirement for annual reports no longer aligns with the initial relocation of personnel and projects as originally planned. The initial Guam realignment plan, created in May 2006, included relocation of approximately 13,000 U.S. Marines and dependents over a 5-year period between 2010 and 2014. The relocation of a large number of service members and completing multiple projects in a compressed timeframe necessitated comprehensive oversight and congressional reporting on an annual basis. However, since the 2006 plan's inception, the number of relocated service members and dependents has decreased by 6,700, and the timeframe for the realignment completion has grown by 14 years, as illustrated in the table below. Furthermore, as a result of fewer personnel moving, the number of realignment projects has decreased.

	Originally Planned	Current Plan
Approximate Number of Marines and Dependents	8,000 Marines 5,000 Dependents	5,000 Marines 1,300 Dependents
Timeline	FYs 2010 – FY 2014 5 years	FY 2010 – FY 2028 19 years

Therefore, amending the annual reporting requirement to a biennial basis better aligns with the increased relocation timeline, the reduced personnel movements, and the reduced construction projects. Accordingly, Congressional oversight would be better accomplished through timely and relevant incremental audits conducted individually by Offices of Inspectors General over the remaining years of the 19-year realignment process, supplemented by a biennial report summarizing the activities of the ICG, rather than an annual summary report. The DoD OIG requests an amendment to the reporting requirement from an annual basis to a biennial report beginning February 1, 2022, covering Guam relocation actions for FYs 2020 through 2021.

A biennial reporting requirement for the ICG and the DoD OIG would not affect specific oversight of the programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam. Individual audits and investigations conducted by the various entities associated with the members of the ICG would still be done.

In addition, section 2835 requires the chairperson of the ICG of Inspectors General for Guam Realignment to prepare and submit to the congressional defense committees a final report containing a notice of termination and a final forensic audit on programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam when

the Guam realignment is 90 percent complete (subsection (h)(2)(B)); the final report will continue to remain a requirement.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President's Budget Request. This proposal will allow the DoD OIG to continue to use existing resources to provide effective oversight of DoD's Guam Realignment operations, while freeing up resources to perform other important audits, increasing the DoD OIG's overall efficiency.

Changes to Existing Law: This proposal would make the following changes to section 2835 of the National Defense Authorization Act for FY 2010 (10 U.S.C. 2687 note):

**SEC. 2835. INTERAGENCY COORDINATION GROUP OF INSPECTORS GENERAL
FOR GUAM REALIGNMENT.**

(a) Interagency Coordination Group.-There is hereby established the Interagency Coordination Group of Inspectors General for Guam Realignment (in this section referred to as the "Interagency Coordination Group")-

(1) to provide for the objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam in connection with the realignment of military installations and the relocation of military personnel on Guam; and

(2) to provide for coordination of, and recommendations on, policies designed-

(A) to promote economic efficiency and effectiveness in the administration of the programs and operations described in paragraph (1); and

(B) to prevent and detect waste, fraud, and abuse in such programs and operations.

(b) Membership.-

(1) Chairperson.-The Inspector General of the Department of Defense shall serve as chairperson of the Interagency Coordination Group.

(2) Additional members.-Additional members of the Interagency Coordination Group shall include the Inspector General of the Department of Interior and the Inspector General of such other Federal agencies as the chairperson considers appropriate to carry out the duties of the Interagency Coordination Group.

(c) Duties.-

(1) Oversight of guam construction.-It shall be the duty of the Interagency Coordination Group to conduct, supervise, and coordinate audits and investigations of the treatment, handling, and expenditure of amounts appropriated or otherwise made available for military construction on Guam and of the programs, operations, and contracts carried out utilizing such funds, including-

(A) the oversight and accounting of the obligation and expenditure of such funds;

(B) the monitoring and review of construction activities funded by such funds;

(C) the monitoring and review of contracts funded by such funds;

(D) the monitoring and review of the transfer of such funds and associated information between and among departments, agencies, and entities of the United States and private and nongovernmental entities;

(E) the maintenance of records on the use of such funds to facilitate future audits and investigations of the use of such fund; and

(F) the monitoring and review of the implementation of the Defense Posture Review Initiative relating to the realignment of military installations and the relocation of military personnel on Guam.

(2) Other duties related to oversight.-The Interagency Coordination Group shall establish, maintain, and oversee such systems, procedures, and controls as the Interagency Coordination Group considers appropriate to discharge the duties under paragraph (1).

(3) Oversight plan.-The chairperson of the Interagency Coordination Group shall prepare an annual oversight plan detailing planned audits and reviews related to the Guam realignment.

(d) Assistance From Federal Agencies.-

(1) Provision of assistance.-Upon request of the Interagency Coordination Group for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Interagency Coordination Group.

(2) Reporting of refused assistance.-Whenever information or assistance requested by the Interagency Coordination Group is, in the judgment of the chairperson of the Interagency Coordination Group, unreasonably refused or not provided, the chairperson shall report the circumstances to the Secretary of Defense and to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] without delay.

(e) Reports.-

(1) ~~Annual~~ Biennial reports.-Not later than February 1 of ~~each year~~ every other year, beginning February 1, 2022, the chairperson of the Interagency Coordination Group shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Secretary of Defense, and the Secretary of the Interior a report summarizing, for the preceding ~~fiscal year~~ two fiscal years, the activities of the Interagency Coordination Group during such ~~year~~ years and the activities under programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam. Each report shall include, for the ~~year~~ years covered by the report, a detailed statement of all obligations, expenditures, and revenues associated with such construction, including the following:

(A) Obligations and expenditures of appropriated funds.

(B) A project-by-project and program-by-program accounting of the costs incurred to date for military construction in connection with the realignment of military installations and the relocation of military personnel on Guam, together with the estimate of the Department of Defense and the Department of the Interior, as applicable, of the costs to complete each project and each program.

(C) Revenues attributable to or consisting of funds contributed by the Government of Japan in connection with the realignment of military installations and the relocation of military personnel on Guam and any obligations or expenditures of such revenues.

(D) Operating expenses of agencies or entities receiving amounts appropriated or otherwise made available for military construction on Guam.

(E) In the case of any contract, grant, agreement, or other funding mechanism described in paragraph (2)-

(i) the amount of the contract, grant, agreement, or other funding mechanism;
(ii) a brief discussion of the scope of the contract, grant, agreement, or other funding mechanism;

(iii) a discussion of how the department or agency of the United States Government involved in the contract, grant, agreement, or other funding mechanism identified, and solicited offers from, potential individuals or entities to perform the contract, grant, agreement, or other funding mechanism, together with a list of the potential individuals or entities that were issued solicitations for the offers; and

(iv) the justification and approval documents on which was based the determination to use procedures other than procedures that provide for full and open competition.

(2) Covered contracts, grants, agreements, and funding mechanisms.-A contract, grant, agreement, or other funding mechanism described in this paragraph is any major contract, grant, agreement, or other funding mechanism that-

(A) is entered into by any department or agency of the United States Government with any public or private sector entity; and

(B) involves the use of amounts appropriated or otherwise made available for military construction on Guam.

(3) Form.-Each report required under this subsection shall be submitted in unclassified form, but may include a classified annex if the Interagency Coordination Group considers it necessary.

(4) Rule of construction.-Nothing in this subsection shall be construed to authorize the public disclosure of information that is-

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(5) Submission of comments.-Not later than 30 days after receipt of a report under paragraph (1), the Secretary of Defense or the Secretary of the Interior may submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] any comments on the matters covered by the report as the Secretary concerned considers appropriate. Any comments on the matters covered by the report shall be submitted in unclassified form, but may include a classified annex if the Secretary concerned considers it necessary.

(f) Public Availability; Waiver.-

(1) Public availability.-The Interagency Coordination Group shall publish on a publicly available Internet website each report prepared under subsection (e). Any comments on the report submitted under paragraph (5) of such subsection shall also be published on such website.

(2) Waiver authority.-The President may waive the requirement under paragraph (1) with respect to availability to the public of any element in a report under subsection (e), or any comment with respect to a report, if the President determines that the waiver is justified for national security reasons.

(3) Notice of waiver.-The President shall publish a notice of each waiver made under this subsection in the Federal Register no later than the date on which a report required under subsection (e), or any comment under paragraph (5) of such subsection, is submitted to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]. The report and comments shall specify whether waivers under this subsection were made and with respect to which elements in the report or which comments, as appropriate.

(g) Definitions.-In this section:

(1) Amounts appropriated or otherwise made available.-The term “amounts appropriated or otherwise made available for military construction on Guam” includes amounts derived from the Support for United States Relocation to Guam Account.

(2) Guam.-The term “Guam” includes any island in the Northern Mariana Islands.

(h) Termination.-

(1) In general.-The Interagency Coordination Group shall terminate upon the expenditure of 90 percent of all funds appropriated or otherwise made available for Guam realignment.

(2) Final report.-Before the termination of the Interagency Coordination Group pursuant to paragraph (1), the chairperson of the Interagency Coordination Group shall prepare and submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a final report containing-

(A) notice that the termination condition in paragraph (1) has occurred; and

(B) a final forensic audit on programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam.

Section 2805 would explicitly apply the authority provided by section 2853 of title 10, United States Code (U.S.C.), to increase the cost of a military construction project, to allow unspecified minor military construction (UMMC) projects authorized by 10 U.S.C. § 2805 to exceed the UMMC limit in section 2805(a)(2) when unforeseen cost increases occur.

Under current law, there is no authority for the Secretary concerned to exceed the applicable limits of section 2805(a)(2) for any UMMC project, except to satisfy a contractor claim under 10 U.S.C. § 2863. This proposal would extend the provision of 10 U.S.C. 2853 on project cost variations to include UMMC projects in need of exceeding the limit of section 2805(a)(2), and afford minor projects the same ability as major projects to respond to unforeseen cost growth. This would provide flexibility to complete projects with unusual variations and avoid (1) project cancellation; (2) constructing a facility or item of infrastructure that does not fully meet the planned mission requirement; or (3) reprogramming the project into the FY+2 Specified Military Construction program. The proposal does not limit the cost variation per project, but section 2805(a) limits the authority to carry out UMMC projects collectively to 125 percent of the amount authorized by law.

This authority is not often needed but nonetheless crucial. As an example, the lack of this authority compelled the Air Force to cancel eight FY 2011 Overseas Contingency Operations (OCO) UMMC projects that had been terminated for default when the projects were approximately 50% complete. The U.S. Army Corps of Engineers re-advertised the contract for

all eight projects, but due to the sunk costs and risk associated with assuming the previous contractor’s work, the new cost estimates exceeded the UMMC threshold. To complete the projects, the Air Force must resubmit them as specified major projects in the FY+2 Military Construction program—delaying completion by three years at greater cost and significant detriment to the mission.

Budget Implications: The resources impacted are estimated in the table below and are included within the Fiscal Year (FY) 2021 President's Budget. As the actual total amount of all cost variations allowed by this proposal is unknown, an estimate of 5% the total UMMC appropriation was used. For major MILCON projects, DoD adds 5 percent contingency to project estimates to account for unforeseen cost increases during construction, based on historical averages. Applying this to the UMMC program (the focus of this LP), 5 percent of the total UMMC program would be a theoretical worst-case amount, representing a scenario where all UMMC projects were awarded near the UMMC upper limit and subsequently experienced cost growth (in aggregate) matching the historical average for major projects.

RESOURCE REQUIREMENTS (\$ MILLIONS)								
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG
Army	\$3.5	\$3.6	\$3.6	\$3.7	\$3.8	Military Construction, Army	02	2050
Navy	\$1.95	\$1.48	\$2.29	\$4.83	\$4.52	Military Construction, Navy	02	1205
Air Force	\$4.1	\$4.1	\$4.2	\$4.3	\$4.4	Military Construction, Air Force	02	3300
Defense-Wide	\$5.0	\$5.1	\$5.2	\$5.3	\$5.4	Military Construction, Defense-Wide	02	0500
Total	\$14.55	\$14.28	\$15.29	\$18.13	\$18.12	--		

Changes to Existing Law: This proposal would make the following changes to 10 U.S.C. § 2853:

§2853. Authorized cost and scope of work variations.

(a) Except as provided in subsection (c), (d), or (e),—

(1) the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased or decreased by not more than 25 percent of the amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a) of this title, whichever is less, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was authorized by Congress; and

(2) the cost of an unspecified minor military construction project undertaken pursuant to section 2805(a)(2) or section 2805(d) of this title may be increased above the applicable ceiling in section 2805(a)(2) or section 2805(d)(1) of this title by not more than 25 percent of such ceiling, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual and unanticipated variations in cost occurring after award of the project.

(b)(1) Except as provided in subsection (c), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition. Any reduction in scope of work for a military construction project shall not result in a facility or item of infrastructure that is not complete and useable or does not fully meet the mission requirement contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(2) Except as provided in subsection (d), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may not be increased above the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(3) In this subsection, the term "scope of work" refers to the function, size, or quantity of a facility or item of complete and useable infrastructure contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

~~(c)(1) The limitation on~~ The limitations on the amount of cost variations in subsection (a) and or the limitation on scope reduction in subsection (b)(1) does do not apply if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and-

(A†) in the case of a cost increase or a reduction in the scope of work-

(iA) the Secretary concerned notifies the appropriate committees of Congress of the cost increase or reduction in scope, the reasons therefor, a certification that the mission requirement identified in the justification data provided to Congress can still be met with the reduced scope, and a description of the funds proposed to be used to finance any increased costs; and

(iiB) a 14-day period has elapsed after the date on which the notification is received by the committees in an electronic medium pursuant to section 480 of this title; or

(B2) in the case of a cost decrease, the Secretary concerned notifies, using an electronic medium pursuant to section 480 of this title, the appropriate committees of Congress not later than 14 days after the date funds are obligated in connection with the military construction project or military family housing project.

(2) An unspecified minor military construction project undertaken pursuant to section 2805(a)(2) or section 2805(d) may be decreased in cost or reduced in scope at the discretion of the Secretary concerned.

if- (d) The limitation in subsection (b)(2) on an increase in the scope of work does not apply

(1) the increase in the scope of work is not more than 10 percent of the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition;

(2) the increase is approved by the Secretary concerned;

(3) the Secretary concerned notifies the congressional defense committees in writing of the increase in scope and the reasons therefor; and

(4) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(e) The limitation on limitations on the amount of cost variations in subsection (a) ~~does~~ do not apply to the following:

(1) The settlement of a contractor claim under a contract.

(2) The costs associated with the required remediation of an environmental hazard in connection with a military construction project or military family housing project, such as asbestos removal, radon abatement, lead-based paint removal or abatement, or any

other legally required environmental hazard remediation, if the required remediation could not have reasonably been anticipated at the time the project was approved originally by Congress.

(f)(1) In addition to the notification sent under paragraph (1) of subsection (c) of a cost increase with respect to a project, the Secretary concerned shall provide an additional report notifying the congressional defense committees and the Comptroller General of the United States of any military construction project or military family housing project with a total authorized cost greater than \$40,000,000 that has a cost increase of 25 percent or more.

(2) The report under paragraph (1) shall include the following-

(A) A description of the specific reasons for the cost increase and the specific organizations and individuals responsible.

(B) A description of any ongoing or completed proceedings or investigation into a government employee, prime contractor, subcontractor, or non-governmental organization that may be responsible for the cost increase, and the status of such proceeding or investigation.

(C) If any proceeding or investigation identified in subparagraph (B) resulted in final judicial or administrative action, the following:

(i) In the case of a judicial or administrative action taken against a government employee, the report shall identify the individual's organization, position within the organization, and the action taken against the individual, but shall exclude personally identifiable information about the individual.

(ii) In the case of a judicial or administrative action taken against a prime contractor, subcontractor, or non-governmental organization, the report shall identify the prime contractor, subcontractor, or non-governmental organization and the action taken against the prime contractor, subcontractor, or non-governmental organization.

(D) A summary of any changes the Secretary concerned believes may be required to the organizational structure, project management and oversight practices, policy, or authorities of a government organization involved in military construction projects as a result of problems identified and lessons learned from the project.

(3) If any proceeding or investigation described in paragraph (2)(C) is still ongoing at the time the Secretary concerned submits the report under paragraph (1), the Secretary shall provide a supplemental report to the congressional defense committees and the Comptroller General of the United States not later than 30 days after such proceeding or investigation has been completed. If such proceeding or investigation resulted in final judicial or administrative action against a government employee, prime contractor, subcontractor, or non-governmental

organization, the Secretary shall include in the supplemental report the information required by paragraph (2)(C).

(4) Each report under this subsection shall be cosigned by the senior engineer authorized to supervise military construction projects and military family housing projects under section 2851(a).

(5) The Secretary shall send the report required under paragraph (1) with respect to a project not later than 180 days after the Secretary sends to the appropriate committees of Congress the notification under paragraph (1) of subsection (c) of a cost increase with respect to the project.

(6) The Comptroller General of the United States shall review each report submitted under this subsection and validate or correct as necessary the information provided.

(g) Notwithstanding the authority under subsections (a) through (f), the Secretary concerned shall ensure compliance of contracts for military construction projects and for the construction, improvement, and acquisition of military family housing projects with section 1341 of title 31 (commonly referred to as the "Anti-Deficiency Act").

Subtitle D—White Sands Missile Range, New Mexico, and Fort Bliss, Texas

SEC. 2951. WITHDRAWAL AND RESERVATION OF PUBLIC LAND.

(a) ~~WITHDRAWAL.—Subject to valid existing rights, the Federal land described in subsection (b) is withdrawn from the public land (including interests in land) described in subsection (b), and all other areas within the boundaries of the land as depicted on the maps referred to in such subsection that may become subject to actions identified in paragraphs (1), (2), and (3), including land under the administrative jurisdiction of the Secretary of the Army, is withdrawn from all forms of—~~

- (1) entry, appropriation, and disposal under the public land laws;
- (2) location, entry, and patent under the mining laws; and
- (3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(b) ~~DESCRIPTION OF FEDERAL LAND.—The Federal land referred to in subsection (a) consists of public land (including interests in land) referred to in subsection (a) is the Federal land comprising—~~

~~(1) approximately 5,100 acres of land depicted as “Parcel 1” on the map entitled “White Sands Missile Range/Fort Bliss/BLM Land Transfer and Withdrawal”, dated April 3, 2012, and filed in accordance with section 2912; and~~

~~(2) approximately 341,415 acres in Socorro and Torrance Counties, New Mexico, and 352,115 acres in Sierra, Socorro, and Doña Ana Counties, New Mexico, depicted as Northern Call-Up Area and Western Call-Up Area, respectively, on the maps entitled “WSMR Northern Call-Up Area” and “WSMR Western Call-Up Area”, both dated August 16, 2016, and filed in accordance with section 2912.~~

(c) RESERVATION.—(1) The Federal land described in subsection (b)(1) is reserved for use by the Secretary of the Army for military purposes in accordance with Public Land Order 833, dated May 27, 1952 (17 Fed. Reg. 4822).

(2) The Federal land described in subsection (b)(2), less the approximately 10,775 acres under the administrative jurisdiction of the Secretary of the Army, is reserved for use by the Secretary of the Army for military purposes consisting of overflight research, development, test, and evaluation and training but does not extend to the surface estate below 50 feet above the surface, except that structures above 50 feet in height above the surface may be allowed with the concurrence of the Secretary of the Army on a case-by-case basis. The approximately 10,775 acres under the administrative jurisdiction of the Secretary of the Army is reserved for military purposes as determined by the Secretary of the Army.

(3) Sections 2914, 2915, and 2916 shall not apply to the lands identified in subsection (b)(2).

**SEC. 2953. TERMINATION OF RESERVATION FOR OVERFLIGHT RESEARCH,
DEVELOPMENT, TEST, AND EVALUATION AND TRAINING.**

The reservation made by section 2951(c)(2) shall terminate on October 1, 2046.