

# 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.

## **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.<sup>1</sup>

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.—

---

<sup>1</sup> 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 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).

\*\*\*\*\*

(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)).

## **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.~~

\* \* \* \* \*

## **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).

### **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.

\* \* \* \* \*

**§ 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.

\* \* \* \* \*

**§ 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.~~

\* \* \* \* \*

**§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.~~

\* \* \* \* \*

**§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.~~

**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, Defense-Wide	BA01 BA04	4GTJ 4GTD 4GTO	0808715B T 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.

<b>NUMBER OF PERSONNEL AFFECTED</b>					
	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>
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,	Military Personn	01, 02	45, 95

						Army	el, Army		
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
<b>Total</b>	\$1,556.2	\$1,564.8	\$1,573.7	\$1,582.8	\$1,592.1				

<b>RESOURCE IMPACT (\$MILLIONS) – COST AVOIDANCE</b>									
	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/SAG</b>	<b>Program Element (for all RDT&amp;E programs)</b>
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
<b>Total</b>	(\$1,556.2)	(\$1,564.8)	(\$1,573.7)	(\$1,582.8)	(\$1,592.1)				

<b>PERSONNEL IMPACT</b>					
	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>
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
<b>Total</b>	278,558	279,733	280,921	282,120	283,331

<b>RESOURCE IMPACT FUNERAL HONORS AMENDMENT - (\$MILLIONS)</b>									
	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/SAG</b>	<b>Program Element (for all RDT&amp;E programs)</b>
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
<b>Total</b>	<b>95.5</b>	<b>95.9</b>	<b>89.4</b>	<b>83.9</b>	<b>85</b>				

<b>RESOURCE IMPACT FUNERAL HONORS AMENDMENT (\$MILLIONS) – COST AVOIDANCE</b>									
	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/ SAG</b>	<b>Program Element (for all RDT&amp;E programs)</b>
Army National Guard	(24.9)	(25.2)	(18.1)	(11.7)	(11.8)	Operation and Maintenance, Army National Guard	1	133	133G9200
Army National	(48.3)	(48.4)	(48.8)	(49.6)	(50.4)	National Guard Personnel,	1	010, 080	Multiple

Guard						Army			
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
<b>Total</b>	(95.5)	(95.9)	(89.4)	(83.9)	(85)				

<b>NUMBER OF PERSONNEL AFFECTED</b>					
	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>
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
<b>Total</b>	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.

## **TITLE VII—[RESERVED]**

## **TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS**

**Section 801** 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

-

~~(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 is 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.~~

## **TITLE IX—[RESERVED]**

## **TITLE X—GENERAL PROVISIONS**

### **Subtitle A—[RESERVED]**

### **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—Counterterrorism

**Section 1021** 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 D—Miscellaneous Authorities and Limitations**

**Section 1031** 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 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 1032** 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.

<b>FY17 Transfer of Receipts to U.S. Treasury—Categories</b>	<b>FY17 Receipts</b>
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
<b>FY17 Total</b>	<b>\$4,571,281</b>

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.

<b>RESOURCE IMPACT(\$MILLIONS)</b>									
	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/SAG</b>	<b>Program Element</b>
Army	\$4.7	\$4.8	\$4.9	\$5.0	\$5.1	Research, Development, Test and Evaluation,	06	156	0605301A

						Army			
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 1033** 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 1034** 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.

<b>RESOURCE IMPACT (\$MILLIONS)</b>									
<b>Program</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/SAG</b>	<b>Program Element (only for RDT&amp;E programs)</b>
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 1035** 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 1036** 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				
-------	--------	--------	--------	--------	--------	--	--	--	--

**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.

**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.

<b>Program</b>	<b>FY 2021</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/SAG</b>	<b>Program Element (for all RDT&amp;E programs)</b>
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				

<b>Program</b>	<b>FY 2021</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/SAG</b>	<b>Program Element (for all RDT&amp;E)</b>
----------------	----------------	----------------------	------------------------	----------------	--

					<b>programs)</b>
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 Capital Funds, Defense-Wide (OCO)	Multiple	Multiple	
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 ~~2021~~ 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.

	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/SAG</b>
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.

## 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.

\* \* \* \* \*

**Subtitle B—[RESERVED]**

**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 (CTEF) Iraq	\$645					Overseas Contingency 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.

### **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—[RESERVED]**

**Subtitle D—[RESERVED]**

### **Subtitle E—Missile Defense Programs**

**Section 1651.** 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~~

~~(II) 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.

## **DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS**

**TITLE XXI—[RESERVED]**

**TITLE XXII—[RESERVED]**

**TITLE XXIII–[RESERVED]**

**TITLE XXIV–[RESERVED]**

**TITLE XXV–[RESERVED]**

**TITLE XXVI–[RESERVED]**

**TITLE XXVII–[RESERVED]**

## **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).~~