

DCMA Administrative Record for FY 2013 Furlough Appeals
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**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

DECLARATION OF ROBERT F. HALE

Personal Background

I, Robert F. Hale, having personal knowledge of the facts contained in this declaration and being competent to testify to them, hereby state as follows:

1. I currently serve as the Under Secretary of Defense (Comptroller)/Chief Financial Officer in the United States Department of Defense (“DoD” or “the Department”). I have held this position since February 2009 following my nomination by President Barack Obama, confirmation by the United States Senate, and appointment by President Obama.

2. Prior to my appointment, I served as the Executive Director of the American Society of Military Comptrollers (ASMC), the professional association of Defense financial managers. As Executive Director, I led the ASMC’s certification program (the Certified Defense Financial Manager program), and oversaw other training programs, the society’s professional journal, and the ASMC’s National Professional Development Institute, an annual conference attracting more than 3,500 participants. Prior to my ASMC tenure, from 1994 to 2001, I served in the Pentagon as the Assistant Secretary of the Air Force (Financial Management and Comptroller), where I was responsible for annual budgets in excess of \$70 billion, efforts to streamline Air Force financial management, and compliance with the Chief Financial Officers Act. In addition, from 1982 to 1994, I headed the National Security Division at the Congressional Budget Office, developing quantitative analyses of major defense budget issues and testifying frequently before congressional committees. During my career, I was also a senior fellow and head of the acquisition and grants management group at LMI, a consulting firm

specializing in service to the Federal government. I also spent 3 years as an active duty officer in the U.S. Navy and served as a staff analyst and study director at the Center for Naval Analysis.

3. I graduated with honors from Stanford University with a Bachelor of Science (B.S.) in mathematics and statistics. I also hold a Master's degree in operations research from Stanford and a Master of Business Administration (MBA) degree from the George Washington University. I am a Certified Defense Financial Manager (CDFM). I am a fellow of the National Academy of Public Administration and a past member of the Defense Business Board, a high-level Pentagon advisory panel. In addition, I am the recipient of the Department of Defense Exceptional Public Service Award, the Air Force Distinguished Service Award, and the National Defense Medal.

4. In my current position as Under Secretary of Defense (Comptroller), I am the principal advisor to Secretary of Defense Hagel on all budgetary and fiscal matters, including the development and execution of DoD's annual budget of more than \$500 billion, which pays for day-to-day and wartime requirements. As Chief Financial Officer, I also oversee the Department's financial policy, financial management systems, and business modernization efforts. I served in the same capacity for former Secretaries of Defense Panetta and Gates.

Overview of Sequestration and Its Impact on the Department of Defense

5. As the Department's Comptroller, I have advised both Secretary Hagel and former Secretary Panetta regarding the Department's reduced funding levels and the impact of sequestration on the Department's budget and the various options, including furloughs, for addressing such impact. I advised that an administrative furlough was a management tool that would result in a predictable, recurring amount of money being available for use by the

Department to contribute to addressing the negative fiscal impacts of sequestration, operating for a full-year under a continuing resolution, and increasing war requirements.

6. By way of background, the Budget Control Act (BCA) of 2011, which was enacted in August 2011, provided for a projected \$1.2 trillion in automatic spending cuts, if Congress failed to enact deficit reduction legislation by adopting the recommendations of the Joint Select Committee on Deficit Reduction by January 15, 2012. The cuts were to be evenly divided: (1) over a 9-year period beginning in 2013 and ending in 2021, and (2) between defense spending and discretionary domestic spending. Known as sequestration (or sequester), the above process of automatic spending cuts was intended as a means of encouraging compromise on deficit reduction efforts. When no such compromise was reached, however, the mandatory budget cuts (including \$109 billion in total cuts for fiscal year 2013) were scheduled to go into effect on January 2, 2013. Passage of the American Taxpayer Relief Act on January 2, 2013, delayed the mandatory budget cuts until March 1, 2013.

7. As of February 2013, the Department anticipated, absent another postponement or a compromise, that by the end of the following month, its share of the sequester for fiscal year 2013 would result in an approximate \$42 billion reduction in the Department's total discretionary budgetary topline (later recalculated by the Office of Management and Budget at \$37 billion) with virtually every budget account in the Department's budget – including wartime funding but excluding military personnel accounts – cut by as much as 9 percent.

8. In addition to sequestration, the Department anticipated further budgetary constraints if the funding levels for the remainder of fiscal year 2013 were to stay in effect at the then-current funding levels allowed by the continuing resolution (CR). A CR is an appropriations act that funds specified Federal agencies or the entire Federal government until a

specified date or for the remainder of the fiscal year when agreement cannot be reached on one or more of the regular appropriation acts. Typically it proportionally allocates budget authority into accounts based on amounts appropriated in the prior year appropriations acts. Thus, the lack of a regular DoD appropriations act for fiscal year 2013 created, among other things, the additional constraint of having money in the wrong appropriation accounts. Specifically, under the then-existing CR, the Department had too many dollars in the investment accounts and too few dollars in the operation and maintenance (O&M) accounts.

9. Finally, by February 2013 the Department faced costs of wartime operations in excess of those that were estimated two years earlier when budgets were prepared. At that point we estimated that we could be short as much as \$10 billion in wartime operating costs.

10. These various factors – sequestration, misallocation of funds under the CR, unexpectedly high wartime costs – all affected the DoD budget, especially the Operation and Maintenance (O&M) portion of the budget, which funds the costs for many of our civilian employees. Taken together, these factors left us facing shortfalls of \$40 billion or roughly 20 percent of O&M funding for active forces.

Initial Considerations Regarding the Furlough of Department of Defense Civilian Employees

11. In response to sequestration and other shortfalls, the DoD determined that if it had to operate under reduced funding levels for an extended period of time, it would have to consider furloughs and other actions to ensure it could execute its core mission and to bring its expenditures down to appropriated levels. As an initial overriding objective, the Department had to protect the warfighter. This objective meant, however, that there would be larger and more disproportionate cuts in the Military Departments' O&M accounts supporting the base budget for

the active forces and from which most civilian positions are funded. The need to protect warfighter funds added to the Department's O&M problems.

12. As of late February 2013, the Department had already begun taking many near-term actions in an attempt to slow spending and avoid more draconian cuts at a later time. Such actions included severe cutbacks in travel and training conferences; civilian hiring freezes; layoffs of more than 7,500 temporary and term employees; sharp cutbacks in facilities maintenance (by as much as 90 percent in the remainder of the year); cutbacks in base operations; reduction of the number of aircraft carriers, embarked air wings, and accompanying defensive and support ships deployed to the Persian Gulf; reductions in the scope of and period of performance of contracts; and delay of contracting actions until the next fiscal year. However, the Department recognized at that time that if sequestration and the CR were to last throughout fiscal year 2013, many more far-reaching changes would be required, including cutbacks and delays in virtually every investment program in the Department (some 2,500 of them) and the furlough of civilian personnel.

13. As a result, on February 20, 2013, Secretary of Defense Panetta notified DoD civilian employees and the Congress about the potential for such furloughs for up to 22 days (176 hours). As I noted that same day in a DoD Press Briefing on "Civilian Furlough Planning Efforts," although the Department would strongly prefer not to impose furloughs, the Department believed that it had no choice but to do so absent further action by Congress, given the severe budget constraints outlined above. As I then stated,

We're more than 20 percent short in O&M, with 7 months to go, much higher in some of the services, particularly the Army. Civilian personnel make up a substantial part of DoD O&M funding. We can't do reductions in force, especially at this point in the year. They'd cost us money in this year because of unused leave and severance pay, so furloughs are really the only way we have to quickly cut civilian personnel funding.

14. During the planning for possible furloughs, the Secretary determined that, as a matter of policy, there would be only limited exceptions to any furloughs that were imposed. Exceptions would include civilians directly involved in support of wartime operations, those needed for protection of life and property, and those involved in a few programs of particularly high priority (especially programs directly and significantly affecting military readiness). Remaining furloughs would be implemented in a fair and even manner across the breadth of the Department (including the Military Departments). We estimated that furloughs of 22 days would reduce DoD expenditures by \$4 to \$5 billion.

15. On March 21, 2013, Congress passed H.R. 933, the “Consolidated and Further Continuing Appropriations Act, 2013,” (hereafter referred to as “the Act”) which, in part, provided fiscal year 2013 full-year appropriations through September 30, 2013, for various Federal agencies, including the Department of Defense, and which modified some aspects of sequestration. Although it retained the overall sequestration spending cuts and their across-the-board nature, and did not provide sufficient funding to cover the OCO shortfalls, it aligned funding closer to the fiscal year 2013 budget request for DoD and provided limited transfer authority to the Department, which is an authority to move money from one account (*e.g.*, Procurement) to another (*e.g.*, O&M) in order to provide some flexibility during budget execution. In anticipation of the President’s signing Public Law No. 113-6, on March 21, 2013, the Department delayed issuance of furlough notices to allow the Department to analyze carefully the impact of the Act on the Department’s resources. After March 26, 2013, when President Obama signed H.R. 933 into law as Public Law No. 113-6, the Department no longer operated under the CR terms and conditions. This corrected approximately \$11 billion of the

shortfall in the Military Departments' base O&M accounts that resulted from operating under the CR at the fiscal year 2012 funding levels and authorized a total of \$7.5 billion in general and special transfer authority under sections 8005 and 9002, respectively.

16. However, even after enactment of this appropriations legislation, the Department still faced an O&M shortfall in excess of \$30 billion. In efforts to minimize the adverse effects of the sequester, and of the overall O&M shortfall, the Department pursued various courses of action. In addition to the short-term actions mentioned above, the Department imposed far-reaching cutbacks in training and maintenance. In April the Air Force began shutting down all flying at 12 combat-coded fighter and bomber squadrons and curtailed exercises, acts that seriously reduced military readiness. By April the Army had already cancelled seven combat training center rotations – culminating training events that are necessary to ready units for deployment – and five brigade-level exercises. The Department of the Navy also cut back steaming days and flying hours across the Navy and Marine Corps. The military services also cut back funding for weapons maintenance. In addition, the Department of the Navy delayed deployment of the USS TRUMAN carrier strike group to the Persian Gulf, curtailed the sailing of the USNS COMFORT to the United States Southern command area of responsibility, and cancelled four other ship deployments.

17. By late April these various actions had reduced the estimated O&M shortfall to about \$11 billion, mostly in our wartime budget and mostly in the Army. Faced with a limited number of options to close this gap, and with uncertainty about the Department's ability to identify and gain Congressional acceptance of further budget cuts, on May 14 the Secretary announced his intention to impose furloughs on civilian personnel rather than making even larger cuts in training and maintenance that would have further eroded military readiness. Overall, the

furloughs impacted approximately 650,000 (or about 85%) of the Department's approximately 767,000 civilian employees paid directly by DoD funds. Rather than the 22 days estimated earlier, the Secretary reviewed budget projections and decided that furloughs could be limited to a maximum of 11 days (88 hours). We estimated that furloughs of 11 days would save DoD about \$2 billion, avoiding substantial further cuts in training and maintenance. The Department began the required "impact and implementation" bargaining with unions and began the process of issuing required notifications to employees and furloughs began during the week of July 8.

Inclusion of Working Capital Fund Employees

18. On June 21, 2013, a bipartisan group of 31 Members of Congress sent a letter to the Secretary of Defense expressing "concern about the determination that civilian workers at entities funded through Defense Working Capital funds are subject to furlough." Specifically, the members inquired as to the legality of furloughing civilians in these funds in light of section 129 of title 10 of the United States Code.

19. On July 5, 2013, acting based on the Advice of the DoD Office of General Counsel, I responded on behalf of Secretary Hagel. In my letter, which is attached hereto as Attachment 1, I noted that the short-term furlough directed by the Department of Defense does not contradict any of the various prohibitions which are set forth in section 129. As I further explained, to the contrary,

Section 129 directs the Department to manage our civilian workforce based on workload and on the "funds made available to the department for such fiscal year." The \$37 billion reduction levied on the Department by sequestration is a major cause of these furloughs, and therefore our actions satisfy the requirements of section 129. Indeed, section 129 directs the Department to manage our civilian workforce based on workload and funding.

As for your cost concerns, furloughs of all DoD civilians will save about \$2 billion in fiscal year 2013, including more than \$500 million associated with

reduced personnel costs in working capital fund activities. These working capital fund personnel savings provide us the flexibility to adjust maintenance funding downward to meet higher-priority needs. The Air Force, for example, currently expects to reduce funded orders in their working capital funds by about \$700 million to meet higher-priority needs while the Army expects to reduce orders by \$500 million.

See Attachment 1.

20. Having imposed furloughs, the Department undertook extensive efforts to identify budget changes that would close the remaining gap and, if possible, reduce cutbacks in training and impose fewer furlough days. In mid-May the Department prepared and submitted two Omnibus reprogramming requests that sought permission from the congressional defense committees to move funds totaling about \$9.6 billion from lower priority budget lines to higher priority budget lines. When the congressional committees did not approve all of the Omnibus reprogramming requests, the Department submitted two additional reprogramming actions on July 22, 2013, that included about \$1 billion of replacement sources for those sources that one or more of the committees had denied or deferred. These reprogrammings moved furlough savings and funds for lower-priority activities to areas of highest budgetary need. The law limits the amount of funds that can be transferred annually under reprogrammings, and these two reprogramming actions used almost all of DoD's transfer authority for FY 2013. Second, pursuant to existing authorities, the Department transferred responsibilities for some specific programs and missions from one Department of Defense component to another and used other available means to reallocate the financial burden for supporting the warfighter. For example, on July 15, 2013, pursuant to section 165(c) of title 10 of the United States Code, the Deputy Secretary of Defense assigned to the Secretary of the Navy the responsibility for providing up to \$450 million for support to U.S. Forces in Afghanistan that previously had been the responsibility of the Army under the Logistics Civil Augmentation Program (LOGCAP). The

Navy ultimately provided \$310 million for the support to U.S. Forces in Afghanistan using the Army's LOGCAP contract. On July 15, 2013, pursuant to section 2571(b) of title 10 of the United States Code, the Deputy Secretary also directed the Director for the Defense Logistics Agency to reduce the standard prices for jet and ground fuel procured under the authority of section 2208 of title 10 of the United States Code and provided to DoD customers in connection with military operations conducted in Afghanistan, retroactive to March 1, 2013 (to coincide with the President's sequestration order). This effectively tapped funds available to the Defense Logistics Agency to support the warfighting costs that would otherwise have been borne by the military departments.

The Furlough Outcome

21. Since Congress approved most of the Department's large reprogramming requests that were submitted in mid-May and late-July, giving the Department flexibility to move funds across accounts, together with the facts that the Military Departments were aggressive in identifying ways to hold down costs, and that the Department was able to transfer some responsibilities for funding specific programs and missions using existing authorities, the Department was successful in shifting savings (including furlough savings) to meet its highest priority needs. As a result, the Department was able to close the remaining budgetary gap and abide by legally binding spending caps. DoD was also able to accomplish two high-priority goals: a reduction in furlough days, and modest improvements in training and readiness. Specifically, DoD was able to reduce furloughs from a maximum of 11 days to 6 days (48 hours) for most DoD civilian employees.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: September 16, 2013



Robert F. Hale



UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

JUL - 5 2013

COMPTROLLER

The Honorable Derek Kilmer
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Kilmer:

Thank you for your letter of June 21, 2013 concerning the furlough of working capital fund civilians of the Department of Defense (DoD). Secretary of Defense Hagel asked me to respond on his behalf. I can say in summary that in FY 2013 DoD faced a budget cut of \$37 billion caused by sequestration, in addition to shortfalls in wartime funding. The Department does not want to furlough any of its valued civilian employees but must do so to help meet these budgetary shortfalls. Furloughs of civilians at working capital fund activities are legal and result in personnel cost savings.

Secretary Hagel regrets having to furlough any DoD civilian employees, whether they serve in the Department's working capital fund activities or elsewhere. Unfortunately, in FY 2013 DoD faces a large shortfall in our operating budgets both because of sequestration and a lack of funds to meet all our wartime operating requirements. The Department has taken many steps to close this shortfall including sharp cuts in facilities maintenance, hiring freezes, and layoffs of temporary and term employees. DoD has asked Congress to let us "reprogram" or move money from our investment accounts into operating accounts to help pay DoD's wartime bills, though our Congressional Committees have not yet approved a significant part of that request. The Department has also cut back sharply on training and maintenance, actions that have led to serious damage to our readiness. Finally, and reluctantly, DoD has imposed furloughs for up to 11 days on most of its civilian employees.

You requested the Department's views on the legality of furloughing civilians in working capital fund activities, in particular with respect to section 129 of title 10, United States Code. The Department believes short-term furloughs of working capital fund civilians -- who are indirectly funded Government employees -- are permissible under that statute. Indirectly funded Government employees may not be subjected to constraints or limitations based on the number of such personnel who may be employed on the last day of a fiscal year, and may not be managed on the basis of man years, end strength, full-time equivalent positions, or maximum number of employees. They also may not be controlled under any policy of a Military Department Secretary with respect to civilian manpower resources. A short-term furlough directed by the Secretary of Defense does not contradict these prohibitions. Further, Section 129 directs the Department to manage our civilian workforce based on workload and on the "funds made available to the department for such fiscal year". The \$37 billion reduction levied on the Department by sequestration is a major cause of these furloughs, and therefore our actions satisfy the requirements of section 129. Indeed, section 129 directs the Department to manage our civilian workforce based on workload and funding.

As for your cost concerns, furloughs for all DoD civilians will save about \$2 billion in FY 2013, including more than \$500 million associated with reduced personnel costs in working capital fund activities. These working capital fund personnel savings provide us the flexibility to adjust maintenance funding downward to meet higher-priority needs. The Air Force, for example, currently expects to reduce funded orders in their working capital funds by about \$700 million to meet higher-priority needs while the Army expects to reduce orders by \$500 million. Because Congress has not yet approved about \$2.5 billion of our reprogramming request as of the date of this letter, it is unfortunately possible that these maintenance cutbacks may have to be increased.

The Secretary and the Department appreciate and share your concerns for the efficiency of our operations, the welfare of our civilian employees, and the impact of furloughs on our defense communities. The Department is also seriously concerned with the adverse effects on readiness caused by cutbacks in training and maintenance. The best way for Congress to address all these concerns to is to pass a balanced deficit reduction plan that the President can sign and then repeal sequestration.

An identical letter is being provided to the other signatories to your letter.

Sincerely,

A handwritten signature in black ink that reads "Robert F. Hale". The signature is written in a cursive style with a large, prominent "R" and "H".

Robert F. Hale



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Presenter: Senior Defense Officials

August 06, 2013

Background Briefing on the Status of the Defense Department's Civilian Furlough Planning Efforts in the Pentagon Briefing Room

SENIOR DEFENSE OFFICIAL: Okay. Well, today, Secretary Hagel announced – and I think you now have it – that as part of DOD's efforts to improve productivity and readiness, we'll be reducing the furlough days for DOD's civilian employees from up to 11 days to six days. And for most DOD civilian employees, that will mean furloughs will end next week.

Last May, when we reluctantly decided to impose furloughs of up to 11 days, we faced a shortfall in our operating budget at that time of about \$11 billion, principally our wartime budget. We had already imposed hiring freezes, cut facilities' maintenance, and laid off temporary employees, as well as many other actions. We had sharply cut training and maintenance, which has adversely affected military readiness.

So as of three months ago, furloughs of 11 days, which would have saved about \$2 billion, were one of the limited available options that we had to close the remaining budgetary gap without further cuts in training and maintenance. But even at the time he announced – and so Secretary Hagel reluctantly made the decision to impose them. But even as he made that announcement, the secretary said that he'd try to reduce the number of days if he could do so without further cuts in training and maintenance.

Since then, Congress has improved most of a large reprogramming that we requested to let us move money into our operating accounts. The services have identified some changes that let us reduce costs. And we've been aggressive about shifting funds into those service accounts that have the most problems.

As a result, we've been able to accomplish two goals, two key goals. We've made some modest improvements in training. The Air Force, for example, is flying again for most of its squadrons, and the Army is increasing some organizational training. And we've been able to reduce the number of furloughed days.

While this is very positive news for the department and for our valued civilian workers – and I can say personally, it's great – I feel great about it – we're still facing some major challenges. Military readiness is degraded heading into 2014. We still need several months and substantial funding to recover. And yet, 2014 is a year that's going to feature great uncertainty, as much as I can remember any time in working with the defense budget, and it may feature some additional austerity.

Faced with all of this uncertainty, we cannot be sure what will happen next year, but Secretary Hagel wants to assure our civilian employees that we'll do everything possible to avoid imposing furloughs again next year. The secretary and all of us want to thank our civilian workers for their patience and dedication during these extraordinarily tough times. Our dedicated civilian employees make a major contribution to national security. And we all look forward to one day putting this difficult period behind us.

And with that, I'll stop and we would be glad to entertain your questions.

FACILITATOR: If I could and if it doesn't upset anybody, we've got time to take everybody's questions, I think, just to make it easy, if we start with Tony and just went down the front row and then go to the second row and go down, we can get everybody's questions. If you don't have one or it's been passed, you just pass, okay?

Q: Two questions. One, roughly it's about \$1 billion in savings you found. And can you explain how you found it from the retrograde of equipment in Afghanistan? In English, explain what that means.

SENIOR DEFENSE OFFICIAL: Well, yeah, we went from \$2 billion in savings, right, Tony, to – from furloughs to about \$1 billion. I mean, there are lots of ways that we accomplished that and the training increases, but let me address the question you ask.

There's a number of pieces of equipment in Afghanistan that we identify that we're not going to have to move in fiscal '13. It doesn't mean at some future point some of them will not need to come home, but that is what led to the containers from the Army to reduce what's called second destination transportation.

Q: Roughly how much was that of the billion?

SENIOR DEFENSE OFFICIAL: That's about a billion dollars that they won't need in fiscal '13 for second destination transportation.

Q: Okay, thanks.

Q: But they will need it in fiscal '14?

SENIOR DEFENSE OFFICIAL: Possibly. I mean, it's a fluid situation. And we'll be making assessments of cost-benefit analyses of what to bring home that's possible.

Q: Sorry, that wasn't my question.

SENIOR DEFENSE OFFICIAL: Okay. That counts. (Laughter.) No.

Q: Yeah. Can you -- can you just give us sort of like a couple of the, like, higher profile or more in English-y kind of explanation of the reprogramming requests? Like can we -- that we can point to as specific things that have made this change possible?

SENIOR DEFENSE OFFICIAL: It totaled \$9.6 billion. It primarily moved money from our acquisition accounts, and there, there were about 200 programs that had varying sizes of reductions. Sometimes contracts had been delayed. Sometimes we just made a decision that was lower priority. And most of the money got moved into our operating accounts, principally the overseas contingency operation funds and principally the Army, which had the biggest shortfalls. Does that help?

Q: So -- so money was reprogrammed from other areas into -- primarily into those two accounts? And that was the savings that allowed....

SENIOR DEFENSE OFFICIAL: It was part of it. I mean, you know, we did a lot of different things. It reminds me of pouring water and milk in the glass at some time and when it overflows blaming the milk. I mean, I can't pick one thing. There were a whole series of actions we took, finding reduced costs. Reprogramming was very important. And we are also able to shift around some other funding from the Navy, some lower priority Navy programs into the Army. So it's a bunch of different things.

And it wasn't just furlough days. We brought back some training.

Q: Oh, okay.

SENIOR DEFENSE OFFICIAL: The Air Force, as I said, is flying all its combat -- its squadrons again, though it will take them months to catch up from a three-month stand-down -- or not flying, and the Army has made some small increases in training of about six brigade combat teams.

Q: It's great that you're able to do this, but there are going to be some people who say, well, you know, they cried wolf, basically. They exaggerated the extent of the problem and now they've -- you know, they've fixed it. How do you respond to that?

SENIOR DEFENSE OFFICIAL: Well, I respond by going back three months ago and saying we faced enormous uncertainty. I think as great as I can remember any time in the defense budget. And at that point, we were short \$11 billion. Most of it was OCO funding. And I got to tell you, you know, it was one of the things you wake up and night and you go, how am I going to make this work? Or how's the department going to make this work?

We didn't know. I mean, we knew -- the reprogramming was there, but it's not a guarantee. These are single committee veto items. And we didn't get all of it. We didn't know about some of the things like identifying funding we wouldn't need for transportation costs. The Air Force found some reductions in weapons system sustainment. We are able, as I mentioned, to move some lower priority Navy money to areas we needed it more.

So there were a whole bunch of things that broke in our favor, but three months ago, with \$11 billion short, I don't think we had a lot of choice, unless we were willing to cut more training and maintenance. And we felt that we had done that as much as we should.

But I hear your point. And, you know, hindsight -- there's a old saying in the budget world that time is the best budget analyst. If you wait longer, you'll know more. And we do know more than we did three months ago.

Q: Just maybe one quick sort of question on the numbers. The buying back the furlough days is going to cost about -- is it \$900 million --

SENIOR DEFENSE OFFICIAL: Yeah, about -- a little less than \$1 billion. We were going to save about \$2 billion with 11 days. It'll be a little more than \$1 billion with six.

Q: So there's that. And then how much in some of the other changes for the Air Force combat flying and the Army -- so what's -- can you give us sort of a broad total of the amount savings?

SENIOR DEFENSE OFFICIAL: You know, it's probably another half-billion or so for training, around \$400 million in the Air Force, and I don't have a precise number for the Army, but -- but probably around \$1 billion in buying back furlough days and then some -- perhaps \$500 million of added costs associated with buying back some training.

Q: So -- okay. And then overall, then, that's like \$1.5 billion or something that in recent weeks you've been able to find. And was some of that identified, would you say, as a result of, you know, all the services looking for money or everyone looking for money? And have you kind of come -- do you think you're nearing kind of the end of all those little types of savings you can find? Or is this something you can do again and again and again, as next year dawn's?

SENIOR DEFENSE OFFICIAL: So, remember, we started \$11 billion in the hole three months ago. We had to find that, plus a little more to allow us to make some of these restorals. And as I've said, it came through a variety of factors, reprogramming, identifying some costs we could either put off or, in some cases, do without, put off in the case of a second destination transportation, and some aggressive moving money around of some Marine Corps money, for example, into the Army.

All of those got us to that point. Is there more? Well, probably a little bit, but I suspect that we've largely -- you know, we've largely come to the end of the rope. I mean, sometimes toward the end of the year, there will always be some fallout, but we feel at this point we're confident we can get down to six, but six is where it's going to stop.

Q: Well, I guess, just to make my -- I want to be clear. As you look ahead to next year, I mean, with that whole \$54 billion, have you sort of done all the little whittling you can? Or can you just do it all over again?

SENIOR DEFENSE OFFICIAL: Oh, there will be -- there's always -- it probably doesn't sound good [inaudible] to say wiggling, but there are always changes that go on. And, yes, there will be again next year, especially when you're in the middle of a war. I mean, we put together the budget we're going to start executing on October 1st more than a year ago. And then there will -- there are uncertainties and there will be changes.

And, of course, looking forward to next year, we don't really have any idea right now what's going to be appropriated. I mean, if we -- if we go with the sequester-level caps, we're going to be down \$52 billion from the president's request.

Q: Two kinds of granular-level questions, first for defense official two. Does this mean that DODEA schools are not going to be furloughed?

SENIOR DEFENSE OFFICIAL: So DODEA schools have several different categories. They have 12-month employees that will be furloughed. And then had the 10-month employees, those that are the educators and the support staff. So they were to be furloughed five days at the beginning of the next school year, which would have still been in fiscal '13.

We have decided to exempt them from furlough, and so their school years will start on time, and then the teachers and the support staff that were initially going to be furloughed are now not going to be furloughed.

Q: Okay. And -- thanks. The second question, defense official one, you mentioned somehow the Navy had given some money to the Army or -- does that -- does that happen normally? And how -- I mean, it's nice of them. How did they do it?

SENIOR DEFENSE OFFICIAL: Well, in that case, they paid a bill that they had the legal authority to pay, one of the OCO bills for LOGCAP. I wouldn't

say it's routine, but these are not routine times. And we've had to look across the department and try to make some shifts in order to get through this year.

Q: How much was it?

SENIOR DEFENSE OFFICIAL: It was about \$300 million, if I recall.

Q: So they just wrote a check for the Army, so --

SENIOR DEFENSE OFFICIAL: Well, they just paid a bill that they had the legal authority to pay, or the secretary directed them to pay a bill they had legal authority to pay.

Q: Okay.

Q: My first question for senior defense official number two. Given that we're just less than two months out from fiscal '14, what contingency plans are you making in terms of civilian workforce, either furlough, reductions in force, et cetera, for fiscal '14 if sequestration does occur?

SENIOR DEFENSE OFFICIAL: Well, I -- you know, I'm going to reiterate what -- what defense official number one said, that these are hugely uncertain times. I mean, the department's not gone through this before. And I also reiterate what Secretary Hagel says, that we will try to avoid furloughs as much as we possibly can next year.

But we haven't received our budget. We don't know what we face going into '14. And we're going to have to make plans based upon that number. But right now, we're really going to work to avoid a furlough.

Q: And how about a reduction in force?

SENIOR DEFENSE OFFICIAL: I think every -- you know, everything is on the table. And that can potentially be on the table, should it be needed. And reduction in force is not something that we turn on and turn off. It can -- we've done reduction in forces within the last year, and it has nothing to do with sequestration. It has something to do with shaping the force as it is needed. So it's potentially not as widespread, but it is done as a shaping tool.

Q: And no planning underway at this point?

SENIOR DEFENSE OFFICIAL: Right now, everything is on the table.

Q: Okay. Question for senior defense official number one. Once we're past fiscal '13, is there going to be -- do you have any plan on producing any sort of -- any after-action report on how it achieved the \$37 billion cut? Because from the outside, frankly, it looks rather mysterious.

SENIOR DEFENSE OFFICIAL: Well, I mean, we will, in the sense that you'll see a budget next year that has an actual in it. And it's a good point that we maybe need to be helpful. About 20 -- I can give you some rough ideas -- about \$20 billion came out of the operations and maintenance accounts. The other \$17 billion came out of our investment accounts. We talked a lot about them, but virtually every one of our line items was cut 8 percent, and just the whole array of changes that got made to accommodate those. But I hear you -- in our spare time, we probably owe you some help to understand how we got there.

Q: So you will provide --

SENIOR DEFENSE OFFICIAL: Let me -- let me take that one. I'm concerned -- I mean, we're facing, furloughs or not, an enormous workload as we try to get a new budget for '14 potentially. I hope not, but potentially, and as well as budgets for the out-years.

Q: I guess my only question would be, so these furloughs end this week or next week? I'll have to --

SENIOR DEFENSE OFFICIAL: For most employees, they will end next week.

Q: Do you have a number?

SENIOR DEFENSE OFFICIAL: It really depends upon -- if the individual received their furlough letter on the week of 8 July, and if they participated in the furlough one day a week, that would take them six days, which would equal 48 hours, to the 17th of August. And so that's the calculation. So most of the force that was furloughed was furloughed in that manner.

Q: Okay.

Q: Senior official two, I'm sorry, can I ask about schools again?

SENIOR DEFENSE OFFICIAL: Yes.

Q: To go through -- are you saying no -- no furloughs now for any school personnel? What's the situation?

SENIOR DEFENSE OFFICIAL: So there was a group of individuals, educators and support staff that were going to be furloughed for five furlough days at the beginning of the next school year, which would start at the end of August 2013. So they were going to have five furlough days between August and September of 2013, which would be the '13-'14 school year. Those individuals will not receive any furlough days. The school year will start and end without furlough days.

Q: Okay.

SENIOR DEFENSE OFFICIAL: Well, let me say, the school year for fiscal year '13 will not have any furlough days. We are really trying not to furlough in fiscal year '14, but we haven't received a budget yet.

Q: I'll pass.

Q: First of all, I really like the milk-water thing. (Laughter.) I wish it was on the record. Anyway, my real question, I may have missed it at the top, but the \$300 million transfer or the bill that the Navy paid, are there other bills like that, that either the Navy or another service paid, say, on behalf of the Army? Or...

SENIOR DEFENSE OFFICIAL: No other services. We were able to transfer some money -- fuel funds by lowering fuel prices that would have come out of the working capital fund, but I don't believe there are any other service bills.

Q: So only that one -- \$300 million bill?

SENIOR DEFENSE OFFICIAL: It's actually the Marine Corps, but in the Department of the Navy, it's Marine Corps.

Q: Okay.

Q: For defense official number one, you talk about uncertainty in fiscal '14. How helpful would it be to know what post-2014 troop numbers are in Afghanistan for you guys?

SENIOR DEFENSE OFFICIAL: Well, I think that one -- there are bigger issues there than budget. Certainly at some point we're going to need to know that in order to do a fiscal '15 budget, but we're not a -- I think the timing of those depends more -- or is more important than we know it in order to -- to execute a responsible drawdown than it is for the budget.

Q: Question for senior defense official one. You mentioned some of the money was moved using legal authorities given to DOD to shift funds around. There's been some criticism that the Pentagon hasn't fully taken advantage of some of these -- these authorities while, on the same hand, arguing for more flexibility in spending of these funds. I guess what I wanted to ask you is, is this move sort of a precursor to using more of these authorities as -- more of these authorities even more, as the number crunch kind of continues?

SENIOR DEFENSE OFFICIAL: Well, our authorities are pretty limited, frankly, and normally we don't do shifts of that sort, because the other services planned on that funding and how to use it, but these were extraordinary times. If we face extraordinary times again next year, we'll probably look at everything we can legally do.

I realize the issue of flexibility has been raised, but I'm trying to think of specific concerns that have been raised that we weren't using flexibility that we had.

Q: Did you think that -- yeah, there were -- there were some areas, particularly in -- I think it was in O&M that -- that Congress had legislated and that DOD hadn't fully exercised.

SENIOR DEFENSE OFFICIAL: Yeah, I mean, I think we did. We got a budget from them in March, which helped a lot, because we got the money in the right pots, but it didn't add any money, but it would -- things would have been much worse without that, so that was helpful. We certainly made full use of that.

So I'm not sure -- not sure of the specifics, but, you know, we will look again next year. Let's hope next year is more stable, but if it's not, then we will look at everything we can do to try to carry out what was our goal throughout this, and that is to minimize the adverse effects on our mission. Everything we did was with that in mind, including the modest buybacks of training and the -- and the reductions in furlough days.

Q: Are there any others that are being exempted because of this change?

SENIOR DEFENSE OFFICIAL: No, just the teachers, well the teachers and support staff

Q: Right.

Q: One minor one. Has anybody --

SENIOR DEFENSE OFFICIAL: I don't know how many teachers, I can take it for the record.

SENIOR DEFENSE OFFICIAL: Let me get back to you with the number about it.

FACILITATOR: A couple more minutes.

Q: I know some people could take like a week or take all -- has anyone taken more six days?

SENIOR DEFENSE OFFICIAL: There is potential.

SENIOR DEFENSE OFFICIAL: We don't know.

SENIOR DEFENSE OFFICIAL: That I don't know.

Q: Could be?

SENIOR DEFENSE OFFICIAL: Pardon me?

Q: That could have happened, if you had the authority to...

SENIOR DEFENSE OFFICIAL: It could have happened, yes.

SENIOR DEFENSE OFFICIAL: I'm pleased to say we didn't manage this from here.

Q: No, but I would assume they would just get their money back.

SENIOR DEFENSE OFFICIAL: Well, we're working through that issue.

SENIOR DEFENSE OFFICIAL: I'm sure we'll hear about it.

Q: Sure. (Laughter.)

Q: How would you characterize the impact of the furloughs on the department? Do you see any lasting repercussions?

SENIOR DEFENSE OFFICIAL: You want to go ahead and I'll follow?

SENIOR DEFENSE OFFICIAL: I would tell you that this was one of the hardest things we ever had to do. And -- and I can't emphasize enough the uncertainty of the world that we're living in right now. And I also can't emphasize enough the quality and the professionalism and the dedication of our civilian employees. I mean, they -- they really are the glue that holds us together. I mean, they're here all the time doing their job.

So their morale has drastically been affected. And not only that, the productivity of the work that they do has been affected. All across the board -- and if you were here for the first time we had a press conference, what I said was that 80 -- about 85 percent of our civilian workforce works outside of this national capital region. So it's not just a Washington, D.C., phenomenon. This is a worldwide phenomenon, how it affects the total Department of Defense, whether it's in our depots or whether it's in shipbuilding or whether it's people that process promotions or people who work in our hospitals. It is across the board.

And it's been devastating for our civilian employees, and it's been very hard for the servicemember who relies on five days a week, of work from these people.

SENIOR DEFENSE OFFICIAL: Let me give you a couple of examples. It slowed work at depots, which is going to mean we've got maintenance that didn't get accomplished, going to get pushed off until next year. I'm worried about our contracting officials having enough time to get all those funds obligated - I think they will, and we will - we will go back to normal overtime rules after the furlough is over. It has certainly adversely affected financial management and how many people aren't getting the reports done on time. We've missed some deadlines at DFAS because we didn't have the people to do it. Our call center times are growing in DFAS. When people ask about their pay, they're having to wait longer. All of these things, I think, are tangible signs that it has reduced our productivity, I think, significantly.

FACILITATOR: Time for one more...

Q: The billion dollars - the bulk of the furlough buyback was from the Army's decision on the second destination transportation?

SENIOR DEFENSE OFFICIAL: You don't like my water and milk, do you? I mean, look at it that way, but there are a whole bunch of other things that contribute to the plus side and a bunch to the minus side, as well. It's hard to pick one and say that that's what caused it.

Q: You said a billion dollars?

SENIOR DEFENSE OFFICIAL: Yes, I mean, they're about the same size, so I suppose, but - but, Tony, we made a lot of - found a number of ways to save funds and a number of ways we wanted to spend money. And it's hard for me to pick one and match it up.

Q: That was one of the biggest categories, though, is that correct?

SENIOR DEFENSE OFFICIAL: It was a significant savings.

Q: Thank you.

SENIOR DEFENSE OFFICIAL: The reprogram was probably the biggest single thing.

FACILITATOR: Well, thank you, again, for short notice and the interest in this topic, but we have to get at least one of our officials off to a meeting right now. So thanks again. If you got additional questions, you should have the secretary's statement. You have the memo going out to the department. And we're happy to take questions in the press office.

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IMMEDIATE RELEASE

No. 565-13
August 06, 2013

Secretary Of Defense Chuck Hagel's Message on Reducing Civilian Furloughs

When I announced my decision on May 14 to impose furloughs of up to 11 days on civilian employees to help close the budget gap caused by sequestration, I also said we would do everything possible to find the money to reduce furlough days for our people. With the end of the fiscal year next month, managers across the DoD are making final decisions necessary to ensure we make the \$37 billion spending cuts mandated by sequestration, while also doing everything possible to limit damage to military readiness and our workforce. We are joined in this regard by managers in non-defense agencies who are also working to accommodate sequestration cuts while minimizing mission damage. As part of that effort at the Department of Defense, I am announcing today that, thanks to the DoD's efforts to identify savings and help from Congress, we will reduce the total numbers of furlough days for DoD civilian employees from 11 to six.

When sequestration took effect on March 1, DoD faced shortfalls of more than \$30 billion in its budget for day-to-day operating costs because of sequestration and problems with wartime funding. At that point we faced the very real possibility of unpaid furloughs for civilian employees of up to 22 days.

As early as January, DoD leaders began making painful and far reaching changes to close this shortfall: civilian hiring freezes, layoffs of temporary workers, significant cuts in facilities maintenance, and more. We also sharply cut training and maintenance. The Air Force stopped flying in many squadrons, the Navy kept ships in port, and the Army cancelled training events. These actions have seriously reduced military readiness.

By early May, even after taking these steps, we still faced day-to-day budgetary shortfalls of \$11 billion. At that point I decided that cutting any deeper into training and maintenance would jeopardize our core readiness mission and national security, which is why I announced furloughs of 11 days.

Hoping to be able to reduce furloughs, we submitted a large reprogramming proposal to Congress in May, asking them to let us move funds from acquisition accounts into day-to-day operating accounts. Congress approved most of this request in late July, and we are working with them to meet remaining needs. We are also experiencing less than expected costs in some areas, such as transportation of equipment out of Afghanistan. Where necessary, we have taken aggressive action to transfer funds among services and agencies. And the furloughs have saved us money.

As a result of these management initiatives, reduced costs, and reprogramming from Congress, we have determined that we can make some improvements in training and readiness and still meet the sequestration cuts. The Air Force has begun flying again in key squadrons, the Army has increased funding for organizational training at selected units, and the Navy has restarted some maintenance and ordered deployments that otherwise would not have happened. While we are still depending on furlough savings, we will be able to make up our budgetary shortfall in this fiscal year with fewer furlough days than initially announced.

This has been one of the most volatile and uncertain budget cycles the Department of Defense has ever experienced. Our fiscal planning has been conducted under a cloud of uncertainty with the imposition of sequestration and changing rules as Congress made adjustments to our spending authorities.

As we look ahead to fiscal year 2014, less than two months away, the Department of Defense still faces major fiscal challenges. If Congress does not change the Budget Control Act, DoD will be forced to cut an additional \$52 billion in FY 2014, starting on October 1. This represents 40 percent more than this year's sequester-mandated cuts of \$37 billion. Facing this uncertainty, I cannot be sure what will happen next year, but I want to assure our civilian employees that we will do everything possible to avoid more furloughs.

I want to thank our civilian workers for their patience and dedication during these extraordinarily tough times, and for their continued service and devotion to our department and our country. I know how difficult this has been for all of you and your families. Your contribution to national security is invaluable, and I look forward to one day putting this difficult period behind us. Thank you and God Bless you and your families.

Secretary Hagel's Memorandum can be viewed at: http://www.defense.gov/home/features/2013/docs/080613_Furlough_Reductions.pdf.

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DCMA Furlough Guidance

Welcome to the [DCMA Furlough Guidance Webpage](#).

DCMA has established this Furlough Planning web page to ensure all DCMA employees have access to information related to the 2013 Administrative Furlough. This web page is dedicated to answering your questions and addressing your concerns.

DCMA has been directed to conduct a furlough. We have provided information and links on this web page that may answer your questions as you plan for your furlough. We will continue to update this page as information is received. For any questions that cannot be answered via these sites, you are encouraged to send your questions to furlough@dcma.mil.

The Defense Department has revised from 14 to 11 the number of days civilian employees are to be furloughed this year due to the budget sequester. Employees will be discontinuously furloughed no earlier than July 8, 2013 through the end of the fiscal year.

Important New Information:

Assistant Secretary of Defense, Readiness and Force Management, F. Vollrath, provided in a memorandum dated June 28, 2013, "On furlough days, furloughed civilians are not authorized to perform official duties at their permanent or temporary duty station, at home, or at an alternate site, including communicating by BlackBerry or other mobile device. In addition, civilian personnel subject to furlough shall not be required to work beyond their regularly scheduled and compensated times on non-furlough days to make up for work lost as a result of furlough, nor shall employees in pay status perform work beyond their regularly scheduled hours to compensate for workload/productivity loss of those who are in furlough status." The memorandum is posted below under "Additional Documentation."

It is important to note that DCMA continues to maintain flexible and compressed work schedules during the 2013 furlough period, therefore furlough times may be calculated in terms of hours rather than days. In these cases, the provision above refers to furlough hours.

Director's Messages:

[Updated Furlough Message 14-May-13](#) (Secretary Hagel's message on Furloughs included)
[Director's Furlough Message 6-May-13](#)
[All-Hands Budget - Part 2 1-Mar-13](#)
[All-Hands Budget 15-Feb-13](#)

DCMA Specific Information:

DCMA employees have asked the questions provided in the attached--similar questions have been grouped together. Additional questions and answers will be posted daily. | [DCMA Frequently Asked Questions \(22-May-13\)](#)

[Process Covering Potential for Administrative Furlough for FY 2013 \(Between DCMA & AFGE\) Amendment \(30-May-13\)](#)

Employee Resources Related to Furlough: NEW!2013 Furlough Resources**Supporting Documentation:**

[USD Comptroller Memo on Budgetary Uncertainty \(23-May-13\)](#)
[SECDEF Furlough Memorandum \(14-May-13\)](#)
[SECDEF Furlough SD Employee Msg \(14-May-13\)](#)
[USD Comptroller Sequestration Implementation Guidance \(5-Mar-13\)](#)
[White House Sequestration Order \(1-Mar-13\)](#)
[OMB Memo Issuance of Sequestration Order \(1-Mar-13\)](#)
[Deputy SECDEF Memos to Governors \(1-Mar-13\)](#)
[OMB Memorandum Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources \(14-Jan-13\)](#)
[Deputy SECDEF Memo Handling Budgetary Uncertainty in FY 2013 \(10-Jan-13\)](#)
[OMB Memo Agency Responsibilities for Implementation of Potential Joint Committee Sequestration \(27-Feb-13\)](#)
[Notice to Congress and DoD Employees \(20-Feb-13\)](#)
[SECDEF Memo Implications of Ongoing Fiscal Cliff \(20-Dec-12\)](#)
[Budget Control Act of 2011](#)
[American Taxpayer Relief Act of 2012](#)

[ASD Memo Total Force Management and Budgetary Uncertainty \(21-Feb-13\)](#)
[SECDEF Memo Preparations for Potential Sequestration on March 1 and Furlough Notifications \(20-Feb-13\)](#)

Additional Documents:

[Civilian Furloughs and Total Force Management \(28-Jun-13\) NEW!](#)
[Merit Systems Protection Board Appeal Form \(MSPB Form 185\)](#)
[Guidance for LWOP during Administrative Furlough](#)
[Employee Handout - Furlough 16-May-13](#)
[TSP Furlough Fact Sheet](#)
[Hagel Issues Memo Directing Preparations for Civilian Furloughs \(14-May-13\)](#)
[DoD Administrative Furlough Q&A \(2-May-13\)](#)
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[OPM Guidance – Addendum \(Overtime and Credit Hours – Administrative Furlough, 20-Feb-13\)](#)
[OPM Guidance – Addendum 2 \(Leave Accrual and Retirement Annuity Benefits – Administrative Furlough, 26-Feb-13\)](#)
[OPM Guidance – Addendum 3 \(Travel Expenses – Administrative Furlough, 27-Feb-13\)](#)
[OPM Guidance – Addendum 4 \(Details, LWOP, Unemployment Compensation and Collective Bargaining Obligations, \(5-Mar-13\)](#)
[OPM Guidance – Addendum 5 \(Guidance on various topics, 25-Apr-13\)](#)
[OPM Guidance – Addendum 6 \(Federal Employees' Group Life Insurance Program – Administrative Furlough, 23-May-13\)](#)

OPM Guidance - Addendum 7 (Travel Time as Hours of Work, 10-Jun-13)

Additional Links:

OPM Furlough Guidance

OPM Benefits Furlough Guidance

Thrift Savings Plan (TSP)

Employee Assistance Program (EAP), 1-(800) 222-0364

Defense Civilian Personnel Advisory Services

Defense Finance and Accounting Service

Unemployment Information



2013 Furlough Resources and Information

With Department of Defense furloughs scheduled to begin on Monday, July 8, 2013, DCMA is providing resource information to help everyone navigate effectively through this difficult period.

Furlough Website and E-mail Address

Furlough Website: Employees can access extensive information about the furlough to include OPM Guidance, furlough overview, guides on budgeting, TSP Furlough Fact Sheet, overall guidance and policy, and much, much more at www.dcms.mil/furlough.

Furlough E-mail Address: Email furlough@dcma.mil to get answers to your questions.

EAP Services

The Employee Assistance Program (EAP) is available 24/7 to assist you as you cope with the effects of the furlough. Call 1-800-222-0364 (TTY: 1-888-262-7848) or go online at www.worklife4you.com for assistance. International callers should call 314-387-4701 and ask the operator to reverse the charges. For international TTY callers, please have the relay operator make the initial call because collect calls can only be authorized by voice. Once authorized, the TTY machine may be used. New website users should use registration code "dcma" to register.

PERSONALIZED REFERRALS: Specialists are accessible 24/7 to help you find a variety of resources including legal and financial support, alternate child and senior care options that meet your budget, community services, assistance programs (food, utilities, transportation, etc.), housing options, and much more.

ONLINE TOOLS: Access tips, checklists, articles, podcasts, webinars, calculators, and other resources on topics including guidance for hard times, budgeting, saving, credit and debt, mortgages/foreclosure, staying healthy, coping with stress, conquering substance abuse, understanding child and senior care options, and more.

FREE EDUCATIONAL GUIDES: Get helpful guides including *Building a Better Credit Report*, *Choosing and Using Credit Cards*, *Finding a Lawyer That is Right for You*, and more.

LIVE INTERACTIVE WEBINARS: Interact with the presenter to ask questions and clarify information. You can attend from anywhere—all you need is a computer and an internet connection. Please visit <https://dcma.motivation.cc> to register.

- **July 10, 2013:** “Emergency Preparedness” 12:00-1:00 p.m. EDT*
- **July 24, 2013:** “Planning, Prioritizing, & Organizing Your Time” 12:00-1:00 p.m. EDT*
- **August 7, 2013:** “Smart Shopping” 2:00-3:00 p.m. EDT*
- **August 21, 2013:** “Overcoming Debt” 12:00-1:00 p.m. EDT*

*These are live webinars, so please remember to adjust the start time for your time zone.

View past webinars, including “Budgeting Basics,” “Stress Management,” and other previously recorded webinars, at www.worklife4you.com. Just click the On Demand Library module on the right hand side of the home page to access webinars on a variety of topics.

Please note that the webinars cannot be currently accessed using DCMA computers due to issues with the webhost. The technology needed to allow access has been procured and is slated to be deployed by September 2013. Until then, they can be accessed at any time using a non-DCMA computer.

Other Resources

CFC-Supported Charities

With the furlough fast approaching, the loss of income may put some employees in a particularly tough spot economically, in the short-term. Reach out to the Combined Federal Campaign (CFC) programs to help you get through it. They have a wide-variety of programs that can assist with finding community services such as food assistance, shelter, non-emergency medical care, and prescription discounts; scholarships and loans; substance abuse assistance; adult and child care; and more. Visit www.opm.gov/combined-federal-campaign/ and click “Finding Local Campaigns” to discover resources in your area.

United Way

Over 300 United Ways and their local community partners are engaged in activities and initiatives to help build the financial stability of families in their communities. Visit their website at www.unitedway.org for information on the education, income, and health resources they offer.

DCMA Specific Frequently Asked Questions

Pay/Leave/Schedules

1. Q. Does DCMA plan to shut down operations one day a week and remain open daily with employees opting for Fridays or Mondays off?
A. Currently, there is no overall plan to shut down operations one day a week. Decisions regarding furlough days will be made to minimize adverse impact to the mission and ensure continuity of operations and may vary, but as a general rule will be scheduled for 8 hours per week.
2. Q. Can an employee elect to take the 11 furlough days consecutively?
A. Currently, the guidance from the Department of Defense requires employees to be furloughed on discontinuous (intermittent) days for no more than 16 hours per pay period.
3. Q. Will employees be removed from Alternate Work Schedules and moved to 8 hour work days during the furlough?
A. Employees will not automatically be removed from alternate work schedules; however, some work schedules may be impacted due to pressing mission needs.
4. Q. How will furlough affect employees working part time?
A. Furlough time off for part-time employees will be prorated based on the employee's work schedule. For further guidance, please reference OPM's FAQ's (Section L/Furlough Time Off).
https://swww.dcms.mil/furlough/files/OPM_Administrative_Furlough_Guidance.pdf
5. Q. Will the telework benefit be available for employees during the furlough?
A. Employees will not automatically be removed from telework; however some telework arrangements may be impacted due to pressing mission needs.
6. Q. Will use or lose be affected by the furlough?
A. Employees should schedule use or lose leave in accordance with established procedures to avoid forfeiture at the end of the leave year.
7. Q. How does an employee stop their contribution to the Combined Federal Campaign (CFC)?

A. The employee must contact their local Customer Service Representative or make your request via the centralized mailbox (FinancialLiaisonCenter.Inbox@dcma.mil) to place a stop on funds being deducted from their Leave and Earning Statements (LES) for the purpose of CFC.

8. Q. Can an employee request to be furloughed as a way of reducing the hours of furlough required of other employees?

A. An employee cannot request to be furloughed. A furlough is an agency adverse action that places an employee in a temporary non-duty, non-pay status because of lack of work or funds, or other non-disciplinary reasons. For full guidance please see: <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-administrative-furloughs.pdf>

9. Q. How will an employee on FMLA utilizing sick leave for 3 months be affected by sequestration?

A. Agencies have discretion in determining whether to furlough employees who are in LWOP status, since both furloughs and LWOP are periods of non-pay status. Employees may already be scheduled for LWOP for a variety of reasons and for various lengths of time on either a continuous or discontinuous basis. Agencies are responsible for determining (1) whether employees already scheduled for LWOP during a period when administrative furloughs are being conducted will be subject to furlough and (2) the hours of furlough required of such employees. For additional guidance on this topic, please see: <https://swww.dcma.mil/furlough/files/addendum4.pdf>

10. Q. Will there be provisions for the continued incurrence of Travel Comp Time (earned) during the furlough?

A. Employee entitlements to earn compensatory time for travel will not be affected by furlough.

11. Q. Will civilian employees be able to schedule their furlough hours in blocks when they are performing reserve duty? For example, if an employee takes two weeks of leave without pay during the furlough period, will all 80 hours of LWOP is applicable to the 176 hours each employee will be required to take as furlough?

A. Employees who are in LWOP status during an administrative furlough will receive credit for their time in that status towards any remaining scheduled furlough hours.

12. Q. Can agencies furlough employees who are on approved leave without pay (LWOP) during a time when administrative furloughs are being conducted for other employees?

A. Employees who are in LWOP status during an administrative furlough will receive credit for their time in that status towards any remaining scheduled furlough hours.

- During an administrative furlough, employees issued furlough notices will be subject to scheduled furlough time until an approved period of LWOP begins.
- Once the previous furlough hours served plus LWOP hours taken during an administrative furlough equals the number of furlough hours required during the administrative furlough, no additional furlough time will be required.
- When a period of LWOP ends during the administrative furlough, the employee will be subject to the remaining balance of furlough time, if any.

13. Q. If an employee is on approved leave without pay (LWOP), but affected by the furlough, would the employee be furloughed and LWOP terminated?

A. Employees who are in LWOP status during an administrative furlough will receive credit for their time in that status towards any remaining scheduled furlough hours.

During an administrative furlough, employees issued furlough notices will be subject to scheduled furlough time until an approved period of LWOP begins.

14. Q. How will employees be compensated during the furlough if they work outside of their basic workweek?

A. Employees who are required to work hours outside of a basic workweek during which they have been furloughed are compensated with their rate of basic pay if overtime thresholds have not been met, and/or with overtime pay or compensatory time off in lieu of overtime pay, as appropriate, once the threshold have been met. Most employees are subject to a 40-hour weekly overtime threshold and an 8-hour daily overtime threshold. *For example, if an employee is ordered to work 8 additional hours outside the basic workweek, these hours are substituted for the 8 furlough hours, and in essence the employee has worked a regular 40-hour workweek.*

15. Q. Will overtime pay be calculated based on an 8 hour work day or a 40 hour work week?

A. Overtime pay provided under title 5 USC is pay for hours of work officially ordered or approved in excess of 8 hours in a day or 40 hours in an administrative workweek.

- FLSA exempt employees who work full-time, part-time, or intermittent tours of duty are eligible for title 5 overtime pay. Employees in SL and ST positions are covered by the premium pay provisions under title 5.
- For employees with rates of basic pay equal to or less than the rate of basic pay for GS-10, step 1, the overtime hourly rate is the employee's hourly rate of basic pay multiplied by 1.5. For employees with rates of basic pay greater than the basic pay for GS-10, step 1, the overtime hourly rate is the greater of: the hourly rate of basic pay for GS-10, step 1, multiplied by 1.5, or the employee's hourly rate of basic pay.

Overtime pay for nonexempt employees is computed under the Fair Labor Standards Act (FLSA). A non-exempt employee is compensated for all hours of work in excess of 8 in a day or 40 in a workweek. All overtime work that is ordered or approved or "suffered or permitted" must be compensated.

- Under the FLSA, overtime pay is determined by multiplying the employee's "straight time rate of pay" by all overtime hours worked PLUS one-half of the employee's "hourly regular rate of pay" times all overtime hours worked.
- Any applicable special rate supplement or locality payment is included in the "total remuneration" and "straight time rate of pay" when computing overtime pay under the FLSA (ex. Sunday premium pay, night pay)

17. Q. May compensatory time off be utilized during furlough?

A. Yes. Compensatory time off is merely an alternative form of payment for overtime work. As such, the value of an hour of compensatory time off is equal to the overtime hourly rate that is payable in dollars.

- Compensatory time off may be approved in lieu of overtime pay for irregular or occasional overtime work for both FLSA exempt and nonexempt employees. Compensatory time off can also be approved for a prevailing rate employee, but there is no authority to require that any prevailing rate (wage) employee be compensated for irregular or occasional overtime work by granting comp time off.
- An employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was earned. If the accrued comp time is not used within this timeframe, the employee is paid for the earned comp time off at the overtime rate in effect when earned.

18. Q. Where can I find help if I encounter financial difficulties as a result of furlough?

A. Furlough financial assistance is available through the Employee Assistance Program. DCMA Furlough Resources at <https://www.dcmamil/furlough>.

19. Q. If an employee has already taken LWOP for military duty in this fiscal year, is any of that applicable towards that employee's furlough requirement?

A. No. During an administrative furlough, an employee may not substitute leave or other forms of paid time off for any hours or days designated as furlough time off (e.g. annual, sick, court, or military leave, etc.)

20. Q. Employee is taking two weeks of military leave during the furlough period, do they still need to count two furlough days within the period or are they exempt while charging to military leave.

A. An employee who uses paid military leave must still take furlough days. If the employee chooses instead to use LWOP for his military AT, he would receive credit for time in LWOP status towards any remaining scheduled furlough hours; in other words, all days in LWOP status would be credited towards his remaining furlough days.

TSP/High 3/VERA/VSIP

1. Q. Will an employee's High 3 be affected by Furlough/Sequestration?

A. Generally, furlough will not impact a High 3 computation. Please refer to OPM Furlough Guidance Section: Employee Assistance, Question 1 at <http://www.opm.gov/furlough>.

2. Q. What ramifications are there for items that are based on a percentage of earnings like TSP and Life insurance?

A. See TSP Fact Sheet at <https://www.tsp.gov/index.shtml>

3. Q. Will VERA/VSIP be offered this fiscal year?

A. VERA/VSIP will not be offered to DCMA employees this fiscal year as a result of budget uncertainties or furlough. These authorities are used to permanently reduce the number of personnel employed or to restructure the workforce to meet mission objectives without reducing the overall number of personnel.

Performance

1. Q. Will performance awards be affected by furlough?
A. Consistent with guidance from the Office of Management and Budget (OMB Bulletin #M-13-05), DCMA will not issue discretionary monetary awards (e.g., performance awards, special acts, QSIs, etc.) until further notice.
2. Q. Will metrics be adjusted to offset the reduced time employees have to complete their work?
A. Supervisors will guide adjustments of plans.

Keystone/Pathways/852 Funding/Training

1. Q. If Keystones are unable to get the training they need due to budgetary issues, will the employee be penalized?
A. Employees will not be penalized if required training becomes unavailable due to conditions beyond the employee's control.
2. Q. If sequestration cuts take effect for FY13 and FY14, and all travel is restricted, will employees be penalized for not completing non-CBT core DAWIA courses?
A. There is currently no restriction planned for DAWIA related training; in the event restrictions must be placed on DAWIA related training events, any modification to the 24 month requirement will be addressed by AT&L for implementation across the Department.
3. Q. How will I be furloughed if I am attending an extended training class such as the two week DAU class?

A. The Department guidance is to generally target 8 hours per week but it is recognized this may not always be feasible, achievable, or a smart business decision to keep rigidly to that guidance. I want to remind you all as you are making scheduling decisions for your folks that some degree of flexibility exists. Extended TDY or training, critical mission requirements, employee requests, etc., may occur that will necessitate that furlough hours be taken on a slightly modified basis - and hours in a week or pay period may be modified to accommodate specific situations. For example, an employee attending a two-week training course during the pay period

may not be able to have furlough hours scheduled that pay period. The 16 hours "missed" during that pay period should be redistributed immediately before and/or after the training. For long-term TDY and training, it is feasible to schedule furlough days at the TDY/training site--the employee will continue to receive per diem and lodging for the day, but no work or training would be performed and the employee would not be paid. To the extent possible, these employees should follow the furlough guidance from the school they are attending. This is something that, as a supervisor, you will need to closely monitor.

General Questions

1. Q. Am I allowed to file for unemployment compensation if we are furloughed?
A. Rules for unemployment eligibility vary by State. Please refer to OPM Furlough Guidance in Section H (Employee Assistance). <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-administrative-furloughs.pdf>

2. Q. Will I be able to seek additional employment during a furlough to compensate for lost wages?
A. While on furlough, an individual remains an employee of the Federal Government. Therefore, executive branch-wide standards of ethical conduct and rules regarding outside employment continue to apply when an individual is furloughed (specifically, the executive branch-wide standards of ethical conduct at 5 CFR part 2635). In addition, there are specific statutes that prohibit certain outside activities, and agency-specific supplemental rules that require prior approval of, and sometimes prohibit, outside employment. Therefore, before engaging in outside employment, an employee should review these regulations and then consult his or her agency ethics official to learn if there are any agency-specific supplemental rules governing the employee.

3. Q. Who determines whether someone is deemed "mission essential"?
A. The term "Mission Essential" is not entirely relevant to a furlough action of this type. DCMA employees will be deemed "excepted" during furlough if they fall into one of two categories: foreign national employee or a civilian deployed to a combat zone. Every other civilian employee--852 funded mission essential, veterans, supervisors, or SES members, will be furloughed and treated in the exact same manner.

4. Q. Bargaining Unit employees will be given 30 days advance notice prior to furlough taking place. Will Non-Bargaining Unit employees be treated the same?

A. Yes. All employees, regardless of bargaining unit status, will receive a 30-day advance notice period.

5. Q. How will veterans be treated during a furlough?

A. Veterans will not be exempt from furlough.

6. Q. Could there be a RIF?

A. RIF actions are not anticipated this fiscal year. They could actually cost more money this year than they would save due to separation expenses and payout of accrued leave.

7. Q. Will there be a freeze on PCS?

A. There is no plan to freeze PCS at this time but approvals are decided on a case-by-case basis.

8. Q. What are the status of negotiations between DCMA and AFGE Council 170?

A. A Memorandum of Understanding between DCMA and AFGE Council 170 has been signed and can be viewed at http://www.dcmamil/furlough/files/MOU_Furlough.pdf

9. Q. If DCMA's budget is cut due to sequestration, will the Notice of Transfer of Work letter sent in early November to certain HQ and Center employee's be rescinded?

A. No, the HQ Center Realignment effort is still in process.

10. Q. Will any work-life programs be cut as a result of the sequestration or furlough; such as authorized time for physical fitness activity?

A. Generally, work-life programs, such as authorized time for physical fitness, will not be affected as a result of sequestration or furlough, unless mission requirements warrant.

11. Q. Will DCMA's OCONOS employees lose LQA on the day they are furloughed?

A. In accordance with DSSR 132.2.b, an employee would not lose LQA. DSSR 132.2.b - while the employee is in non-pay status not in excess of 30 calendar days at any one time, LQA grants will continue. For periods in non-pay status longer than 30

calendar days, payment shall be suspended as of the day the employee enters such status, and payment is not made for any part of such period.

12. Q. How does an employee stop their contribution to the Thrift Savings Plan (TSP)?

A. In order to stop or change your Thrift Savings Plan (TSP) you must do so electronically thru the Employee Benefits Information System (EBIS). This database can be found at <https://www.abc.army.mil/index.htm>. If you are having difficulty navigating the system, please call the Army Benefits Center (ABC) at (877) 276-9287. If you are having a CAC issue and are unable to access your AKO email address or you are a new DCMA employee, the ABC hotline will be able to make your election for you.

13. Q. Will OPM consider an "open season" for employees to change benefits (particularly FEHB)?

A. Although there will not be an Open Season just for the impending furlough, there are FEHB Event Codes that are applicable in a furlough situation. For example, the following FEHB events codes may be used:

1E code- Should be used in the event the employee is working on a Part-time schedule and an SF-50 is completed to change their work schedule (from part-time to full-time or vice-versa) or work hours. This event code will allow an employee to change to self-only, self-family or cancel their coverage.

1G code - Should be used for full-time employees who have insufficient pay to cover their FEHB premiums. These employees will be provided the option to cancel or change to self-only coverage within 31 days of insufficient pay notice. When full pay resumes, the employee has 60 days to elect to continue coverage.

1D code - Should be used when an employee terminated their coverage and is returning to a full pay status, the employee will have 60 days from the date of their return to full pay status to elect health coverage.

You can view other qualifying life event (QLE) codes that can be made outside of Open Season at the link below:

<http://www.opm.gov/healthcare-insurance/healthcare/reference-materials/reference/enrollment/>

Subsequently, you will be notified by your employing agency if your salary becomes insufficient to pay your FEHB premiums. When notified you will be given the option to pay directly, incur a debt, or pre-pay premiums. Consequently, if you choose to incur a debt, you must agree to pay the resulting debt in full and allow the debt to be collected from your pay once you return to a full pay status.

14. Q. What are the procedures or policies for participants in the event of a furlough schedule?

A. The same MTBP procedures/policies apply whether in regular status or furlough. Participants in the mass transit benefit program should always claim monthly benefits in amounts up to their most recently approved mass transit enrollment application (not to exceed the maximum statutory monthly limit). , they need only adjust their monthly claims according to the days they will actually be commuting (taking into account furlough days, and as always, AWS, telework, etc.). Any benefits not used by participants expire at the end of each month. Unused benefits do not roll over to the next month.

15. Q. If a new employee comes on board during the furlough period, what rules apply when placing the employee under the furlough?

A. Per OPM guidance, an agency must give a 30 day notice to employees who are being furloughed, employees must be given a 7 day response period before they can be placed on furlough. The Notice of Furlough can be given to the employee on the first day of employment and the furlough will go into effect after the requisite periods have passed.

16. Q. What PLAS code do employees use for furlough days?

A. The week of July 8, 2013 officially started the furlough period for all Department of Defense (DoD) employees. During this time, the correct PLAS code on the day of furlough will be KE.

17. Q. How many days or hours of furlough will a new employee have to serve?

A. The number of days required for furlough will be pro-rated based on the week the employee begins the furlough. Examples are provided in the scheduling guidance document posted below under DCMA Specific Information.

18.

18. Q. Does placement in furlough status cause a full-time employee to be converted to part-time or a part-time employee to be converted to a reduced part-time work schedule?

A. No. Placement in furlough status or any other kind of temporary nonpay, nonduty status does not affect the nature of an employee's official work schedule as full-time or part-time. For a full-time employee who is furloughed during a 40-hour basic workweek, the employee continues to have a full-time 40-hour basic workweek. For a part-time employee who is furloughed, the part-time tour of duty established for leave usage purposes also remains the same.

19. Q. May an employee volunteer to do his or her job on a nonpay basis during any hours or days designated as furlough time off?

A. No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an employee. (See 31 U.S.C. 1342.)

20. Q. Will an employee's Federal Flexible Spending Account Program (FSAFEDS) be impacted during an administrative furlough?

A. The employee's FSAFEDS coverage continues, and allotments made by the employee continue if the employee's salary in each pay period is sufficient to cover the deduction(s). If the employee's salary is insufficient to cover his or her allotment(s), then incurred eligible health care expenses will not be reimbursed until the allotments are successfully restarted (in which case the remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount). Incurred eligible dependent care expenses may be reimbursed up to whatever balance is in the employee's dependent care account, as long as the expenses incurred allow the employee (or employee's spouse if married) to work, look for work or attend school full-time. Once dependent care allotments are successfully restarted, remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount.

Security Questions

1. Q. If I can't meet my financial obligations can it impact my security clearance?

A. Security clearance determinations are made based on a "whole person" principle. Decisions regarding eligibility for access to classified information take into account factors that could cause a conflict of interest and place a person in the position of having to choose between his or her commitment to the United States, including the commitment to protect classified information, and any other compelling loyalty. When a person's life history shows evidence of unreliability or untrustworthiness,

questions arise whether the person can be relied on and trusted to exercise the responsibility necessary for working in a secure environment where protecting classified information is paramount. Financial issues are one of many considerations taken into account when trying to determine whether a person is an acceptable security risk. As a category, financial problems are a leading reason a security clearance is revoked or not granted. A single financial misfortune may not in and of itself cause a loss of clearance. Rather, it would be a factor to be considered among many others:

- Are they unable or unwilling to pay their debts?
 - Is there evidence of unexplained affluence?
 - Do they file annual Federal, state, or local income tax returns as required?
 - Is the financial difficulty a result of drug use or alcohol abuse?
 - Do they have a history of gambling or other risky financial behavior?
 - Was the financial misfortune an isolated incident or part of a pattern, or cycle of debt?
 - Has the individual acted responsibly? (i.e. notified and worked with creditors)
 - Has the individual been open and honest with his or her leadership about the issue or have they tried to cover it up?
2. Q. What should I do to minimize the effects on my security clearance if and when I find myself unable to meet my financial obligations?
- A. You should immediately contact your creditors and explain the situation. You should document each interaction with the creditor to the maximum extent possible. Many creditors are willing to work with their customers in such situations. For example, if the creditor agrees to lower payments for a period of time, you should ask for that agreement in writing or email. This will allow you to provide the adjudicator with the documented evidence that you were acting responsible given the situation. Additionally, you should keep your security office informed if you are experiencing or beginning to experience difficulty meeting your financial obligations.
3. Q. What kinds of financial hardships should I report to my Security Office if they occur?

A. You should notify the DCMA Security Office at PERSONNELSECURITYMAILBOX@DCMA.MIL and your supervisor in writing if, because of furlough, you: (1) face bankruptcy, (2) are unable to pay Federal, state or other taxes required by law or ordinance, (3) require credit counseling, (4) become delinquent on alimony or child support payments, (5) have a judgment entered against you for failure to meet financial obligations, (6) have liens placed against you, (7) become delinquent on a Federal debt, (8) have possessions or property repossessed, (9) default on loans, (10) have accounts turned over to a collection agency, (11) have credit accounts suspended, charged off, or cancelled for failure to pay as agreed, (12) are evicted for non-payment, (13) have wages garnished in order to satisfy a financial obligation, or (14) become over 120 days delinquent on a debt. Providing notification demonstrates responsibility which can mitigate any security concerns about the debts themselves.

ADMINISTRATIVE FURLOUGH SCHEDULING GUIDANCE FOR NEW EMPLOYEES

New employees reporting for duty at DCMA must be given a Notice of Proposed Furlough by the new supervisor upon arrival. The employee will have seven calendar days from the date this notice is received to make a written and/or verbal reply to the deciding official. The proposal provides the employee a 30-calendar day notice period starting from the date the proposal is received. After the seven-calendar day reply period has expired, the employee must be given a Notice of Decision to Furlough prior to the expiration of the 30-calendar day notice period. If the decision is to furlough the employee, the employee will begin the furlough no sooner than 30 calendar days after the proposal notice is received. The number of days required for furlough will be pro-rated based on the week the employee begins the furlough.

Examples:

Employee A – Enters on duty with DCMA effective 17 June 2013 and receives the Notice of Proposed Furlough on the same date (30-calendar day notice period begins).

The employee's seven-calendar day reply period expires on 24 June 2013. The employee receives the Notice of Decision to Furlough on 25 June 2013.

The employee's first effective date of furlough is 18 July 2013. The employee will serve one furlough day (eight hours) on either 18 or 19 July 2013. The employee's furlough is reduced by one day (eight hours) and will serve ten days of furlough for the remaining furlough period.

The employee is identified as an exception in AutoNOA (Reason #21, Delayed issuance of furlough proposal notice). A manual furlough RPA is submitted through DCPDS with an effective date of 18 July 2013.

Employee B – Enters on duty with DCMA effective 1 July 2013 and receives the Notice of Proposed Furlough on the same date (30-calendar day notice period begins).

The employee's seven-calendar day reply period expires on 8 July. The employee receives the Notice of Decision to Furlough on 9 July 2013.

The employee's first effective date of furlough is 1 August 2013. The employee will serve one furlough day (eight hours) on either 1 or 2 August 2013. The employee's furlough is reduced by three days (24 hours) and will serve eight days of furlough for the remaining furlough period.

The employee is identified as an exception in AutoNOA (Reason #21, Delayed issuance of furlough proposal notice). A manual furlough RPA is submitted through DCPDS with an effective date of 1 August 2013.

Employee C – Enters on duty with DCMA effective 15 July 2013 and receives the Notice of Proposed Furlough on 16 July 2013 (30-calendar day notice period begins).

The employee's seven-calendar day reply period expires on 23 July 2013. The employee receives the Notice of Decision to Furlough on 29 July 2013.

The employee's first effective date of furlough is 16 August 2013. The employee will serve one furlough day (eight hours) on 16 August 2013. The employee's furlough is reduced by five days (40 hours) and will serve six days of furlough for the remaining furlough period.

A manual furlough RPA is submitted through DCPDS with an effective date of 16 August 2013.

ADMINISTRATIVE FURLOUGH SCHEDULING EXAMPLES FOR TDY/TRAINING

Employee A – Scheduled to attend a one-week training class 29 July – 2 August 2013. Employee travels on Sunday, 28 July, and either Friday, 2 August or Saturday, 3 August. The DCMA employee will adjust the one furlough day (eight hours) “missed” while in training to the week before or the week following the training.

Employee B – Scheduled to attend a two-week DAU training class 30 July – 8 August 2013. DAU scheduled furlough days are Monday, 29 July, and Friday, 9 August. The DCMA employee travels on Monday, 29 July, and Friday, 9 August. The DCMA employee will adjust the two furlough days (16 hours) “missed” while in training to the week before or the week following the training. For example, the DCMA employee will schedule two furlough days the week of 22 July and two furlough days the week of 12 August to make up the “missed” 16 hours of furlough while in training.

Employee C – Scheduled to attend a four-week DAU training class 30 July – 21 August 2013. DAU scheduled furlough days are Monday, 29 July; Friday, 9 August; and Thursday and Friday, 22 and 23 August. The DCMA employee travels on Monday, 29 July, and Thursday, 22 August. The DCMA employee is furloughed on Friday, 9 August, and Friday 23 August. The DCMA employee will adjust the two additional furlough days (16 hours) “missed” while in training to the week before or the week following the training. For example, the DCMA employee will schedule two furlough days the week of 22 July and two furlough days the week of 26 August to make up the “missed” 16 hours of furlough while in training.

Employee D – Scheduled for TDY 23-26 July 2013. The employee’s original furlough schedule included a furlough day on 22 July. The employee will travel on 22 July and reschedule the one furlough day (eight hours) to the week before or the week following the TDY.



ASSISTANT SECRETARY OF DEFENSE

4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4800

READINESS AND
FORCE MANAGEMENT

JUN 28 2013

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Civilian Furloughs and Total Force Management

Reference: (a) Secretary of Defense Memorandum, "Furloughs", dated 14 May 2013

The Secretary of Defense, per reference (a), directed civilian furloughs beginning July 8, 2013. Reference (a) also provided for certain exceptions to the civilian furloughs to minimize adverse effects on mission. This memorandum provides additional guidance related to the Total Force of active and reserve military, civilians, and contracted support during the time-period of civilian furloughs.

While civilian furloughs will undoubtedly disrupt the mission and have a negative impact on productivity, it has been determined that the risk associated with that workload loss, while unavoidable, is acceptable. On furlough days, furloughed civilians are not authorized to perform official duties at their permanent or temporary duty station, at home, or at an alternate site, including communicating by BlackBerry or other mobile device. In addition, civilian personnel subject to furlough shall not be required to work beyond their regularly scheduled and compensated times on non-furlough days to make up for work lost as a result of furlough, nor shall employees in pay status perform work beyond their regularly scheduled hours to compensate for the workload/productivity loss of those who are in furlough status.

Accordingly, Component heads, installation commanders, and line managers shall take steps to manage workload, but must ensure that borrowed military manpower is not used to compensate for work resulting from a civilian furlough. To do so would be inconsistent with the Secretary's intent and the Department's commitment to protect the viability of the All-Volunteer Force.

Additionally, in accordance with the Department's statutory requirements, contractors are prohibited from being assigned or permitted to perform additional work or duties to compensate for the workload/productivity loss resulting from the civilian furlough.

To protect against further harm to morale and productivity – which the Secretary of Defense warned against - compliance with the above is critical. Please ensure maximum distribution of this memorandum throughout your organization.

F. E. Vollrath



DEFENSE CONTRACT MANAGEMENT AGENCY

3901 A AVENUE, BUILDING 10500
FORT LEE, VA 23801-1809

INTERNAL MANAGEMENT GUIDANCE – FOR OFFICIAL USE ONLY

MEMORANDUM FOR DEPUTY DIRECTOR
CHIEF OPERATING OFFICER
REGIONAL COMMANDERS
EXECUTIVE DIRECTOR, SPECIAL PROGRAMS
EXECUTIVE DIRECTOR, INTERNATIONAL
EXECUTIVE DIRECTOR, CONTRACTS
GENERAL COUNSEL

MAY 30 2013

SUBJECT: TASKING: FY 13 Administrative Furlough Requirements for Deciding Officials
Suspense: June 5, 2013 THROUGH NO LATER THAN July 5, 2013

As indicated in the original Furlough Tasking Memorandum, an administrative furlough will be instituted for all DCMA civilian employees, except direct and in-direct hire foreign national employees; civilians deployed in combat zones and civilians deployed in Africa; and Foreign Military Sales (FMS) employees whose positions are exclusively funded from FMS Administrative and FMS Case Funds and from Foreign Military Financing Accounts. The furlough will be on discontinuous (intermittent) days for no more than 11 workdays or 88 hours. Generally, each employee will be furloughed for no more than 8 hours per week during the period between July 8, 2013 and September 30, 2013.

Proposing Officials (normally first line supervisors) were tasked with issuing the Notice of Proposed Furlough during the period May 28 through June 5, 2013. Management officials were designated to receive the employee's oral reply and will provide Deciding Officials a Memorandum for Record summarizing the employee's oral reply. The employee reply period ends during the period June 4 through June 12, 2013 (seven calendar days from the date the Notice of Proposed Furlough was received by the employee).

As Deciding Officials, you are charged with fully considering any replies (written and/or oral) and issuing the Notice of Decision to Furlough. Deciding Officials are accountable for making final decisions on furloughs for individual employees after carefully considering the employee's reply, if any, and the needs of the Agency. Deciding Officials must also ensure final decisions are made in cases where an employee does not submit a reply. Deciding Officials will have the authority to execute the full range of options with respect to providing relief in individual employee cases. This authority includes, but is not limited to, reducing the number of days/hours an individual employee is furloughed, or granting the individual employee an exception from the furlough altogether. Agency templates have been developed for the Notice of Decision to Furlough and cannot be amended or changed.

NOTE: If the decision is made to grant partial or total relief from the furlough, the Deciding Official must contact the servicing Labor and Employee Relations Specialist for assistance in preparing the Notice of Decision to Furlough.

EMPLOYEES ON TEMPORARY APPOINTMENTS AND REEMPLOYED ANNUITANTS: These employees do not have the same statutory procedural rights as permanent employees. Therefore, employees on temporary appointments and reemployed annuitants will not receive a Notice of Proposed Furlough. The Notice of Furlough will be issued by the designated Deciding Officials during the period NOT EARLIER THAN June 5 through NO LATER THAN July 5 (Previously provided as Attachment E in the original Furlough Tasking Memorandum).

As a reminder, a DCMA Memorandum of Understanding addressing the Agency's Administrative Furlough Plan has been negotiated with the American Federation of Government Employees, Council 170. Further negotiation of the Agency's Administrative Furlough Plan and supplemental guidance are not authorized at any level.

Attachment A provides a template for the Notice of Decision to Furlough where the employee made an oral and/or written reply

Attachment B provides a template for the Notice of Decision to Furlough where the employee did not make a reply

Attachment C provides procedures for issuing the Notice of Decision to Furlough

Attachment D provides a listing of Merit Systems Protection Board Regional Offices (required for insertion in the Notice of Decision to Furlough)

Attachment E provides the MSPB Appeal Form (attachment to Notice of Decision to Furlough)

Requirement(s) Summary:

The following outlines requirements and actions to be taken by Deciding Officials:

- NOT EARLIER THAN June 5 through NO LATER THAN July 5: Deciding Officials issue the Notice of Decision to Furlough (**Notice of Decision to Furlough templates and procedures are at Attachments A, B, and C**)
- Attach MSPB Appeal Form to Notice of Decision to Furlough
- Ensure a complete record of each individual action is maintained (Notice of Proposed Furlough; Written Reply (if any); Memorandum for Record of Oral Reply (if any); Supporting Documents provided by employee (if any); and Notice of Decision to Furlough)
- June 5 through NO LATER THAN July 5: Issue Notice to Furlough to temporary employees and reemployed annuitants
- July 8: First workday an employee may be furloughed

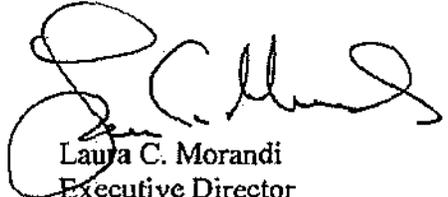
Reporting and Recordkeeping Requirements: A separate Tasking Memorandum will follow to outline specific reporting and recordkeeping requirements.

Resource Impact:

- Approximately one to four hours per employee.

Administrative Information:

- PLAS Code for this task: 223B
- This tasking memo has been coordinated with appropriate headquarters operational leadership.
- POC: The Labor and Employee Relations Specialist, Human Capital Directorate, in accordance with organizational assignments (Previously provided as Attachment I in the original Furlough Tasking Memorandum).



Laura C. Morandi
Executive Director
Human Capital

Attachments:
As stated

DISTRIBUTION:

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UNDER SECRETARIES OF DEFENSE
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COMPTROLLER

UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

MAY 23 2013

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Additional Guidance for Handling Budgetary Uncertainty in Fiscal Year 2013

- References:
- (a) Deputy Secretary of Defense's memorandum on "Handling Budgetary Uncertainty in Fiscal Year 2013," dated January 10, 2013
 - (b) USD(C) Memorandum "Additional Guidance on Handling Budget Uncertainty in Fiscal Year 2013," March 5, 2013 - **Rescinded**
 - (c) DoD Directive 4515.12, DoD Support for Travel of Members and Employees of Congress
 - (d) Title 10, United States Code § 1051, "Bilateral or regional cooperation programs: payment of personnel expenses"
 - (e) DoD Instruction 1015.15, Establishment, Management and Control of Non-appropriated Fund Instrumentalities and Financial Management of Supporting Resources
 - (f) Title 10, United States Code § 1491, "Funeral honors functions at funerals for veterans"
 - (g) Title 31 United States Code § 1353, "Acceptance of Travel and Related Expenses from Non-Federal Sources"

The purpose of this memorandum is to provide additional guidance to reference (a) to ensure consistency in the treatment of issues across the Department of Defense (DoD) as the Department implements sequestration and the funding provided in the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6). All DoD Components need to ensure that funding for wartime operations is protected and critical priority requirements for national security are funded within the limited resources and flexibilities provided. Effective immediately, the guidance in this memorandum supersedes the guidance provided in reference (b), and subsequent clarifications, which are hereby rescinded.

Congressional Travel Support

The Department will strictly enforce DoD's policies in its support of travel by congressional delegations (CODELs) and congressional staff delegations (STAFFDELS). It is DoD policy that support for approved travel of members and employees of Congress shall be provided on an economical basis upon request from Congress, pursuant to law or where necessary to carry out DoD duties and responsibilities. Organizations shall ensure that travel of members and employees of Congress is sponsored by the DoD *only* where the purpose of the travel is of primary interest to and bears a substantial relationship to programs or activities of DoD and is not solely for the purpose of engendering goodwill or obtaining possible future benefits. Specific guidance is included in reference (c). Some specific policies worth highlighting include:

- Military airlift will not be used for CODELs if commercial airlift is reasonably available.
 - Within the Continental United States (CONUS), no CODELs may use military airlift as commercial airlift is readily available.
 - Military airlift may be authorized for CODELs Outside the CONUS if commercial airlift is limited or unsafe; every effort must be made to minimize costs.
 - Spouses may accompany members if there is an official function as long as they pay their own expenses and do not increase the number or size of aircraft required.
- Minimum number of congressional members for military airlift originating in CONUS.
 - No less than five members for large aircraft.
 - No less than three members for small aircraft.
- Tickets purchased by DoD for CODELs, STAFFDELS, and liaison escorts.
 - Must be economy class; individuals may upgrade at their own expense.
 - DoD does not pay for a member's personal staff traveling to his/her home State/District; this includes travel, lodging, meals, or escorts.
- All itineraries for CODELs/STAFFDELS must be approved by the escorting Service's 2-star Legislative Affairs Director to ensure that the itinerary is an efficient use of taxpayer funds.

Tuition Assistance

The Services are to restore funding for tuition assistance to the budgeted level for the remainder of Fiscal Year 2013, without reduction for sequestration. In addition, the Services will not implement any management controls/restrictions that did not exist prior to the tuition assistance stoppage. This will meet, and exceed, the requirement in section 8129 (Requirement to Continue Provision of Tuition Assistance for Members of the Armed Forces) of division C of Public Law 113-6 (Department of Defense Appropriations Act, 2013).

Discretionary Monetary Awards for Civilians

In the Office of Management and Budget (OMB) Bulletin #M-13-11, Ongoing Implementation of the Joint Committee Sequestration, dated April 4, 2013, the Controller provides the following guidance with regard to discretionary monetary awards:

"OMB Memorandum 13-05 [Agency Responsibilities for Implementation of Potential Joint Committee Sequestration] directs that discretionary monetary awards should not be issued while sequestration is in place, unless issuance of such awards is legally required. Discretionary monetary awards include annual performance awards, group awards, and special act cash awards, which comprise a sizeable majority of awards and incentives provided by the Federal Government to employees. Until further notice, agencies should not issue such monetary awards from sequestered accounts unless agency counsel determines

the awards are legally required. Legal requirements include compliance with provisions in collective bargaining agreements governing awards.¹

Consistent with past guidance, certain types of incentives are not considered discretionary monetary awards for the purposes of this policy. These include quality step increases (QSIs); travel incentives recognizing employee savings on official travel; foreign language awards for mission-critical language needs; recruitment, retention, and relocation incentives (3Rs); student loan repayments; and time-off awards. While these items are permitted, in light of current budgetary constraints, they should be used only on a highly limited basis and in circumstances where they are necessary and critical to maintaining the agency's mission. In addition, consistent with the policy set forth in the Guidance on Awards for Fiscal Years 2011 and 2012, jointly issued by the Office of Personnel Management (OPM) and OMB on June 10, 2011, spending for QSIs and 3Rs should not exceed the level of spending on such incentives for fiscal year 2010.

With respect to Federal political appointees, agencies should continue to follow the policy set forth in the August 3, 2010 Presidential Memorandum, Freeze on Discretionary Awards, Bonuses, and Similar Payments for Federal Political Appointees. OPM previously issued guidance on implementation of this memorandum.”

The Office of the Under Secretary of Defense for Personnel and Readiness will be issuing supplemental guidance on award limitations for DoD civilians.

Participation in International Events

The Department should limit its participation in international events except in those instances where individuals are supporting Foreign Military Sales and the funds supporting these efforts are not being sequestered because the accounts are exempt from sequestration.

Components may continue to participate in military exercises and to conduct military-to-military engagement activities, including participation by DoD personnel in bilateral or regional conferences, seminars, or similar meetings if the appropriate conference approval authority determines that the attendance of such personnel at such conference, seminar, or similar meeting is in the national security interests of the United States. In addition, Components may continue to use - in accordance with established guidance and approval procedures - the authority provided by reference (d) to pay travel and subsistence costs for defense personnel from developing countries in order for them to attend conferences, seminars, or similar meetings considered in the interest of U.S. national security. In this period of sequestered budgets, however, Component Heads should take particular care to ensure that any military-to-military engagement activities, including conferences, seminars, or similar meetings, are mission critical and that the goals of the

¹ Consistent with legal requirements, agencies may consider engaging in discussions with employees' exclusive representatives to explore revisions to such provisions in existing collective bargaining agreements, in recognition of this guidance.

activity cannot be deferred or met through other means. We also ask that you take into account factors that could result in special scrutiny of an event, including size, cost, and location. Utilization of military musical units or ceremonial units in military-to-military engagement activities will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval.

Demonstration Flying

All aerial demonstrations, including flyovers, jump team demonstrations, and participation in civilian air shows and military open houses were to cease as of April 1, 2013, consistent with previous direction. Flyovers in support of military funerals will be given special consideration. To ensure consistency across the Department all exceptions and waivers for demonstration flying will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval.

Support to Non-DoD Organizations and Special Events

All military support to non-DoD organizations and special events for outreach purposes beyond a military installation's local area is prohibited. Military support to outreach activities in the local area is permitted so long as the support is provided using only local assets and personnel, and is at no cost to the Department. This includes, but is not limited to, military equipment displays at civilian air shows, military open houses, Fleet and Service weeks, and CONUS-based ship homeport visits, and in parades and civic events. The use of non-appropriated funds (NAF) to host military installation open houses in support of authorized NAF programs is permitted in accordance with reference (e). To ensure consistency across the Department, all exceptions and waivers for support to non-DoD organizations and special events will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval. This section does not apply to DoD Component Recruiting Marketing activities using Recruiting assets, National Guard outreach activities funded solely by State funds, and attendance by DoD personnel at a non-DoD hosted conference.

Military Musical Unit (and Ceremonial Unit) Travel

As a matter of policy, military musical and ceremonial units will not be permitted to travel beyond their respective duty station's local area for any purpose, including support to another military installation, even if such travel could be conducted at no cost to DoD. Units may continue to perform locally both on and off military installations, including for the purpose of producing and distributing audio and video recordings, as long as those performances, productions and distributions are at no cost to the Department. To ensure consistency across the Department, all exceptions and waivers will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval. Presidential Wreath-Laying Ceremonies are exempt from this restriction. In addition, Military Funeral Honors Details are exempt from this restriction and will continue to be executed in accordance with Service Department policies and reference (f).

Official Speeches and Related Travel Expenses for DoD Personnel

Department of Defense personnel may not travel beyond the local area at DoD cost, including to deliver official speeches, unless the activity is deemed mission critical. Each organization in the Office of the Secretary of Defense (OSD), Service Component or Combatant Command (COCOM) is responsible for making this "mission critical" determination. Expenditure of DoD travel funds to support a mission critical official speech must be approved by the member's respective OSD organization, Service Component or COCOM leadership. The Department may continue to accept unsolicited travel benefits from non-Federal sources in accordance with reference (g). However, all expenses for non-mission critical travel must be covered by the non-Federal source, including per diem, lodging, meals, transportation and all other travel-related expenses.

Conference Attendance

As you know, the Deputy Secretary of Defense has issued guidance requiring that all conferences be mission critical. There are also certain individuals who must approve conferences, depending on their nature and size. If you have questions about this guidance, it is available for review at: <http://dcmo.defense.gov/products-and-services/conference-policies-controls/index.html>.

Even under sequestration, we do not want to prohibit conferences, including hosting of or attendance at DoD-hosted conferences or attendance at conferences hosted by non-DoD entities. However, in this period of sequestered budgets, we ask that commanders and managers take particular care to be certain that conferences are indeed mission critical and that the goals of the conference cannot be met through other means. We also ask that you take into account factors that could result in special scrutiny of conferences including size, cost, and locations that are remote from the workplace of most participants. Particular care should be exercised in assessing the need for conferences held overseas or in other locations likely to attract special attention.

If, after weighing the above considerations, travel approving officials determine that attendance at conferences hosted by non-Federal sources during sequestration is still appropriate, if asked, the host may be informed of DoD's authority to accept payments for travel, subsistence, and related expenses pursuant to reference (g). Payments for travel expenses under reference (g) may not be solicited. Apart from this statute, we do not have authority to accept reimbursements from non-Federal entities in a manner that can be used to offset DoD's costs of participation in a non-Federal source's conference. All DoD travel approving officials should ensure that DoD employees attend only those conferences that satisfy the criteria set forth in the preceding paragraph and that, wherever appropriate, all travel, subsistence and related expenses incurred by DoD are reimbursed in accordance with reference (g).



READINESS AND FORCE
MANAGEMENT

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

MAY 21 2013

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Supplemental Guidance on Leave Without Pay Status for the Department of Defense Civilian Employees during an Administrative Furlough

On March 5, 2013, the Office of Personnel Management revised the Guidance for Administrative Furloughs. The revision states "Agencies have discretion in determining whether to furlough employees who are in Leave Without Pay (LWOP) status, since both furloughs and LWOP are periods of non-pay status."

This memorandum provides the Department of Defense supplemental guidance on the treatment of employees who are in LWOP status during an administrative furlough. For consistency and fairness, this guidance applies to employees in all categories of LWOP, including employees on leave under the Family and Medical Leave Act (FMLA) and Absent-Uniformed Service Leave (A-US). The guidance achieves required civilian payroll savings while maximizing productivity without creating additional financial burden for employees.

Employees who are in LWOP status during an administrative furlough will receive credit for their time in that status towards any remaining scheduled furlough hours.

- During an administrative furlough, employees issued furlough notices will be subject to scheduled furlough time until an approved period of LWOP begins.
- Once the previous furlough hours served plus LWOP hours taken during an administrative furlough equals the number of furlough hours required during the administrative furlough, no additional furlough time will be required.
- When a period of LWOP ends during the administrative furlough, the employee will be subject to the remaining balance of furlough time, if any.
- Managers and supervisors are advised to limit discretionary LWOP to the maximum extent practicable during the administrative furlough.
- LWOP taken prior to or after the administrative furlough will not be credited toward required furlough time.
- This guidance does not supersede any past practice or collective bargaining agreement. All bargaining obligations must be met prior to implementing a change in conditions of employment based on this guidance.

If you have questions about this guidance, my point of contact is Mr. Seth Shulman, Chief, Compensation Division, Defense Civilian Personnel Advisory Service. He can be reached at (571) 372-1617, or seth.shulman@cpms.osd.mil.



Paige Hinkle-Bowles
Deputy Assistant Secretary
Civilian Personnel Policy

DISTRIBUTION: ASSISTANT G-1 FOR CIVILIAN PERSONNEL POLICY
(DEPARTMENT OF THE ARMY)
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Presenter: Senior Department of Defense Officials

May 14, 2013

Department of Defense Background Briefing on Civilian Furloughs from the Pentagon

MODERATOR: So thank you for joining us this afternoon.

As you know, the secretary has made a decision with respect to furloughs, which he announced just about an hour ago. But we thought that you may have some additional questions about how the department came to this decision and how the furloughs will be implemented.

And so, we wanted to give you an opportunity to be able to talk to some of our senior subject matter experts on this.

It is a background briefing, so we have provided the bona fides for each of our senior officials here, but I guess for question purposes, we have senior official one and senior official two, if you want to direct it to a particular individual, or you can ask for either one of them to answer it.

Obviously, by their titles there, they come -- they have different expertises within the department.

And our plan is we -- you -- I think most of you have gotten the secretary's statement on this, and probably watched what he said to the department employees. So it's our plan, really, just to get right into questions and take care of the business that you need to take care of and then get out of here.

So, with that, Lita why don't you start us off then, and we'll go to Courtney and then to Tony, and we'll see where we go from there.

Q: Senior Defense Official Number One, the secretary alluded to this briefly during this town hall, about next -- this fiscal year 14. Can you clear up a little bit about, there's a 1 percent raise for civilians, apparently, in that, but would sequestration -- how -- what does the outlook for next year look like, considering sequestration and --

SENIOR DEFENSE OFFICIAL: I wish I knew. I honestly don't. There's a wide range of possibilities. We could get a budget agreement, a broad one, in which case I think we'd have a decent shot at appropriation near the president's budget level.

Both the House and Senate budget resolutions, these things they set -- you're familiar with them -- were at the president's level for fiscal 14.

At the other extreme, I guess the process could stay broken and we could end up on a continuing resolution at the sequester levels.

As far as the pay raise, sequester, doesn't -- you can't actually effect raises per se in sequestration. So if Congress were to approve that 1 percent raise, people would get it. Whether they will or not, I don't know. We proposed a raise of 1 percent for both military and civilian in fiscal year 14, but we also proposed a 0.5 percent raise in 13 and that's not going to happen.

Q: Would you -- (inaudible) -- two things. First off, do you know the total number yet of how many civilians this will include, with all the exemptions that are now included? And then, can you give us a sense of the decision-making behind making this an across-the-board furlough for all civilians despite the fact that several of the services said that they may not have to, that they could find the money?

It seems -- I'm not -- I'm certainly not a budget expert, but it seems like it's relatively unprecedented to say, "Well, you know, Navy and Marine Corps, you don't have to do this, but we're going to make you do it anyway." And so can you tell us a little bit about the decision-making, please?

SENIOR DEFENSE OFFICIAL: Sure. There's about 800,000 paid -- civilians paid by the Department of Defense. About 120,000 will be exempt, so it's not really across the board. There are some categories of exemptions. And I should add, there are some issues yet to be resolved with regard to intelligence personnel that could increase that 120,000, but right now it's about 15 percent.

In terms of the decision, and specifically like the Navy and some agencies, in any organization this broad, this complex, you're going to have organizations with differing budgetary situations. And some may have been in a situation where they could do less furloughs.

It was our judgment that we wanted to minimize adverse effects on mission across the entire department. And so what we will do to the extent we're permitted by law is, except for those who are exempted, we will furlough the remainder of our civilians and then move money around to try to minimize adverse effects on readiness. And we will do probably some of that in this reprogramming that hasn't made it up to the Hill yet, but I hope will soon. And we may look at other options as well.

Q: I don't understand what -- when you say "minimize adverse effects on readiness," how does increasing the number of civilians to be furloughed minimize -- the impact -- (inaudible)?

SENIOR DEFENSE OFFICIAL: Well, if we -- if the Navy has the funds, say, to avoid furloughs, and now they furlough, we may be able to move some money into the other services that have more problems. And the Army and the Navy definitely need to furlough, and they're the ones that have made the big cuts in training and readiness -- the Army, Navy. The Air Force, I should say, has stopped flying in 12 squadrons. Army has canceled its combat training rotation for the most part, et cetera.

Q: -- (inaudible) -- money that would, if they were furloughing civilians in the Navy and Marine Corps, some of that money that will be saved from the furloughs will now go to the Army -- (inaudible)?

SENIOR DEFENSE OFFICIAL: Right, or we may just end up doing a little less for the Navy, and the reprogramming is probably the way we do it.

Q: Can you reconcile the figures on total number of civilians? From the podium a number of times, officials have stated that it's about 750,000 who would be eligible. You just said 800,000.

SENIOR DEFENSE OFFICIAL: The 800,000 includes foreign national employees. There are about 50,000 of them. So it depends -- foreign national employees are in the 800,000, so the 750,000 would exclude foreign national employees.

Q: But for purposes of clear reporting, it's 750,000 minus about 120,000.

SENIOR DEFENSE OFFICIAL: No, actually it's 800,000 minus 120,000 because we've exempted the foreign national employees. You're looking at me -- so if it's 750,000, it would be less 70,000, if I'm doing the math right.

So, all right?

Q: -- (inaudible) -- really a figure of 750,000 -- (inaudible).

SENIOR DEFENSE OFFICIAL: And, you know, you can define it in lots of different ways. And you could logically exclude foreign nationals. They're not U.S. citizens, obviously. But they are -- some of them are paid by the department and so we normally include them in our totals.

Q: I have a second question. The appropriations bill requests a report to Congress in section 807 -- 8007, laying out the effects of sequestration for baseline purposes, for reprogramming purposes. Where does that stand? And will that spell out for the industry who cares how their particular programs will be cut by sequestration?

SENIOR DEFENSE OFFICIAL: Yeah, it should. I mean, we need to do -- (inaudible) -- 14 -- I think I've got that right -- Senior Defense Official One isn't entirely sure of this answer so I'll get back to you if I'm wrong. But I believe that it's the baseline report that we do before. And it's almost done. You can imagine that it is a little trickier to do this year, but it is almost done.

And if I'm wrong about that, give me a chance to work through -- (inaudible) -- and I'll correct it.

Q: Thank you.

MODERATOR: Let's -- let's -- finish the first row before we move to the second row. So we'll go to Luis and then we'll go over here, and then we'll hit the second row. I think we'll get everybody that has questions.

Q: So just to clarify, every single service is now gonna have furloughs? And were the levels of civilians adjusted within each one? I mean, which one comes off getting better?

SENIOR DEFENSE OFFICIAL: Well, I don't know the answer to that, actually. Yes, they'll all have some furloughs for sure. I don't know who would have the highest percentage exemptions. It -- it -- I'm just not sure. I need to check that.

We didn't really think about it in those terms, frankly.

Q: But the Navy proposal was basically we can do without the furloughs. Now they will have to carry out these furloughs, that's right?

SENIOR DEFENSE OFFICIAL: Correct. Now we are excluding their shipyard workers. These are the people that work in public shipyards and do nuclear maintenance. And we did that for mission reasons. It's a very long planning process. And there're -- there're -- a very long period for maintenance. Very little ability to catch up, and we're dealing with submarines and carriers, which are small in number but high in value. And so on mission grounds we decided that we would exempt shipyard workers.

MODERATOR: Go over here to the right.

Q: Thanks. I want to make sure that I understand the numbers correctly. When I added up the table that's in this memo, comes out to about 68,000 workers. That includes 11,000 DODEA [Department of Defense Education Activity] employees. Are they considered exemptions or are they semi exempt, or --

(CROSSTALK)

SENIOR DEFENSE OFFICIAL: They are considered semi exempt. There was a group of DODEA employees that will be exempt, and then the teachers and the faculty will be furloughed for a total of five days at the beginning of next school year.

Our commitment to -- to our service men and women who have children in these schools is that they will get a accredited school year. Summer school will be held, and then the beginning of next school year, we will work with five furlough days.

Q: So follow-up. -- (inaudible) -- out of the 68,000 -- that was my rough calculation -- and the 50,000 foreign nationals, is that where you get the 120,000 --

(CROSSTALK)

SENIOR DEFENSE OFFICIAL: Sounds about right to me.

SENIOR DEFENSE OFFICIAL: Adds up. I haven't done that calculation either, although the nice gentleman who did all these numbers is in -- (inaudible). So he gave me the 120,000 and I think it's right.

MODERATOR: -- (inaudible) -- on the first row? If not we'll move -- let's just go from my right to left. So go ahead.

Q: Senior Defense Official Two -- I guess, either of you -- you just mentioned five furlough days, as I understand it, for teachers.

SENIOR DEFENSE OFFICIAL: For DODEA.

Q: Right.

Aside from the number of people to be furloughed, are -- is -- are the -- is the length of time of each particular furlough different or is it the same? And if it's different, what's the range of difference -- you know, one day to 14 days to -- I mean, do you know the parameters?

SENIOR DEFENSE OFFICIAL: The — the going in proposition is that the majority of our employees who will be furloughed will be furloughed up to 11 days. And that's what the secretary's letter said. DODEA is a special category because of having very specific rules for educating and making sure that they have an accredited school year.

They're, I think — I need your clarification on this. I think PFFA (Pentagon Force Protection Agency), the Pentagon police, might be furloughed a little differently —

SENIOR DEFENSE OFFICIAL: I'm not sure.

SENIOR DEFENSE OFFICIAL: Yeah. So I can get back to you on that. But the going-in proposition is 11 days.

SENIOR DEFENSE OFFICIAL: Yeah, for the great majority here at 11.

SENIOR DEFENSE OFFICIAL: Yeah, for 11.

Q: — (inaudible) — said up to 11 days. Does that mean it might be one day or two days?

SENIOR DEFENSE OFFICIAL: No, I think that — what I'm saying is that right now our employees will be furloughed for 11 days.

SENIOR DEFENSE OFFICIAL: Remember, Secretary Hagel did say that if we can and our budget permits, at the end of the year we may stop a bit early. And, therefore, the up to 11. It could be a little bit less than 11.

Q: What's DODEA?

SENIOR DEFENSE OFFICIAL: I'm sorry. The Department of Defense Education Activity.

SENIOR DEFENSE OFFICIAL: Come on, speak Pentagon. (Laughter.)

(CROSSTALK)

Q: — eight years here.

SENIOR DEFENSE OFFICIAL: Eight years. Well, I don't know.

If it makes you feel better, I forget them.

Q: Will you guys be providing any help with some of your furloughed employees, in terms of financial management, understanding how to prepare for this?

SENIOR DEFENSE OFFICIAL: We have a whole system of financial management that they — that the employees can certainly work through. And, in fact, it was just recently that we had a very large financial management fair here in the Pentagon for them.

But there are resources on how to manage your money that are provided through our department.

Q: But nothing special to this furlough situation?

SENIOR DEFENSE OFFICIAL: No, it's not — whatever we have will certainly take care of that financial management arena.

Q: I have a couple questions. One, first for second Senior Defense Official Two. What's the anticipated impact on the department's operations because of these furloughs?

SENIOR DEFENSE OFFICIAL: Well, I think that the anticipated impact is — can clearly be the morale of our employees. I will tell you that we value every single civilian employee that — that works in the Department of Defense. And 85 percent of them work outside of the National Capital Region, and they all add value to the mission that we do as a total force. And they're clearly part of that total force.

But when an individual loses 20 percent of their pay, which, that's what will happen when we furlough, that has to impact them, clearly, financially and clearly morale-wise.

I believe that they will continue to perform in an admirable manner. But I'm sure that there will be some morale impact.

SENIOR DEFENSE OFFICIAL: I'd like to add to that. I mean, these people aren't doing PowerPoint slides in the Pentagon. I mean, they're mostly outside of the Pentagon. As (inaudible) said, they fix our ships, our tanks, our planes. They staff our hospitals. They're teachers in our schools.

Eighty percent of the financial managers in the department are civilians. And it's probably similar to that for contracting.

We're going to have problems in terms of getting money obligated, in close-out, personnel staffs to handle furloughs. We're going to delay maintenance. I think we will seriously adversely affect the productivity in almost all areas — support areas of the Department of Defense.

This is a — it's not something we wanted to do.

I hope — I hope that's clear from the secretary's memo, but I'd like to underscore it.

Q: — (inaudible) — the 20 percent figure that you just cited?

SENIOR DEFENSE OFFICIAL: What?

Q: 20 percent of their pay?

SENIOR DEFENSE OFFICIAL: Well, if they're furloughed one day a week every week, that's 20 percent of their paycheck.

Q: How does that tie in with the 11 days? I'm sorry.

SENIOR DEFENSE OFFICIAL: One day a week, it will begin on July 8th. And so one day a week, they'll lose 20 percent of their pay — of their weekly pay, right.

Q: I understand that, but I thought you said 11 furlough days for the entire fiscal year.

SENIOR DEFENSE OFFICIAL: Sure. And during those -- during those weeks when they're furloughed, each week they'll lose 20 percent.

(CROSSTALK)

SENIOR DEFENSE OFFICIAL: It's not the whole year.

(CROSSTALK)

SENIOR DEFENSE OFFICIAL: Yeah, right.

(CROSSTALK)

Q: And do you anticipate any impact -- are you seeing any impact on attrition? I mean, are people retiring, voluntarily separating, at this point? Do you anticipate any?

SENIOR DEFENSE OFFICIAL: Right now, we don't see a major impact on that, of people retiring. I'm sure that people will retire, but we haven't seen a push towards that.

SENIOR DEFENSE OFFICIAL: I might give you an anecdotal. We had one individual that left my organization and said it was because of this, but I think he would have retired at some point fairly soon. So I wouldn't extrapolate; 7.8 percent unemployment, or whatever it is right now, does create an environment where there aren't a lot of jobs out there.

Q: Can you go back to what happens on the beginning of October, assuming you have a straight CR [continuing resolution] that -- then we just end sequester. What's the anticipated impact on DOD's budget? And what are you doing at this point to prepare for it? Is there a possibility furloughs could continue in FY [fiscal year] 14?

SENIOR DEFENSE OFFICIAL: Well, in terms -- it would be about a \$52 billion cut below our request if we remain at sequester levels. So it will be serious. Secretary Hagel has directed the strategic choices and management review, the SCMR as we call it, and it is looking at the kinds of choices we will have to make.

As Secretary Hagel said today, we can't rule out furloughs, but we're sure going to do our damndest to avoid them. And this time, we will have more time to prepare and we are thinking actively about how, if we have to, we would accommodate that. So, as I said, I think we'll do everything we can to avoid them.

Q: And lastly, on the shipyard exemption, I'm already hearing complaints that these are politically motivated; that members of Congress who represent those shipyards were very vocal in defense of them. How do you respond to that?

SENIOR DEFENSE OFFICIAL: Well, there will be lots of members of Congress who will oppose other ones, too. But it was based on mission grounds. I mean, we're talking about overhauls that -- that last months, sometimes more than a year. They are planned well in advance. Had we delayed them, we would have -- we have very little ability to make it up. These are highly technical. We're talking about nuclear safety. All these workers do nuclear maintenance. So that we -- we couldn't just bring in other people to make it up when we had more funds. They wouldn't have the training.

And so we were really talking about seriously adversely affecting our ability to deploy carriers and submarines. And we made a decision that that was too serious an adverse effect on mission.

(CROSSTALK)

Q: -- (inaudible) -- follow up on one of those last ones, actually. (inaudible) -- the thinking that furloughs are some potential possibility in 14. Is that a change? Because a senior defense official, who may or may not be in this room, has said before that you just would not do them in 14. You'd probably do RIFs [reductions in force] or other kinds of -- (inaudible).

SENIOR DEFENSE OFFICIAL: Well, that was probably senior defense official one, speaking with his heart, not necessarily his head. I sure hope we don't, personally, but I understand we can't know the future fully. But I'll underscore what Secretary Hagel said just a few minutes ago. We're going to do our damndest to avoid it.

Q: Then quickly on the safety of life and property exemptions, the Department of Navy has far and away the most in that category -- 7,500. Nobody else is even close. The next closest is 900 in the Air Force and there's a big gap behind them. Why are there so many in the DON [Department of Navy]?

SENIOR DEFENSE OFFICIAL: We've got a lot of -- I think there were shipyard issues. I'm trying to remember now. This is a couple months ago we did this.

I believe there were in -- in nuclear safety and ship issues, but I'd -- I think I better get back to you with a better answer because I'm not -- I'm not tracking fully. Let me get back to you.

Q: Let's go here and then we'll work the third and fourth row.

Q: I just have one question. Are there -- there are rules against civilian employees working other jobs, like, let's say they wanted to work one day a week. Aren't there -- can you describe what those rules are or --

(CROSSTALK)

Q: -- if you're still working for the government, so even though they're off that day, they're still under those rules, right? So what's the --

SENIOR DEFENSE OFFICIAL: They are still government employees. Absolutely. Even though that they are furloughed for that one day. And OPM [Office of Personnel Management] has specific rules in place, and they are the Web site about what they are.

There is -- there is a -- a waiver, if you will, for additional employment, that the employee would need to follow, should they want to -- to go through that process.

Q: -- (inaudible) --

SENIOR DEFENSE OFFICIAL: I would have get back to you. But it -- we follow -- they are not DOD [Department of Defense] rules, they are OPM rules.

MODERATOR: You guys in the back of the room. I saw a few hands. Go ahead.

Q: -- (inaudible) -- the memo, but when do the letters go out?

SENIOR DEFENSE OFFICIAL: They go out between the 28th of May and the 5th of June.

Q: And those receiving them have seven days to reply. Does that mean that they can -- they can make an argument, you know, don't -- don't furlough me, furlough somebody else? What?

SENIOR DEFENSE OFFICIAL: They can respond. First, they can respond to the designated -- their designated official in that seven days with justification of why they should be potentially in the exempt category.

The designated official will review all of that justification and make a decision.

Q: Who sends the letters? Who signs the letters? Who do they go out from?

SENIOR DEFENSE OFFICIAL: It's a designated official, which is a lower level, I'll use the term "commander." They're not all commanders.

Q: Can you just -- can you describe, what do the letters actually say?

SENIOR DEFENSE OFFICIAL: The letters are very specific. They say that you will be -- we're proposing a furlough for X amount of days, starting at X -- at a certain time, which would be on 8 July. And they're addressed to each individual employee.

So it's not a -- it's a -- it's a template letter. But each individual employee gets their own specific letter.

MODERATOR: Let's go over here and then back and then back.

Q: When it comes to the actual choosing of a day, do the employees get some say in what day they get off? And at the same time, as you -- you as an agency, I mean, can we expect that 20 percent of the 680,000 will be gone on any given day, starting July 8th?

Like how are you -- how are you managing having enough people that are on?

SENIOR DEFENSE OFFICIAL: For example, let me give you an example of commissaries. Commissaries more than likely will be closed one day a week. They will, more than likely, select one day throughout all the commissary system. And they will do that because that is -- everybody will know when that day is. They can plan their shopping around that particular day. And they could limit the deliveries on that particular day.

So that would be a reason that commissaries would close on one particular day.

The hospitals, the school systems, potentially the depots, will be judged by their personal supervisor on which day several employees could potentially be furloughed. So we won't close a hospital. We won't close the depot. We'll keep things running, but the day will be negotiated by the individual super -- or designated official.

Q: How much money do you think you're going to save if you keep all 11 days -- furlough 11 days? How much money is that?

SENIOR DEFENSE OFFICIAL: \$1.8 billion for the 11 days, with the exceptions that we're planning now.

(CROSSTALK)

SENIOR DEFENSE OFFICIAL: Yes, "billion" with a "b."

Q: Secretary Hagel left open the possibility of reducing this further. What would have to happen to make that happen this year, short of sequestration being averted?

SENIOR DEFENSE OFFICIAL: Well, first, no large, unanticipated costs would be very nice. The United States Congress approving the majority, if not all of the reprogramming that I hope we'll send to them within a few days. And then we're going to just have to put our heads together and try to scoop up every dollar we can toward the end.

I mean, it's a decentralized organization and we deal, especially with operations and maintenance dollars, and those are the major ones affected here. And so our commands pass it out to their bases. They're executing it. We're going to have to work closely with them toward the end of the year to see where they are and whether or not we can make this happen.

But I'm counting on the incentives. After all, they're the employers of many of these civilians, so I'm hoping, and I think they will work with us and we'll see what we can do.

Q: You mentioned that the requirement to have all the services implement some level of furlough is to achieve larger savings. How do you prioritize the distribution of those savings? In other words, is it readiness? How do you prioritize?

SENIOR DEFENSE OFFICIAL: Well, first I want to make clear that the overall goal is to minimize adverse effects on missions. And I state it that way because we are devastating the readiness of this military right now, but we want to minimize that.

Subject to meeting that goal, consistency and fairness was something we considered. So as those decisions were made, you know, if a service has more readiness problems than another one, we might -- we probably wouldn't take money from them. We'd just reprogram money less into their -- their particular account. And I think you'll see some of that as we send this reprogramming forward.

So the goal is to meet that mission, minimizing adverse effects, particularly readiness. We've already made the cuts we believe we can. In facilities maintenance, we've essentially stopped it except for safety of life and property. We've cut back on base operating costs. We have hiring freezes, not across the board, but many of them are in effect.

I mean, we've done a lot of those tasks. It's really now down to training and maintenance. It's actually more maintenance at the moment. We've made about as many training cuts as we can and still meet needs in Afghanistan and deployments. So we're really now down to further cuts would come out of maintenance, which buys us problems in fiscal 14. It means we won't have the weapons systems ready to deploy.

So, we'll use the criteria minimizing those aspects.

(CROSSTALK)

MODERATOR: -- (inaudible) -- want to make sure everyone that had a question, had a chance to ask them. We'll see if we've got a few more -- (inaudible).

Q: Thanks. (inaudible) -- the employees who get furloughed -- (inaudible) -- write a letter stating why they shouldn't be furloughed. Is financial hardship a reason that they might be considered?

SENIOR DEFENSE OFFICIAL: No, it's truly not, unfortunately. You know, this is a very, very tough decision, and we understand that it will create financial hardships across the board. But that is not the -- a sure reason for -- for exempting from furlough.

Q: So what would be some of the reasons that would?

SENIOR DEFENSE OFFICIAL: Boy, I really -- you know, at the top of my head -- I don't know -- (inaudible) -- if you can help me out here, but I really can't -- can't think of a -- of a reason right now.

I think the individual supervisor -- or the individual designated official would have to review what the employee submits to -- to weigh that against what he or she needs to do mission-wise in order to accomplish that mission.

SENIOR DEFENSE OFFICIAL: And I suppose there could be a circumstance that where a person had a mission-critical aspect that we just couldn't recognize from -- from here, and that -- that a local commander might take that into account.

And, indeed, if you read the memo, they have some very small authority to do some furlough exemptions on their own.

Let me just say, Senior Defense Official One would like to say, this conversation is kind of bloodless. And I understand we're trying to answer your questions. But I want to repeat what you may have heard me say before, this is one of the most distasteful tasks I've had in more than 30 years of government service.

I mean, we are -- we depend on these people to -- to do all the things I mentioned before. And many of them work for me -- not many of them, but a small numbers work for me. And I -- I just -- I find it very distasteful. I mean, I just want to -- Senior Official One would like to be on record as not being bloodless.

And now, I'll go back to being the -- (inaudible). (Laughter.)

SENIOR DEFENSE OFFICIAL: But Senior Official Two would echo what you said, that it's a -- it's a very painful process. And it -- it wasn't made lightly; it was made with a lot of pain and anguish.

MODERATOR: All right. -- (inaudible) -- Let's take a couple real quick ones, if we have --

Q: Just a quick question. You mentioned at the beginning some possible, down-the-road changes, something at DIA. Is that -- (inaudible) -- intelligence, or --

(CROSSTALK)

SENIOR DEFENSE OFFICIAL: We need to work out with the national intelligence folks exactly what furloughs the people funded by the national intelligence program, if any, have been. And they were not included in the 120,000 estimate.

Q: Right. I thought -- I guess I thought I'd seen something where those in the MIP [Military Intelligence Program] group would have furloughs and those in NIP [National Intelligence Program] would not. Is that --

(CROSSTALK)

SENIOR DEFENSE OFFICIAL: What the memo says is those in NIP, N-I-P, would be determined by the director of national intelligence. And I don't know -- I mean I think he's -- he's made pretty clear where he's heading, but I don't know if he's formally said it. And I thought, heck, ask them, so that we can adjust our numbers.

Q: Okay. So that's the part you're saying is not sure. But anyone -- are there exemptions in -- within the military?

(CROSSTALK)

SENIOR DEFENSE OFFICIAL: I don't think there are more. I mean, there may be a few of these onesies and twosies. And, you know, as they go back out and -- I don't -- but I don't think there are going to be large changes.

I mean, we want to give -- we don't want to run this with a 6,000-mile screwdriver if we can avoid it. We really want our commanders to have some latitude. But we will -- I also don't expect them to come back and say I want 5,000 more exemptions. So there better be a heck of a good reason.

(CROSSTALK)

Q: -- (inaudible) -- at one point -- (inaudible) -- a lot of the members of Congress and public are going to say, "Why the hell don't you cut out an F-35 or a littoral combat ship or ground combat vehicle, hardware instead of people?"

This is not a lot of money for this department. It's kind of staggeringly low amount. And yet it's causing all this pain -- (inaudible). And I empathize with that.

SENIOR DEFENSE OFFICIAL: Well, first, we wouldn't have the authority to do that, Tony, I mean, because this sequestration is by account. And so, I have to get it out of the O&M [Operations and Management] account.

And I could only reprogram, but I'm using every dime -- almost every dime in transfer authority I have, so I wouldn't be able to take anymore out of investment.

And, second, I mean the problem is we've already made so many cuts. We've cut out almost all facilities maintenance. We've stopped flying at 12 combat-coded squadrons. We've cut out all training rotations, except for deploying units at -- at Irwin and Polk.

We've done -- and -- and a whole lot of other extras. I read our weekly report and it just -- dozens of exercises we're stopping. We've stopped most ceremonial everything pretty much.

(CROSSTALK)

SENIOR DEFENSE OFFICIAL: So we've already done all these things. If we were gonna get that \$1.8 billion -- I know it doesn't sound like much -- in a three-month period or even the six that we have left, we would have had to go after more maintenance or further shutdowns of units. And I think Secretary Hagel decided, and I believe it was the right decision, that that isn't something we ought to do -- would go too far.

Q: (off mic) this is -- (inaudible) -- didn't have discretion to cut across from different accounts. You had to --

(CROSSTALK)

SENIOR DEFENSE OFFICIAL: Well, it certainly didn't help. I mean, I would have preferred to have more transfer authority. We asked for it, and it just didn't happen and it's not going to happen. So it certainly didn't help.

Q: The number of days -- said 11. All things being perfect toward the end of the year, whether there're any fluctuations -- (inaudible) -- can the number fluctuate above 11 or you're only talking about fluctuations below --

SENIOR DEFENSE OFFICIAL: No.

(CROSSTALK)

SENIOR DEFENSE OFFICIAL: Below.

SENIOR DEFENSE OFFICIAL: It's up to 11.

Q: So eleven is the top line --

SENIOR DEFENSE OFFICIAL: Right.

Q: Thanks.

MODERATOR: The last question today.

Q: And to follow up on Tony's question about the relatively small amount of money comparatively -- compared to the amount of the sequester, is there -- I was talking to one union official who saw this as a politically driven decision; that DOD hopes that now people on the Hill will respond by canceling the sequester or mitigating the impact. Do you help with that? And is -- was that a motive?

SENIOR DEFENSE OFFICIAL: That doesn't seem like it's gonna happen to me. I mean, I'd sure like them to, but I'm not anticipating it.

And, you know, I can tell you, it was not politically motivated. I was in on these meetings. We were saying, "All right, what are we gonna do? How much more maintenance are we gonna cut? What are we gonna cut? Are we gonna go after aviation maintenance? Are we gonna start cutting base ops by closing airfields?"

And we just felt that those steps which we would have had to take to get that \$1.8 billion, given everything else we've done, would have had serious adverse effects on our mission, and that's why we made this decision.

MODERATOR: Okay, I want to thank you all for coming today. We have taken a couple of questions. The press office will have the answers to the taken questions this afternoon. So -- (inaudible) -- right here as well as -- (inaudible) -- are tag-teaming this in the press office. So on the taken questions if you want to check back with them they'll have them for you.

Thanks very much.

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MAY 14 2013

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
CHIEFS OF THE MILITARY SERVICES
COMMANDERS OF THE COMBATANT COMMANDS
CHIEF OF THE NATIONAL GUARD BUREAU
DIRECTOR, COST ASSESSMENT AND PROGRAM
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GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
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DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Furloughs

This memo directs defense managers to prepare to furlough most Department of Defense (DoD) civilians for up to 11 days. The schedule for furloughs, and some specific exceptions, are described later in this memo and in the attachment. I have made this decision very reluctantly, because I know that the furloughs will disrupt lives and impact DoD operations. I, along with the senior civilian and military leadership of the Department, have spent considerable time reviewing information related to the need for furloughs, and I would like to share with you the reasoning that led me to this difficult decision.

Major budgetary shortfalls drove the basic furlough decision. On March 1, sequestration went into effect across the federal government. DoD's budget for FY 2013 was reduced by \$37 billion, including \$20 billion in the operation and maintenance (O&M) accounts that pay many of our civilian workers. In addition, because our wartime budget is also subject to sequestration, we must utilize funds originally budgeted for other purposes in order to provide our troops at war with every resource they need. To compound our problems, when we estimated future wartime operating costs more than a year ago, we planned on fuel costs below what we are currently experiencing. Taken together, all these factors lead to a shortfall in our O&M accounts of more than \$30 billion – a level that exceeds 15 percent of our budget request, with fewer than six months left in the fiscal year in which to accommodate this dramatic reduction in available resources.

We are taking actions to reduce this shortfall. One main priority has governed our decisions: to minimize the adverse effects on our military mission, including military readiness. With this in mind, early this calendar year we cut back sharply on facilities maintenance and worked to hold down base operating costs -- decisions we knew would build a backlog of maintenance and adversely affect our bases. We are also preparing a request to Congress that would permit us to shift some funding from investment and military personnel accounts into the O&M accounts. If approved by Congress, this initiative -- known as a reprogramming -- would help close the gap.

But these actions are not enough. We have begun making sharp cuts in the training and maintenance of our operating forces -- cutbacks that are seriously harming military readiness. The Army, for example, has terminated most remaining FY 2013 training rotations at its combat training centers. The Air Force has or soon will stop all flying at about one-third of its combat-coded squadrons in the active forces. The Navy and Marine Corps are cutting back on training and on deployments -- including a decision not to send a second carrier strike group to the Gulf. These are only a few of the many cutbacks we have made in training and maintenance. These actions reduce our ability to handle future military contingency needs, both this year and in subsequent years.

Even after taking all these actions, we are still short of needed operating funds for FY 2013, and we cannot rule out unexpected increases in costs during the next few months. So we confront a difficult set of trade offs. We can make even larger cutbacks in training and maintenance, further reducing readiness to handle contingency operations and putting into even greater jeopardy our military readiness in future fiscal years. Alternatively, we can furlough civilian personnel to help close the gap and, knowing that morale, productivity and readiness would be affected. This is an unpleasant set of choices, but this is the situation we face.

Before making a decision, I sought advice and inputs from senior leaders in the military departments and agencies as well as advice from my senior civilian and military staff. I asked them to keep in mind our fundamental criterion to minimize adverse mission effects and, subject to that criterion, to ensure reasonable consistency and fairness across the Department for any furloughs that we impose.

Based on all these inputs, I have decided to direct furloughs of up to 11 days for most of the Department's civilian personnel. Furloughs for up to 11 days represent about half of the 22 days that can legally be imposed in a year and also about half the number we had originally planned. This halving of previous furlough plans reflects vigorous efforts to meet our budgetary shortfalls through actions other than furloughs as well as Congressional passage of an appropriations bill in late March that reduced the shortfalls in our operating budget and expectations of Congressional action on our reprogramming request.

Furloughs will be imposed in every military department as well as almost every agency and in our working capital funds. All of our civilian employees are important, and I would prefer not to furlough any of them. However, there will only be limited exceptions driven by law and by the need to minimize harm to mission execution. We will except civilians deployed to combat zones and civilians necessary to protect life and property (but only to the extent needed to provide that protection). A few categories of workers will be excepted for specific mission reasons while some categories of workers will be excepted because furloughing them would not

free up money for critical DoD mission needs. The attachment provides details regarding approved exceptions. Fewer than one fifth of all civilians paid with appropriated funds will be excepted from furloughs.

The planning and implementation of furloughs will be carried out based on the schedule below:

- May 28 - June 5: Furlough proposal notices will be served to individual employees subject to furloughs.
- June 4 - June 12: Individual employee reply periods end 7 calendar days from when the proposal was received, unless Component procedures allow for a different reply period.
- June 5 - July 5: Furlough decision letters will be served to individual employees subject to furloughs, depending on when the proposal was received and prior to the first day of furlough.
- July 8: Furlough period begins no earlier than this date.

We will begin furloughs on July 8 at the rate of 1 furlough day per week for most personnel. For now, we plan to continue furloughs through the end of FY 2013. That schedule would lead to 11 furlough days – one fifth of the week for about one quarter of the year. Moreover, I am directing all components to monitor funding closely for the remainder of FY 2013. If our budgetary situation permits us to end furloughs early, I would strongly prefer to do so. That is a decision I will make later in the year.

Consistent with this memo and with applicable laws and rules, commanders and managers will have the authority to develop the specifics of furlough procedures in order to minimize adverse mission effects and also limit the harm to morale and productivity. Further bargaining with unions may also be required. The Under Secretary for Personnel and Readiness has already issued guidance as appropriate regarding personnel and union issues related to furloughs and will issue additional guidance as needed. Overall coordination of sequester and furlough policies will be the responsibility of the Under Secretary of Defense (Comptroller).

Each of the Department's civilian employees makes an important contribution to the readiness of our Department to meet the nation's national security needs. I understand that the decision to impose furloughs imposes financial burdens on our valued employees, harms overall morale, and corrodes the long-term ability of the Department to carry out the national defense mission. I deeply regret this decision. I will continue to urge that our nation's leaders reach an agreement to reduce the deficit and de-trigger sequestration. If no agreement is reached, I will continue to look for ways to limit the adverse effects of sequestration and associated budgetary shortfalls both on the men and women of the Department of Defense, and on our national defense.

Attachment:
As stated.

*DAVID
HABEL*

Department of Defense Furlough Exceptions

This attachment provides Components with final dispositions on categorical exceptions to the Department of Defense (DoD) plan to furlough civilian employees for a maximum of 88 hours or 11 discontinuous workdays because of the current financial crisis caused by a sequestration for Fiscal Year (FY) 2013, increased costs for ongoing Overseas Contingency Operations, and other emerging requirements. In order to minimize adverse effects on mission, employees in the following categories are excepted from furlough for the reasons noted:

- a) In order to avoid harm to war efforts, all employees deployed (in a Temporary Duty status) or temporarily assigned (to include Temporary Change of Station) to a combat zone (as defined in notes below) are excepted from furlough.
- b) In order to avoid harm to mission, those employees necessary to protect safety of life and property are excepted to the extent necessary to protect life and property. This includes selected medical personnel. Later portions of this attachment provide details.
- c) Employees in Navy shipyards will be excepted from furlough because it would be particularly difficult to make up delays in maintenance work on nuclear vessels and these vessels are critical to mission success. All other depot employees, whether mission-funded or working capital fund employees, will be subject to furlough.
- d) Furloughs for employees funded with National Intelligence Program (NIP) funds will be determined by the Director of National Intelligence. Employees funded with Military Intelligence Program (MIP) funds will be subject to furlough.
- e) Because there would be no savings, Foreign Military Sales (FMS) employees whose positions are exclusively funded from FMS Administrative and FMS case funds (case number may be required to validate funding source) and from Foreign Military Financing accounts are excepted from furlough. Furloughing employees in this category would not reduce the expenditure of DoD budgetary resources and so would not assist in meeting sequestration reductions. The FMS case-funded positions funded in whole or part by DoD appropriations (to include "pseudo-FMS" cases) are subject to furlough.
- f) By law, all individuals appointed by the President, with Senate confirmation, who are not covered by the leave system in title 5, U.S. Code, chapter 63, or an equivalent formal leave system, are excepted from furlough.
- g) All employees funded by non-appropriated funds (NAF)¹ (regardless of source of NAF funding) are excepted from furlough. Furloughing employees in this category would not reduce the DoD budget and so would not assist in meeting sequestration reductions.
- h) All Outside Contiguous United States foreign national employees, many of whom are subject to Status of Forces Agreements, are excepted from furlough because their situation vary greatly by country/region and because, in some cases, they are paid by host governments.

¹ NAF employees are not covered by the requirements and procedures applicable to furloughs of appropriated fund employees under FY13 sequestration. However, NAF employees may be furloughed under DoD NAF and Component policies and procedures for business-based reasons.

- i) Any employees who are not paid directly by accounts included in the Department of Defense-Military (subfunction 051) budget are excepted from furlough. For example, this would include employees funded by the Arlington National Cemetery (705 function) and DoD Civil Works (various non-051 functions) programs. These exceptions have been identified by the Components. Furloughing these employees would not reduce the expenditure of DoD budgetary resources and so would not assist in meeting sequestration reductions.

The following portion of this document provides the definitive list of additional approved exceptions beyond those listed in the preceding paragraph. The exceptions approved for the safety of life and protection of property category are granted with the understanding that these are the minimum exceptions needed to maintain operations and provide security on a 24/7 basis and that furloughing these employees would result in the Department incurring additional costs for premium pay. Similarly, the exceptions for the medical category are approved with the understanding these exceptions preserve the minimum level of personnel needed to maintain quality of care in 24/7 emergency rooms and other critical care areas such as behavioral health, wounded warrior support, and disability evaluation. Furloughing these employees would result in unacceptable care being provided, and the Department would incur increased costs for premium pay or TRICARE. The exception for Child Development Centers is granted with the understanding that this is the minimum level needed to maintain accreditation and maintain quality care for children in military families. Some Department of Defense Education Activity employees, while not excepted from furlough, may only be furloughed when they are in a pay status. Therefore, they will only be subject to furlough for up to five days at the beginning of the 2013 school year.

Recognizing that circumstances can change in this dynamic environment, the Secretaries of the Military Departments, and the Principal Staff Assistants for the Defense Agencies and Field Activities, may approve up to 50 additional individual, mission-based, exceptions as needed to ensure safe and efficient operations of their respective Departments. Any such exception must be reported to the Acting Under Secretary of Defense (USD) for Personnel and Readiness and the USD Comptroller. There are no other approved exceptions provided based on the Components' submissions. Furlough proposal notices should be issued to all impacted employees beginning May 28, 2013.

Relative to the review and decision on individual employee requests for exception, per guidance issued via the Principal Deputy Assistant Secretary of Defense, Readiness and Force Management, memorandum, dated March 13, 2013, activities should designate the Deciding Official. The designated Deciding Official will be no lower than a local Installation Commander, senior civilian or equivalent who would be in the best position to determine the fair and equitable application of the furlough. Deciding Official responsibilities may not be further delegated. Deciding Officials are charged with, and are accountable for, making final decisions on furloughs for individual employees after carefully considering the employee's reply, if any, and the needs of the Department. Deciding Officials must also ensure they make final decisions in cases where an employee does not submit a reply. Deciding Officials will have the authority to execute the full range of options with respect to providing relief in individual employee cases. This authority includes, but is not limited to, reducing the number of days/hours an individual employee is furloughed, or granting the individual employee an exception from the furlough altogether.

DCMA Administrative Record for FY 2013 Furlough Appeals

Component	Safety of Life & Property	Medical Personnel	Others	Comments
DoN	7,543	1,418	<p>212 CIVPERS at Sea</p> <p>4,712 CIVMARS</p> <p>514 Appropriated Fund (APF) Child Development Centers (CDCs)</p> <p>15</p> <p>28,000</p> <p>1,657</p>	<p>CIVPERS deployed at sea are subject to furlough upon return from deployment</p> <p>CIVMARS are subject to furlough upon return from deployment</p> <p>Maintain safety standards and quality of care</p> <p>Support to classified programs</p> <p>Shipyards Workers, General</p> <p>Shipyards Workers, Nuclear and Naval Reactors Staff</p>
USA	263	Up to 6,600	<p>555 APF CDC Employees</p> <p>75</p> <p>17</p> <p>257</p>	<p>Maintain safety standards and quality of care</p> <p>ARNG Dual Status Technicians for Alerts, Firefighting, Personnel Recovery and other missions</p> <p>Support to classified programs</p> <p>Non-immigrant employees requiring H-1B visas at Defense Language Institute</p>

DCMA Administrative Record for FY 2013 Furlough Appeals

Component	Safety of Life & Property	Medical Personnel	Others	Comments
USAF	933	410	62 1,123 30 Students 94 Multi-IOC 24/7 Plant Operators 2 3 1,634 APF CDCs	Support to classified programs ANG Dual Status Technicians for Alerts, Firefighting, Personnel Recovery and other missions Intel School & FLETC Heating/Waste Water Plant minimum safe manning Contingency Planners Special Law Enforcement Pay Maintain safety standards and quality of care
DLA	363			
DA&M	623			546 are from the Pentagon Force Protection Agency; the remaining 77 are Washington Headquarters Services for Pentagon safety and emergency communications. Most will be furloughed fewer than 11 days due to the need to maintain operations and security 24/7.
US Court of Appeals for Armed Services			59	The Chief Judge will decide how many days to furlough employees, if at all.
JTFCAPMED		368		165 @ Walter Reed 203 @ Fort Belvoir

Component	Safety of Life & Property	Medical Personnel	Others	Comments
USUHS	22		5	Animal Husbandry Technicians Non-immigrant employees requiring H-1B visas
Office of the Military Commissions -- Defense Legal Services Agency			9	Civilian Trial Practitioners
Department of Defense Education Activity (DoDEA)			10,950	9-month DoDEA employees, which includes teachers, educational aids, and support staff may only be furloughed for up to 5 days at the beginning of the 2013 school year.
DCAA			1	Non-immigrant employees requiring H-1B visa

Notes:

1. Safety of life and property exceptions are based on need for 24/7 coverage in most instances. It is expected all Components will furlough for less than 88 hours in these areas where feasible.
2. Individuals for whom law enforcement premium pay would result in no loss of pay if furloughed will be excepted from the furlough.
3. 20 CFR 655.731 requires that the employer of a H-1B non-immigrant who is not performing work and is placed in a nonproductive status due to a decision by the employer (e.g., placed in a non-pay/non-duty status due to administrative furlough) pay the salaried employee the full pro-rata amount due, or to pay the hourly-wage employee for a full-time week (40 hours or such other number of hours as the employer can demonstrate to be full-time employment for hourly employees, or the full amount of the weekly salary for salaried employees) at the required wage for the occupation.

1. References.

- a) Title 26, U.S. Code, Section 112, Certain combat zone compensation of members of the Armed Forces
- b) Executive Order 12744, January 21, 1991
- c) Executive Order 13119, April 13, 1999
- d) Executive Order 13239, December 12, 2001
- e) Public Law 104-117, To provide that members of the Armed Forces performing services for peacekeeping efforts in Bosnia and Herzegovina, Croatia, and Macedonia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone.

2. The following locations are designated as "Combat Zones" by law, Presidential Executive Order or by DoD certification that members of the Armed Forces serving in such locations are serving in direct support of military operations in a combat zone:

Countries:

Afghanistan (EO 13239)	United Arab Emirates (EO 12744)
Albania (EO 13119)	Uzbekistan (DoD certification)
Bahrain (EO 12744)	Yemen (DoD certification)
Bosnia (PL 104-117)	Croatia (PL 104-117)
Djibouti (DoD certification)	Herzegovina (PL 104-117)
Iraq (EO 12744)	Jordan (DoD certification)
Kuwait (EO 12744)	Kyrgyzstan (DoD certification)
Macedonia (PL 104-1170)	Montenegro (EO 13119)
Oman (EO 12744)	Pakistan (DoD certification)
Philippines (Only troops with orders referencing Operation Enduring Freedom) (DoD certification)	Qatar (EO 12744)
Saudi Arabia (EO 12744)	Serbia (includes Kosovo) (EO 13119)
Somalia (DoD certification)	Tajikistan (DoD certification)

Sea Areas:

Adriatic Sea (EO 13119)	That portion of the Arabian Sea that lies north of 10 degrees north latitude, and west of 68 degrees east longitude (EO 12744)
Gulf of Aden (EO 12744)	Gulf of Oman (EO 12744)
Ionian Sea north of the 39 th Parallel (EO 13119)	Persian Gulf (EO 12744)
Red Sea (EO 12744)	

3. Adherence to the following principles ensures consistency in applying the "deployed to combat zone" exemption to civilian employees in the context of the administrative furlough:

- a) "Deployed civilian" is defined as a civilian employee who is deployed (in temporary duty (TDY) status) or temporarily assigned (to include temporary change of station (TCS)) to a "combat zone" as set forth above.
- b) "Combat zone" is defined as those locations listed as combat zones in Executive Orders 12744, 13119 or 13239 and locations where military are eligible for combat zone tax benefits under law or because DoD has certified that they are providing direct support to military operations.
- c) A "deployed civilian's" period of deployment includes time spent in attendance at mandatory pre-deployment training as well as in completing mandatory post-deployment requirements.
- d) A civilian employee who was deployed to a combat zone but redeploys mid-way through the furlough period will receive a notice of proposed furlough upon return to their parent organization and prior to any furlough. Further, the number of hours for which the employee will be furloughed will be pro-rated.

EMBARGOED FROM PUBLIC/PRESS RELEASE
UNTIL 1430 HRS, 14 MAY 2013

MESSAGE FROM SECRETARY HAGEL ON FURLOUGHS
TUESDAY, MAY 14, 2013

To all Department of Defense personnel:

As you are fully aware, the Department of Defense is facing a historic shortfall in our budget for the current fiscal year. This is the result of current law that went into effect March 1. It imposes deep across-the-board cuts on DoD and other federal agencies. Combined with higher than expected wartime operating costs, we are now short more than \$30 billion in our operation and maintenance (O&M) accounts – which are the funds that we use to pay most civilian employees, maintain our military readiness, and respond to global contingencies.

The Department has been doing everything possible to reduce this shortfall while ensuring we can defend the nation, sustain wartime operations, and preserve DoD's most critical asset – our world-class civilian and military personnel. To that end, we have cut back sharply on facilities maintenance, worked to shift funds from investment to O&M accounts, and reduced many other important but non-essential programs.

Still, these steps have not been enough to close the shortfall. Each of the military services has begun to significantly reduce training and maintenance of non-deployed operating forces – steps that will adversely impact military readiness. And even these reductions are not enough. Since deeper cuts to training and maintenance could leave our nation and our military exposed in the event of an unforeseen crisis, we have been forced to consider placing the majority of our civilian employees on administrative furlough.

After extensive review of all options with the DoD's senior military and civilian leadership on how we address this budget crisis, today I am announcing that I have decided to direct furloughs of up to 11 days for most of the Department's civilian personnel. I have made this decision very reluctantly, because I know that the furloughs will disrupt lives and impact DoD operations. I recognize the significant hardship this places on you and your families.

After required notifications, we will begin the furlough period on July 8 at the rate of one furlough day per week for most personnel. We plan to continue these furloughs through the end of the current fiscal year. If our budgetary situation permits us to end furloughs early, I would strongly prefer to do so. That is a decision I will make later in the year.

Furloughs for 11 days represent about half of the number we had originally planned, reflecting the Department's vigorous efforts to meet our budgetary shortfalls through actions other than furlough. There will be exceptions driven by law and by the need to minimize harm to the execution of our core missions. For example, all employees deployed or temporarily assigned to a combat zone will be excepted from furloughs.

Your managers have been given authority to develop specific furlough procedures to minimize adverse mission effects and also limit the harm to morale and productivity. They will be in touch with you to provide guidance and answers.

The President and I are deeply appreciative of your patience, your hard work, and your dedication and contributions to the critical mission of helping protect America's national security. I am counting on all of you to stay focused on this vital mission in the days ahead. As I said the day I assumed the responsibilities of Secretary of Defense, I'm proud to be part of your team and I'm proud to serve with you.

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**DCMA Administrative Record for FY 2013 Furlough Appeals
DIRECTOR'S FURLOUGH MESSAGE (14-MAY-2013)**

All,

As many of you may have already heard, the Department issued formal guidance today for us to move forward with plans to furlough civilian employees for as many as 11 days beginning in July. For most of our employees, that will equate to 8 hours per week for the last 11 weeks of the fiscal year. The SECDEF also stated today that, if the Department is successful in further cost cutting efforts, the 11 days may be reduced to a lower number when it is clear that the Department as a whole will be able to come in within current fiscal guidance. While the exact number of furlough days may be less, we should all be planning for the 11 days at this point. Formal notification letters will likely be sent to each of you within the next two weeks.

I know this will present serious personal challenges for many of us and critical workload challenges for all of us. For our part, DCMA will move forward with the plans and processes we have in place and we will carefully monitor our implementation of these reductions to ensure we minimize impacts to customers. We will continue to work closely with our union partners to work any issues as they arise.

I will continue to provide updates as our plans unfold. As I've said before in earlier emails, please do your best to look out for your fellow employees and be sensitive to the issues we all will be facing. Now more than ever, it's important for us to "look out for our wingmen". I know I can continue to count on all of you to keep up the remarkable work that you do each and every day to look out for the interests of our war fighters and the taxpayers.

Charlie E. Williams Jr.

Director

Defense Contract Management Agency

-----Original Message-----

From: Director, DCMA

Sent: Monday, May 06, 2013 1:38 PM

To: DCMA All Personnel

Cc: Ft. Lee – 10500; Ft. Lee - Rivers Bend; Ft. Lee – DSCR

Subject: Updated Furlough Information

All,

I know we are all keenly interested in the status of furlough actions across the Department and the impacts they may have on each of us personally. I promised to keep you informed of any changes or updates as they occur. Unfortunately (or maybe fortunately), there just isn't much to update you on at this point - and that's probably a good thing. Guidance from the Department is still to hold off on issuing formal furlough notifications to the workforce while they carefully work through the financial impacts that recent budget authorities/flexibilities from the Congress have provided. While the DoD is clearly not out of the financial woods yet and may still need to furlough before the end of the fiscal year, I can only view it as a good sign that they have directed us to delay formal notifications.

We may know more in the next few weeks and, if so, I will update you all as soon as possible. But realistically, it is completely possible that we may go through the remainder of the year without a definitive answer on furloughs until the year is over. The Department will continue to look for belt tightening opportunities to solve current budget issues while further minimizing or eliminating the need for furlough actions. To the extent the Department is successful in finding other offsets, I'm fairly certain that furlough decisions will continue to be delayed.

As for how DCMA is holding up through the current problematic budget times, I can only say how proud I am of our workforce, our leaders, and our financial management community for identifying ways to reduce, holding ourselves accountable, and generating savings for the Department to stay within our very restrictive top-line budget. It certainly has not been easy and tough choices continue to be made on a daily basis, but we are staying within our new budget guidelines and doing our part as good financial stewards. But what has been most impressive to me, is the way this Agency has pulled together in these tough times to ensure that our customer's most critical needs have been met and our service levels have remained so high. Thanks so much for your service, stewardship, and selfless commitment to the critical mission of DCMA.

Charlie E. Williams Jr.

Director

Defense Contract Management Agency



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 4, 2013

M-13-11

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Danny Werfel
Controller

A handwritten signature in black ink, appearing to read "D. Werfel", written over the printed name and title.

SUBJECT: Ongoing Implementation of the Joint Committee Sequestration

Section 251A of the Balanced Budget and Emergency Deficit Control Act (BBEDCA), as amended, on March 1, 2013, required the President to issue a sequestration order canceling \$85 billion in budgetary resources across the Federal Government for the remainder of fiscal year (FY) 2013. This action was required due to the failure of the Joint Select Committee on Deficit Reduction to propose, and the Congress to enact, legislation to reduce the deficit by \$1.2 trillion.

The Administration continues to urge Congress to take action to eliminate the Joint Committee sequestration and restore cancelled budgetary resources as part of a balanced agreement on deficit reduction. However, until Congress takes such action, executive departments and agencies (agencies) must continue to implement the reductions required by sequestration.

This memorandum provides further guidance on specific issues regarding the management and implementation of sequestration that the Office of Management and Budget (OMB) preliminarily addressed in prior memoranda. OMB previously issued guidance on the appropriate implementation of sequestration in Memorandum 13-03, *Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources*; Memorandum 13-05, *Agency Responsibilities for Implementation of Potential Joint Committee Sequestration*; and Memorandum 13-06, *Issuance of the Sequestration Order Pursuant To Section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985, as Amended*.

Appropriate Use of Existing Reprogramming and Transfer Authority

Sequestration provides an agency with little discretion in deciding where and how to reduce spending. All non-exempt budget accounts in a given spending category must be reduced by a uniform percentage, and the same percentage reduction must be applied to all programs, projects, and activities (PPAs) within a budget account. However, depending on an agency's account structure and any existing flexibilities provided by law, some agencies may have a limited ability to realign funds to protect mission priorities. As directed by Memorandum 13-03, in allocating reduced budgetary resources due to sequestration, agencies should generally "use

any available flexibility to reduce operational risks and minimize impacts on the agency's core mission in service of the American people." Agencies should also "take into account funding flexibilities, including the availability of reprogramming and transfer authority."

Consistent with this guidance, agencies with reprogramming or transfer authority should continue to examine whether the use of these authorities would allow the agency to minimize the negative impact of sequestration on core mission priorities. In doing so, agencies must consider the long-term mission, goals, and operations of the agency and not just short-term needs. For example, agencies should avoid taking steps that would unduly compromise the ability to perform needed deferred maintenance on facilities, invest in critical operational functions and support, conduct program integrity and fraud mitigation activities, and pursue information technology or other infrastructure investments that are essential to support the long-term execution of the agency's mission. Similarly, while agencies with carryover balances or reserve funds should consider appropriate use of these funds to maintain core mission functions in the short term, it is important not to use these funds in a manner that would leave the agency vulnerable to future risks due to a potential lack of available funds in future years.

Agencies should consult with their OMB Resource Management Office (RMO) to assess options for utilizing existing authorities and ensure that any proposed actions appropriately balance short-term and long-term mission priorities. Agencies must also consult closely with their OMB RMO on any proposed actions that would reduce carryover balances or reserve funds below historical levels.

Funding for Agency Inspectors General

Funds for agency Inspectors General (IGs) from non-exempt accounts are subject to sequestration under the March 1, 2013 sequestration order. The head of each agency has the final responsibility for implementing the reductions required by sequestration. Upon making such determinations, IGs have the final responsibility for determining how their authorized budgets will be allocated.

To the extent an agency has discretion in implementing reductions to IG funding due to sequestration, agency heads should be mindful of the independence of the Office of Inspector General and should consult with the IG on a pre-decisional basis on matters that may impact IG funding. In particular, agencies must remain cognizant of the provisions in section 6 of the Inspector General Act of 1978, as amended, which outline the need for IGs to maintain the appropriate resources and services necessary to perform their statutory duties and describe the manner in which IG budgets are requested.

In cases where IG funds are not intermingled with other agency funds and exist as their own PPA, the IG should be provided full discretion to determine how to implement the reductions required by sequestration. In cases where IG funds are intermingled with other agency funds within a PPA, while the specific amount of reductions will vary by agency and account, a benchmark that should be considered by the head of the agency—in consultation with the IG—is to apply a percentage reduction to IG funds that is same as the average percentage reduction for all other funds within the PPA. Upon determining the amount of the reduction for

IG funds in such cases, the agency head should then defer as appropriate to the IG in determining how the IG manages the reductions.

Agencies should consult with their OMB RMO throughout this process as well.

Discretionary Monetary Awards

OMB Memorandum 13-05 directs that discretionary monetary awards should not be issued while sequestration is in place, unless issuance of such awards is legally required. Discretionary monetary awards include annual performance awards, group awards, and special act cash awards, which comprise a sizeable majority of awards and incentives provided by the Federal Government to employees. Until further notice, agencies should not issue such monetary awards from sequestered accounts unless agency counsel determines the awards are legally required. Legal requirements include compliance with provisions in collective bargaining agreements governing awards.¹

Consistent with past guidance, certain types of incentives are not considered discretionary monetary awards for the purposes of this policy. These include quality step increases (QSIs); travel incentives recognizing employee savings on official travel; foreign language awards for mission-critical language needs; recruitment, retention, and relocation incentives (3Rs); student loan repayments; and time-off awards. While these items are permitted, in light of current budgetary constraints, they should be used only on a highly limited basis and in circumstances where they are necessary and critical to maintaining the agency's mission. In addition, consistent with the policy set forth in the *Guidance on Awards for Fiscal Years 2011 and 2012*, jointly issued by the Office of Personnel Management (OPM) and OMB on June 10, 2011, spending for QSIs and 3Rs should not exceed the level of spending on such incentives for fiscal year 2010.

With respect to Federal political appointees, agencies should continue to follow the policy set forth in the August 3, 2010 Presidential Memorandum, *Freeze on Discretionary Awards, Bonuses, and Similar Payments for Federal Political Appointees*. OPM previously issued guidance on implementation of this memorandum.

Reducing Burden for State, Local, and Tribal Governments

To the extent agencies provide grants or other forms of financial assistance to States, localities, or tribal governments, agencies should consider if there are ways to help such entities mitigate the effects of funding reductions due to sequestration through reducing administrative burdens or other standard administrative processes, consistent with applicable legal requirements associated with the funds provided. In doing so, agencies should consult closely with their State, local, and tribal partners to determine whether such steps enable public funds to be used in a more cost-effective manner.

¹ Consistent with legal requirements, agencies may consider engaging in discussions with employees' exclusive representatives to explore revisions to such provisions in existing collective bargaining agreements, in recognition of this guidance.

-----Original Message-----

From: Director, DCMA

Sent: Thursday, March 21, 2013 1:06 PM

To: DCMA All Personnel

Cc: Ft. Lee - 10500; Ft. Lee - Rivers Bend

Subject: Updated Furlough Information

All,

We have received notice, that should it be necessary, the release of furlough notices will not occur before 5 April 2013. The purpose of the delay is to ensure the Department has time to fully assess the impacts of the pending Continuing Resolution legislation on the Department's resources. As usual, we will continue to keep you informed as things change during these difficult and dynamic times.

Charlie E. Williams Jr.

Director

Defense Contract Management Agency



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Pentagon Delays Sending Furlough Notices to Civilian Workforce

American Forces Press Service

WASHINGTON, March 21, 2013 – Pentagon officials have put off sending furlough notices to civilian employees until they've had a chance to analyze how pending legislation that would fund the federal government for the rest of the fiscal year will affect the Defense Department.

Officials now estimate that furlough notices will go out on or about April 5, Navy Cmdr. Leslie Hull-Ryde, a Pentagon spokeswoman, said.

"The legislation could have some impact on the overall number of furlough days, but no decisions have been reached, especially since the legislation hasn't been signed into law," Hull-Ryde said. "The number of furlough days at this point remains at 22."

Pentagon Press Secretary George Little said the delay makes sense. "We believe the delay is a responsible step to take in order to assure our civilian employees that we do not take lightly the prospect of furloughs and the resulting decrease in employee pay," he said.

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DCMA Administrative Record for FY 2013 Furlough Appeals

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18		3/5/2013	USD Additional Guidance for Handling Budget Uncertainty for FY 2013	Agency
19		3/1/2013	DSD letters to various state Governors	Agency
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21		3/1/2013	EO President, Issuance of Sequestration Order Pursuant to Section 215A of the BB and Emergency Deficit Control Act of 1985 as Amended	Agency
22		3/1/2013	Sequestration Order for FY 2013	Agency
23		3/1/2013	DOD Press Briefing on Sequestration from the Pentagon	Agency



Guidance for Administrative Furloughs

June 10, 2013

a New Day for Federal Service

Overview

The U.S. Office of Personnel Management (OPM) has prepared human resources guidance for agencies and employees on administrative furloughs. An administrative furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or other budget situation other than a lapse in appropriations.

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NOTE: Certain Qs and As in this document, “Guidance for Administrative Furloughs,” assume coverage under provisions of law or regulation specified in the given Q and A. To the extent that a particular employee is not covered by those specified provisions, the guidance in the Q and A may not be applicable.

A. General

1. What is a furlough?

A. A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

2. What is an administrative furlough and why are administrative furloughs necessary?

A. An administrative furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other budget situation other than a lapse in appropriations. This type of furlough is typically a non-emergency furlough in that the agency has sufficient time to reduce spending and give adequate notice to employees of its specific furlough plan and how many furlough days will be required. An example of when such a furlough may be necessary is when, as a result of Congressional budget decisions, an agency is required to absorb additional reductions over the course of a fiscal year.

3. What human resources guidance applies for furloughs that are caused by a lapse of appropriations (i.e., shutdown furloughs)?

A. In the event that funds are not available through an appropriations law or continuing resolution, a “shutdown” furlough occurs. A shutdown furlough is necessary when an agency no longer has the necessary funds to operate and must shut down those activities which are not excepted pursuant to the Antideficiency Act. For additional information on shutdown furloughs, see OPM’s Guidance for Shutdown Furloughs at <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>.

4. What does it mean to be in furlough status?

A. Furlough status means that, because of a furlough (as described in Question A.1.), the employee is placed in a nonpay, nonduty status for designated hours *within* the employee’s tour of duty established for leave usage purposes (i.e., the tour of duty for which absences require the charging of leave). Furlough hours are a type of leave of absence without pay. Employees are in furlough status only during designated furlough hours, not for entire calendar days. Furlough status may be designated as the employee’s full daily tour of duty or part of that tour of duty. For example, an employee may be furloughed for half of an 8-hour daily tour of duty, or 4 hours. An employee who is in furlough status during a daily tour of duty may be ordered to perform work outside that tour, and such work would be subject to normal compensation requirements. (See also Questions D.4. and D.5.)

5. Does placement in furlough status cause a full-time employee to be converted to part-time or a part-time employee to be converted to a reduced part-time work schedule?

A. No. Placement in furlough status or any other kind of temporary nonpay, nonduty status does not affect the nature of an employee's official work schedule as full-time or part-time. For a full-time employee who is furloughed during a 40-hour basic workweek, the employee continues to have a full-time 40-hour basic workweek. For a part-time employee who is furloughed, the part-time tour of duty established for leave usage purposes also remains the same.

B. Covered Employees

1. Which employees may be affected by an administrative furlough?

A. Agencies are responsible for identifying the employees affected by administrative furloughs based on budget conditions, funding sources, mission priorities (including the need to perform emergency work involving the safety of human life or protection of property), and other mission-related factors. See also Procedures and Labor Management Relations Implications.

2. How will employees be notified whether they are affected by an administrative furlough?

A. Each agency will determine the method and timing of notifying employees of whether they are affected by an administrative furlough. See also Procedures and Labor Management Relations Implications.

3. Are political appointees (such as Executive Schedule officials, noncareer members of the Senior Executive Service (SES), and Schedule C appointees) subject to administrative furlough?

A. All political appointees who are covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are subject to administrative furlough. For example, Schedule C appointees in the General Schedule or Senior Level (SL) pay systems and noncareer SES members are all covered by the leave system and subject to administrative furlough. However, regular procedural requirements may not apply. (See Q&As M.5., M.6., N.12., and N.13.) Individuals appointed by the President, with or without Senate confirmation, who are not covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are not subject to furlough. (See Q&A B.4. for more information on why certain Presidential appointees are not subject to furlough.)

4. Why are leave-exempt Presidential appointees not subject to furlough?

A. Individuals appointed by the President, with or without Senate confirmation, who are not covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are not subject to furlough. An exemption from the chapter 63 leave system may be based on 5 U.S.C. 6301(2)(x) or (xi). (See also OPM regulations at 5 CFR 630.211.) These leave-exempt Presidential appointees are not subject to furloughs because they are considered to be entitled to the pay of their offices solely by virtue of their status as an officer, rather than by virtue of the hours they work.

A leave-exempt Presidential appointee cannot be placed on nonduty status. Thus, the appointee's pay cannot be reduced based on placement in nonduty status, including via the mechanism of a furlough. As explained above, a leave-exempt Presidential appointee is entitled to the established pay of the position based on the holding of the office, not on the hours of duty.

Presidential appointees who are covered by the chapter 63 leave system are not considered to be entitled to pay based solely on their status as officers; thus, these individuals are subject to furlough in the same manner as other Federal employees. (See 5 U.S.C. 5508.) Any Presidential appointee who is a member of the Senior Executive Service (SES) or in a senior level (SL/ST) position paid under 5 U.S.C. 5376 may not be exempted from the chapter 63 leave system. All SES and SL/ST employees are subject to furlough on the same basis as other employees. (The furlough of career SES members is subject to the procedures in 5 CFR 359, subpart H, and the furlough of SL/ST employees is subject to the procedures in 5 CFR 752, subpart D, or 5 CFR part 351, as applicable.)

While employees may be subject to furlough, the applicable due process procedures depend on the type of employee in question. For example, all Presidential appointees are excluded from the adverse action procedures in 5 U.S.C. chapter 75, based on 5 U.S.C. 7511(b)(1) and (3). In addition, Presidential appointees subject to Senate confirmation are excluded from reduction in force procedures, based on 5 CFR 351.202(b). If a Presidential appointee is subject to furlough but not subject to adverse action or reduction in force procedures, the agency should follow any administrative procedures required by any applicable internal personnel policies.

Note: A former career Senior Executive Service (SES) appointee who receives a Presidential appointment that would normally convey an exemption from the leave system may be eligible to elect to retain SES leave benefits under 5 U.S.C. 3392(c). If SES leave benefits are so elected, such a Presidential appointee would be subject to furlough under 5 CFR part 359, subpart H.

5. Are furloughed detailees returned to their home agencies following any furlough?

A. Detailed employees remain officially assigned to their permanent positions during the detail. During a furlough, each agency will determine the status of their employees on detail within the agency or to another agency.

6. Do all detailees follow the furlough policies and procedures of their home agencies if the detail continues?

A. Yes, because all detailees remain officially employed by the agencies from which they are detailed. If furlough is required, the home agency will determine if and how the detailed employee is affected. The home agency and the receiving agency should discuss how a detailee will be affected if a furlough is not required in the home agency but is required in the receiving agency.

7. I have a detailee from another agency working in my unit. Who can I contact to discuss any flexibility the home agency may be willing to exercise regarding scheduling of any required furlough days?

A. Generally, the point of contact would be the human resources office of the employee's home agency. If the point of contact within that office is unknown, OPM suggests contacting the employee's supervisor at the home agency to determine who to contact about potential flexibility in scheduling required furlough days.

8. Can an employee request to be furloughed as a way of reducing the hours of furlough required of other employees?

A. An employee cannot request to be furloughed. A furlough is an agency adverse action that places an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

An employee may voluntarily request leave without pay which also places an employee in a nonpay, nonduty status. However, approval of leave without pay does not provide any due process rights (unlike a furlough action), and approval is subject to your organization's policies, procedures, and any collective bargaining agreement provisions. An employee should discuss with their human resources office any personnel implications of additional time in a nonpay, nonduty status. An agency should not pressure employees to request leave without pay. Such requests should be made on a purely voluntary basis.

While the granting of leave without pay to a significant number of employees may produce savings that could potentially affect the extent to which an agency needs to use furloughs to achieve the savings required by sequestration, employees should be aware that there is no guarantee that volunteering for unpaid leave will have a significant enough effect on an agency's operations to affect the agency's need to furlough employees. Moreover, there are many other factors that may potentially affect an agency's budget, and therefore affect the extent to which an agency needs to use furloughs to achieve cost savings.

Note 1: Leave-exempt Presidential appointees may not take leave without pay, as explained in Question B.4.

Note 2: This matter, like others involving the impact and implementation of furloughs, may be subject to collective bargaining for union-represented employees.

C. Working During Furlough

1. May an employee volunteer to do his or her job on a nonpay basis during any hours or days designated as furlough time off?

A. No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an employee. (See 31 U.S.C. 1342.)

2. What happens to employees scheduled for training during an administrative furlough?

A. Since agencies typically have sufficient time to give employees adequate notice and to plan for administrative furloughs, furlough time off may be scheduled so as not to conflict with scheduled training. In the event that scheduled training occurs during a furlough period, affected employees must be placed in a furlough status and ordered not to attend the scheduled training.

3. May employees take other jobs during a period designated as furlough time off?

A. While on furlough time off, an individual remains an employee of the Federal Government. Therefore, executive branch-wide standards of ethical conduct and rules regarding outside employment continue to apply when an individual is furloughed (specifically, the executive branch-wide standards of ethical conduct at 5 CFR part 2635). In addition, there are specific statutes that prohibit certain outside activities, and agency-specific supplemental rules that require prior approval of, and sometimes prohibit, outside employment. Therefore, before engaging in outside employment, an employee should review these regulations and then consult his or her agency ethics official to learn if there are any agency-specific supplemental rules governing the employee. (Also, see the Office of Government Ethics' March 13, 2013, legal advisory entitled, "[A reminder that ethics laws and regulations continue to apply to Federal Government employees during furlough periods.](#)")

4. May an employee work during a period designated as furlough time off to earn credit hours under a flexible work schedule?

A. No. An employee may not work to earn credit hours during hours and/or days designated as furlough time off.

5. May an employee work during a period designated as furlough time off to accumulate religious compensatory time off hours for religious observances?

A. No. An employee may not work during a period designated as furlough time off, even to accrue religious compensatory time.

6. What is the effect of an agency ordering an employee to work during scheduled furlough hours?

A. If an agency official orders an employee to work during scheduled furlough hours (e.g., to respond to an emergency), the assignment of work cancels the employee's furlough status for the duration of the ordered work, and such work would be subject to normal compensation requirements.

D. Pay

1. When an employee's pay is insufficient to permit all deductions to be made because furlough time off occurs in the middle of a pay period and the employee receives a partial paycheck, what is the order of withholding precedence?

A. Agencies will follow the guidance at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=1477> to determine the order of precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions.

2. May agencies deny or delay within-grade or step increases for General Schedule and Federal Wage System employees during a furlough?

A. It depends on the length of the furlough. Within-grade and step increases for General Schedule (GS) and Federal Wage System employees are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status (e.g., because of a furlough for lack of funds) may affect the timing of such increases. For example, a GS employee in steps 1, 2, or 3 of the grade who is furloughed an aggregate of more than 2 workweeks during the waiting period would have his or her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406(b).)

3. What issues arise with the furloughing of employees who would otherwise reach the biweekly cap on premium pay?

A. Under 5 U.S.C. 5547, premium pay may not normally be paid to the extent the payment would cause the sum of the employee's basic pay plus premium pay received in a biweekly pay period to exceed the higher of (1) the biweekly rate for level V of the Executive Schedule (EX-V) or (2) the biweekly rate of basic pay for GS-15, step 10 (including any applicable locality payment or special rate supplement). (Note: In all locality pay areas within the

United States, the applicable GS-15, step 10, rate is higher than the EX-V rate.) Certain employees regularly receive a recurring type of premium pay that causes them to reach the premium pay cap each biweekly pay period. For example, certain employees regularly receive law enforcement availability pay (LEAP), administratively uncontrollable overtime (AUO) pay, standby duty premium pay, or regularly scheduled firefighter overtime pay.

The biweekly premium pay cap limits premium pay based on the aggregate sum of basic pay plus premium pay in a biweekly pay period. Thus, if a furlough causes basic pay to be reduced, it may result in an increased payment of premium pay that had been limited by the premium pay cap.

If an employee is furloughed, he/she will not receive basic pay or premium pay during the furlough period. If the furlough is for a full pay period, then the employee will not receive any pay for the pay period and the biweekly premium pay cap is not an issue.

However, there are issues if an employee who normally reaches the premium pay cap is furloughed for part of a pay period. The employee's total basic pay will be reduced and, as a result, the *uncapped* amount of premium pay for the pay period will be reduced. ("Uncapped" refers to the amount of premium pay that would be payable if the biweekly premium pay cap did not apply.) If the employee was reaching the premium pay cap in a normal pay period and receiving less than the full amount of premium pay available under the given premium pay provision, the reduction of basic pay could allow otherwise blocked premium pay to become payable—even if the uncapped amount of premium pay is reduced. In fact, the employee could receive the same capped total pay while working less hours. In this case, a furlough would not save money and would actually reduce productivity.

For example, consider a GS-15, step 10, criminal investigator in Washington, DC. Criminal investigators are entitled to LEAP equal to 25% of the investigator's basic pay, subject to the biweekly premium pay cap, which can reduce or eliminate the LEAP payment. Normally, a GS-15, step 10, investigator would receive 0% LEAP since his/her adjusted rate of basic pay is already at the cap.

- Assume the investigator is entitled to a GS-15, step 10, locality rate of \$155,500 (EX-IV locality rate cap). The hourly rate is \$74.51 and the biweekly rate is \$5,960.80. Let's say this investigator is furloughed for 2 workdays. The investigator's basic pay would be reduced to \$4,768.64 (80-16=64 hours, 64 hours x \$74.51 = \$4,768.64).
- Uncapped LEAP for 80 hours of basic pay = 25% x \$5,960.80 = \$1,490.20
- Uncapped LEAP for 64 hours of basic pay = 25% x \$4,768.64 = \$1,192.16.
- Basic pay + uncapped LEAP = \$4,768.64 + \$1,192.16 = \$5,960.80, which equals the premium pay cap. So, the investigator receives the full 25% LEAP.
- In this example, the investigator's hours were reduced by 16 hours out of 80 (20%), leaving basic pay at 80% of the normal amount. 25% LEAP x 80% of normal basic pay =

20% of normal basic pay for an 80-hour biweekly pay period (which would have applied but for the furlough). Thus, the LEAP replaced the lost basic pay exactly.

- Uncapped LEAP decreased from \$1,490.20 to \$1,192.16.
 - Capped LEAP increased from \$0 to \$1,192.16.
 - Basic pay decreased from \$5,960.80 to \$4,768.64, a reduction of \$1,192.16.
 - Capped LEAP increase = Basic pay decrease.
- In this scenario, no budget savings would be realized by furloughing the investigator. The investigator would receive the same amount of pay while working fewer hours, resulting in a loss in productivity.

An agency is not required to furlough an employee when the workings of the premium pay cap prevent budget savings or provide limited savings relative to the loss in productivity. As a general rule, an agency may selectively furlough employees, but an explanation must be provided to employees in the advanced written proposal notice regarding the agency's justification as to why the administrative furlough is being implemented. The notice should contain an explanation of other employees who may not have been furloughed in that particular employee's same competitive level. (See 5 CFR 752.404(b)(2).)

For example, see the language below from Sample Notice 1—Furlough Proposal Due to Planned Reduction in Agency Expenditures (5 CFR Part 752):

If other employees in your competitive level (i.e. generally, positions at the same grade level and classification series, the duties of which are generally interchangeable – see 5 CFR 351.403(a)) are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency or, (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, you must include them in this listing.]*

Based on the above, in deciding which employees should be subject to an administrative furlough, an agency should take into account the effects of the premium pay cap and should address in the furlough notice the exclusion of any employees who are affected by the premium pay cap.

4. May Federal agencies require employees who are placed on administrative furlough for all or part of their basic workweek to work hours outside the basic workweek?

A. Yes. An agency may assign work during hours outside the employee's basic workweek, subject to any applicable agency policies or collective bargaining agreements.

Employees are only in furlough status for designated furlough hours. Furlough status means the employee is placed in nonpay, nonduty status for certain hours within the employee's tour of duty established for leave usage purposes (i.e., the tour of duty for which absences require the charging of leave). Thus, for full-time employees with a 40-hour basic workweek, furlough hours must be within the 40-hour basic workweek. For part-time employees, furlough hours must be within the employee's part-time basic workweek based on the part-time tour of duty established for leave usage purposes. For employees on an uncommon tour of duty established under 5 CFR 630.210, furlough hours must be within the uncommon tour of duty. (See Question L.3.)

Note: During a [shutdown furlough](#) in response to a lapse in appropriations, an agency may not allow an employee (unless the employee is excepted or exempt from furlough) to perform work outside his or her basic workweek because it would create a budgetary obligation before an appropriation is made, which is barred by the Antideficiency Act (31 U.S.C. 1341 et seq.).

5. How are employees compensated when they are required to work hours outside a basic workweek in which they have been furloughed?

A. Employees who are required to work hours outside of a basic workweek during which they have been furloughed are compensated with their rate of basic pay if overtime thresholds have not been met, and/or with overtime pay or compensatory time off in lieu of overtime pay, as appropriate, once the thresholds have been met. Normally applicable overtime rules apply. Most employees are subject to a 40-hour weekly overtime threshold and an 8-hour daily overtime threshold. Leave without pay hours (such as furlough hours) do not count as hours of work in applying overtime thresholds.

As provided by 5 CFR 550.112(d)(1), an employee's hours of work outside of his or her basic workweek, but occurring in the same administrative workweek as furlough hours, must be substituted for furlough hours in pay computations, as long as the hours of work outside the basic workweek do not qualify for an overtime rate on the basis of exceeding 40 hours in a workweek. (Note: For hours that qualify for an overtime rate on the basis of exceeding 8 hours of work in a day, this substitution rule does not apply.) Those substituted hours are paid for at the rate applicable to hours in the employee's basic workweek. After all furlough hours during the employee's basic workweek are substituted for, any remaining hours of work are overtime hours on the basis of exceeding 40 hours in a workweek.

Similarly, as provided by 5 CFR 550.112(d)(2), an employee's hours of work outside of his or daily tour of duty, but in the same workday as furlough hours, must be substituted for such furlough hours in pay computations. Those hours are paid for at the rate applicable to the

employee's daily tour of duty. After all furlough hours during the employee's daily tour of duty are substituted for, any remaining hours of work are overtime hours on the basis of exceeding 8 hours in a workday (for employees subject to the 8-hour daily overtime threshold).

The substitution rule in 5 CFR 550.112(d) does not change an employee's basic workweek or daily tour of duty. The hours worked outside the employee's basic workweek or daily tour of duty are substituted for the purpose of pay computations. Under the rule, substituted hours are paid at the rate "applicable to" hours in the basic workweek or daily tour of duty, even though the hours were worked outside those periods. This rule simply recognizes that leave without pay hours (such as furlough hours) do not count toward weekly and daily overtime thresholds.

Examples

For purposes of these examples, an employee with a Monday–Friday, 8-hour per day work schedule is required to work overtime in a workweek during which he or she also has 1 day (8 hours) of designated furlough time off. (As described in Question L.1., agencies have discretion to implement an administrative furlough to best absorb budget reductions over the course of the fiscal year and do not need to follow the same procedures.)

- **Example A.** An employee is furloughed for 8 hours on Monday, works 8 hours per day on Tuesday–Friday, and is required to work 4 hours on Saturday.

The 4 hours of work on Saturday are substituted for 4 of the furlough hours on Monday and paid at the rate applicable to the employee's basic workweek (i.e., basic rate), consistent with 5 CFR 550.112(d)(1). The employee cannot receive overtime pay, or compensatory time off in lieu of overtime pay, for the 4 hours of work on Saturday.

- **Example B.** An employee is furloughed for 8 hours on Monday, works 8 hours per day on Tuesday–Friday, and is required to work 4 additional hours on Friday evening after completing his 8-hour daily tour of duty.

The additional 4 hours of work on Friday evening are beyond the 8-hour daily overtime pay threshold and the employee is entitled to an overtime rate for those hours based on 5 U.S.C. 5542(a). The substitution rule in 5 CFR 550.112(d)(1) bars paying an overtime rate for substitutable hours outside the basic workweek "on the basis of exceeding 40 hours in a workweek." However, the 40-hour overtime pay threshold is not the basis for paying an overtime rate for the 4 additional hours of work on Friday evening. Since the 8-hour overtime pay threshold is being used, those 4 hours are not substituted for the Monday furlough hours in pay computations; thus, an overtime rate applies. If appropriate, the employee may receive compensatory time off in lieu of overtime pay for the 4 additional Friday hours under the normal rules governing compensatory time off.

- **Example C.** An employee is furloughed for 8 hours on Monday and works 8 hours per day

on Tuesday–Friday. The employee is required to work 4 hours on Monday evening during hours outside of his daily tour of duty.

For purposes of pay computations, the 4 hours of work on Monday evening are substituted for 4 hours of furlough time off taken during the employee’s daily tour of duty on Monday and paid for at the rate applicable to the employee’s daily tour of duty (i.e., basic rate), consistent with 5 CFR 550.112(d)(2). The employee cannot receive overtime pay, or compensatory time off in lieu of overtime pay, for the 4 hours worked on Monday evening because the hours are not overtime hours.

Note 1: The above scenarios assume the employee’s administrative workweek and workdays are based on calendar days. The administrative workweek can be based on any 24-hour period. (See 5 CFR 610.102.) That would affect application of 5 CFR 550.112(d), which is based on the applicable “administrative workweek” and “workday.”

Note 2: For employees on flexible or compressed work schedules, the “basic work requirement” is generally equivalent to the “basic workweek.” However, no hour within the basic work requirement can be an overtime hour, even if those basic work requirement hours exceed 8 hours of work in a day or 40 hours of work in a week. For example, if an employee on a flexible or compressed work schedule has a 9-hour basic work requirement on a given day, only hours of work outside the 9-hour basic work requirement could be overtime hours. In other words, while hours of work (including any paid time off but excluding hours in nonpay status) within the basic work requirement count as hours of work in applying the 8-hour daily and 40-hour weekly overtime thresholds, only hours of work outside the basic work requirement may receive an overtime rate. Hours outside the daily or weekly basic work requirement are substituted, as appropriate, for furlough hours under the rules in 5 CFR 550.112(d). For example, if an employee is placed in furlough status during a 9-hour daily basic work requirement and works 4 hours outside the basic work requirement on that same day, those 4 hours would be substituted and paid at the rate for basic work requirement hours.

An employee on a flexible work schedule may have the option to earn credit hours by working hours outside the basic work requirement. The rules governing credit hours remain applicable in the context of an administrative furlough. See Questions C.4., D.6., and E.1. for additional information on earning and using credit hours.

6. May an employee on a flexible work schedule earn credit hours by working during a week or on a day when the employee is furloughed?

A. During a week or on a day when an employee is furloughed during certain basic work requirement hours, the employee may earn credit hours by electing to work in excess of his or her basic work requirement, subject to all legal requirements and applicable agency policies or collective bargaining agreements. An employee may not earn credit hours by working during designated furlough hours within the employee’s basic work requirement. (See Question C.4.) Also, an employee may not use previously earned credit hours during furlough hours. (See Question E.1.)

The substitution rule in 5 CFR 550.112 may not be applied to credit hours—that is, the rule cannot be used to convert earned credit hours into paid hours that substitute for furlough hours in pay computations.

E. Leave and Other Time Off

1. May an employee take paid leave or other forms of paid time off (e.g., annual, sick, court, or military leave, leave for bone marrow or organ donor leave, credit hours earned, any compensatory time off earned, or time off awards) instead of taking administrative furlough time off?

A. No. During an administrative furlough, an employee may not substitute paid leave or other forms of paid time off for any hours or days designated as furlough time off.

2. Can agencies furlough employees who are on approved leave without pay (LWOP) during a time when administrative furloughs are being conducted for other employees?

A. Agencies have discretion in determining whether to furlough employees who are in LWOP status, since both furloughs and LWOP are periods of nonpay status. Employees may already be scheduled for LWOP for a variety of reasons and for various lengths of time on either a continuous or discontinuous basis. An employee's LWOP may or may not fully encompass the period during which administrative furloughs are being conducted for other employees in the same organization. For example, for one employee, a continuous 1-year period of leave without pay to accompany a military spouse overseas may encompass the entire period during which administrative furloughs are being conducted in an employee's organization, while another employee's continuous LWOP may end during that period. Other employees may be scheduled to take LWOP on a regular but discontinuous basis under the Family and Medical Leave Act. (See Question E.3.)

Agencies are responsible for determining (1) whether employees already scheduled for LWOP during a period when administrative furloughs are being conducted will be subject to furlough and (2) the hours of furlough required of such employees. If an agency decides to place an employee in furlough status during hours that were originally scheduled to be LWOP, all applicable procedural requirements must be met, including a furlough notice.

3. May an employee take LWOP under the Family and Medical Leave Act (FMLA) during a time when administrative furloughs are being conducted for other employees?

A. Yes. An employee may take LWOP under FMLA during a time when administrative furloughs are being conducted for other employees in the same organization, subject to the conditions in 5 U.S.C. 6382. (See Question E.2.) However, if an employee is placed in furlough status during hours that were previously scheduled to be LWOP under FMLA, those furlough hours will no longer be considered to be LWOP under FMLA. Furlough hours will not count toward the employee's 12-week FMLA leave entitlement. An employee may not later substitute paid leave for furlough hours.

As explained in Question E.2., agencies are responsible for determining the extent to which employees with scheduled LWOP (including LWOP under FMLA) are placed in furlough status. If employees are placed in furlough status instead of LWOP under FMLA, all applicable procedural requirements must be met, including a furlough notice.

4. Does a furlough affect the accrual of annual leave and sick leave?

A. If an employee is furloughed (i.e., placed in nonpay status) for part of a biweekly pay period, the employee's leave accrual will generally not be affected for that pay period.

However, the accumulation of nonpay status hours during a leave year can affect the accrual of annual leave and sick leave over a period of time. (See 5 CFR 630.208 and Notes 1 and 2 below.) For example, when a full-time employee with an 80-hour biweekly tour of duty accumulates a total of 80 hours of nonpay status from the beginning of the leave year (either in one pay period, or over the course of several pay periods), the employee will not earn annual and sick leave in the pay period in which that 80-hour accumulation is reached. If the employee again accumulates 80 hours of nonpay status, he or she will again not earn leave in the pay period in which that new 80-hour total is reached. At the end of the leave year, any accumulation of nonpay status hours of less than 80 hours is zeroed out so that the accumulation of nonpay status hours for the next leave year starts at zero.

For part-time employees, the rule blocking accrual of leave based on the accumulation of nonpay status hours (5 CFR 630.208) does not apply. Instead, leave accrual for part-time employees is prorated based on hours in a pay status in each pay period; thus, time in nonpay status reduces leave accrual in each pay period containing such time (5 CFR 630.303 and 5 U.S.C. 6307).

Also, please see OPM's fact sheet on the [Effect of Extended Leave Without Pay \(LWOP\) \(or Other Nonpay Status\) on Federal Benefits and Programs](#), which has a section entitled, "Accrual of annual and sick leave."

Note 1: The term "nonpay status" refers to period during which an employee is absent from his or her tour of duty established for leave usage purposes and receives no pay for such absence. Furlough is one type of nonpay status.

Note 2: The term "leave year" is defined as the period beginning on the first day of the first full biweekly pay period in a calendar year and ends on the day immediately before the first day of the first full biweekly pay period in the following calendar year. (For example, for employees on the standard biweekly payroll cycle, the 2013 leave year is January 13, 2013, through January 11, 2014.) (See fact sheet at <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/leave-year-beginning-and-ending-dates/>.)

Note 3: For full-time employees with an uncommon tour of duty under 5 CFR 630.210, the accumulation limit used in applying 5 CFR 630.208 is the number of hours in the uncommon tour of duty for a biweekly pay period.

5. May an employee who takes furlough hours off be permitted to substitute annual leave retroactively for furlough hours taken, if the agency finds sufficient funds to cover the hours the employee was in a furlough status?

A. Generally no. However, if an employee has proactively taken more than the required number of furlough hours under an agency's phased furlough plan prior to the agency cancellation of the furlough, the employee may retroactively cancel excess furlough hours and substitute annual leave for those hours, as determined by the agency. (See B-219211, December 9, 1985.) For example, an agency's furlough plan requires each employee to take 176 furlough hours (22 days) between April and September. The agency requires the employee to take 8 furlough hours off each week in the month of April (for a total of 32 furlough hours (4 days)) and provides the employee with an option of when to take his/her remaining furlough hours off at a time of the employee's choosing, but no later than the end of September. If the employee takes all 176 furlough hours off (22 days) in April and the agency cancels the furlough on May 1 due to improved financial conditions, the employee would have taken 144 furlough hours more than what was needed (176 hours (22 days) - 32 hours (4 days)). Upon the determination to cancel the furlough, the agency must decide how to handle the 144 furlough hours (18 furlough days) off the employee has taken ahead of schedule in accordance with internal agency procedures and any applicable collective bargaining agreement. Any annual leave substituted for furlough hours would be calculated at the same compensation rate the employee would have received had he or she used annual leave at that time.

Note: This matter may be subject to collective bargaining for union-represented employees to the extent an agency has discretion to retroactively substitute annual leave for furlough hours taken.

6. May an employee who takes furlough hours off be granted excused absence to substitute retroactively for the furlough hours taken, if the agency finds sufficient funds to cover the hours the employee was in a furlough status?

A. Agencies have the discretionary authority to determine the situations in which an employee may be excused from duty without loss of pay or charge to leave in accordance with internal agency policy and any collective bargaining agreement. However, agencies are not required to provide excused absence unless specifically required by statute or Presidential directive. For example, if an employee has proactively taken more than the required number of furlough hours under an agency's phased furlough plan prior to the agency cancellation of the furlough, the agency is not required to provide excused absence for the excess furlough hours, as determined by the agency. (See B-219211, December 9, 1985.) If the agency decides to cancel certain furlough hours and substitute excused absence, the excused absence should be provided to all similarly situated employees. Any retroactive substitution of excused absence would be calculated at the same compensation rate the employee would have received had he or she used annual leave at that time.

Note: This matter, like others involving the impact and implementation of furloughs, may be

subject to collective bargaining for union-represented employees.

F. Holidays

1. May employees be administratively furloughed on a holiday?

A. Employees may be furloughed for periods of time that include holidays. However, an agency should select the furlough days off on programmatic and administrative grounds that are unrelated to the fact that the period includes a holiday. For example, an agency may not properly furlough employees for a 3-day period, the middle of which is a holiday, for the sole purpose of saving 3 days' pay while losing only 2 days of work. (See Comptroller General opinion B-224619, August 17, 1987.) Neither would it be proper to furlough an employee solely on a holiday. (See Comptroller General opinion B-222836, May 8, 1986.)

2. If employees have a designated administrative furlough day off on the last workday before a holiday *or* the first workday after a holiday (but not on both days), will they be paid for the holiday?

A. Yes. The general rule is that an employee is entitled to pay for a holiday so long as he or she is in a pay status on either the workday preceding a holiday or the workday following a holiday. The employee is paid for the holiday based on the presumption that, but for the holiday, the employee would have worked. (Note: A holiday should not be the first or last day of the period covered by a furlough.)

3. If employees have a designated administrative furlough day off on the last workday before a holiday *and* the first workday after a holiday, will they be paid for the holiday?

A. No. If a furlough includes both the last workday before the holiday and the first workday after the holiday, the employee is not entitled to pay for the holiday because there is no longer a presumption that, but for the holiday, the employee would have worked on that day. (See Comptroller General opinion B-224619, August 17, 1987.) Agencies that allow employees to choose their furlough days off should explain that the employee will not be paid for the holiday if the employee chooses to take a furlough day off both before and after the holiday.

G. Benefits

1. How does an administrative furlough impact the Federal Employees Health Benefits Program?

A. Please see Section S (Federal Employees Health Benefits Program).

2. Will an employee's Federal Flexible Spending Account Program (FSAFEDS) be impacted during an administrative furlough?

A. The employee's FSAFEDS coverage continues, and allotments made by the employee continue if the employee's salary in each pay period is sufficient to cover the deduction(s). If the employee's salary is insufficient to cover his or her allotment(s), then incurred eligible health care expenses will not be reimbursed until the allotments are successfully restarted (in which case the remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount). Incurred eligible dependent care expenses may be reimbursed up to whatever balance is in the employee's dependent care account, as long as the expenses incurred allow the employee (or employee's spouse if married) to work, look for work or attend school full-time. Once dependent care allotments are successfully restarted, remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount.

3. How does an administrative furlough impact the Federal Employees' Group Life Insurance (FEGLI) Program?

A. Please see Section T (Federal Employees' Group Life Insurance Program).

4. Will an employee continue to be covered under the Federal Dental and Vision Insurance Program (FEDVIP) during an administrative furlough?

A. Yes. Just as with scheduled LWOP, if BENEFEDS is unable to take the necessary premium deduction from an employee's pay, BENEFEDS collects premium up to twice the biweekly amount from the next full pay period to make up for the missed premium deduction. If the furlough continues for more than two consecutive pay periods, BENEFEDS will mail a direct bill to the employee. The enrollee should pay premiums directly billed to him/her on a timely basis to ensure continuation of coverage.

5. Will an employee continue to be covered under the Federal Long Term Care Insurance Program (FLTCIP) during an administrative furlough?

A. Yes, eligible claims will continue to be paid. Coverage will terminate if premiums are not paid. If the contractor does not receive premium for two or fewer pay periods, they will adjust future premium deductions, increasing by no more than \$50 per pay period to recover the missed premiums. Three consecutive pay periods of no premium will result in the contractor billing the participant directly.

The employee also has the option to change to direct billing or to payment via electronic funds transfer (EFT). If premiums are not collected or a final bill is not paid within a 30 day grace period, FLTCIP will send a termination letter. The employee has 35 days from the date of the letter to pay the premium; otherwise the employee will be disenrolled retroactively to the last pay period in which premium was paid.

6. How does a furlough affect retirement annuity benefits?

A. Generally, furloughs will not affect an annuity benefit under the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS).

The amount of a CSRS or FERS annuity paid by OPM is based primarily on the amount of creditable service an employee performs and the employee's high-3 average salary. Both CSRS and FERS allow service credit for up to 6 months of nonpay status in any calendar year. If a furlough period does not cause an employee to be in a nonpay status for more than 6 months in a calendar year, the furlough period will be included as creditable service in determining the employee's total creditable service used in the annuity computation. If the total amount of time an employee spends in a nonpay status in a calendar year exceeds 6 months, the amount of nonpay status in excess of 6 months in the calendar year will not be creditable for retirement purposes.

The high-3 average salary used to compute CSRS and FERS annuities is the largest annual rate resulting from averaging an employee's *rates of basic pay* in effect over any period of 3 consecutive years of creditable civilian service, with each *rate* weighted by the length of time it was in effect. If a period of nonpay status (such as a furlough) that is creditable for retirement occurs during the 3-year period used to compute the high-3 average salary, the loss of actual pay during that nonpay status period generally would have no effect on the high-3 computation. The basic pay rate in effect during that nonpay status period would be used in the high-3 average salary calculation. For example, if an employee whose annual rate of basic pay is \$85,000 is placed in a furlough status for two weeks and that 2-week period falls in the employee's average salary period, that 2-week furlough period will be credited in the high-3 average salary calculation using the \$85,000 annual rate of basic pay that was in effect during the furlough period. In this example, the loss of actual pay (or earnings) during that period is not material in the high-3 average salary calculation.

Basic pay for retirement includes locality pay and certain types of additional pay, such as law enforcement availability pay (LEAP), administratively uncontrollable overtime (AUO) pay, standby duty pay, firefighter pay (annualized salary), and market pay for physicians. These types of additional pay are included in the basic pay used to calculate the high-3 average salary during periods of creditable nonpay status as long as the authorization for the payments remains in effect.

Other additional types of basic pay, however, including night shift differential and environmental differential for wage grade employees, and certain overtime pay for customs officers are included in the average salary computation only when an employee has received that type of pay.

H. Employee Assistance

1. Are employees entitled to unemployment compensation while on furlough?

A. It is possible that furloughed employees may become eligible for unemployment compensation. The various State unemployment compensation requirements differ. Some States require a 1-week waiting period before an individual qualifies for payments. In general, the law of the State in which an employee's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. Agencies or employees should submit questions to the appropriate State (or the District of Columbia, Puerto Rico, or the Virgin Islands) office. The Department of Labor (DOL) website provides links to individual State offices at <http://www.servicelocator.org/OWSLinks.asp>.

For additional information on Unemployment Compensation for Federal Employees (UCFE), see DOL's UCFE webpage at <http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>, fact sheet at <http://www.dol.gov/sequestration/ucfe.pdf>, and frequently asked questions at <http://www.dol.gov/sequestration/ucfe-faqs.pdf>.

2. What resources are available if a Federal employee needs financial assistance during a furlough period?

A. Some agency employee assistance programs (EAPs) include financial consultation services. In addition, employees may want to contact their financial institution or credit union or learn about their options through the Thrift Savings Plan (<http://www.tsp.gov>). The Federal Retirement Thrift Investment Board, which administers TSP, has posted guidance regarding the effect of nonpay status on TSP accounts at www.tsp.gov/PDF/formspubs/oc95-4.pdf, and specific guidance regarding the March 1, 2013 sequester at <https://www.tsp.gov/PDF/formspubs/oc13-7.pdf>, and can be reached at 1-877-968-3778 for additional information.

3. Can I take a TSP loan while I'm furloughed? What is the effect of an administrative furlough on Thrift Savings Plan (TSP) contributions, investments, and loans?

A. Agencies and employees should refer to the TSP website (<http://www.tsp.gov>) or contact their agency representative for information. Specifically, the Federal Retirement Thrift Investment Board, which administers TSP, has posted guidance regarding the effect of nonpay status on TSP accounts at www.tsp.gov/PDF/formspubs/oc95-4.pdf, and specific guidance regarding the March 1, 2013 sequester at <https://www.tsp.gov/PDF/formspubs/oc13-7.pdf>, and can be reached at 1-877-968-3778 for additional information.

I. Service Credit for Various Purposes

1. Is being furloughed or on leave without pay (LWOP) considered a break in service?

A. No, both mean the employee is in a nonpay, nonduty status for those days/hours. However, an extended furlough or extended LWOP may affect the calculation of creditable service for certain purposes.

2. To what extent does nonpay status affect Federal employee benefits and programs?

A. The effects of a nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) on Federal employee benefits and programs vary based on current law and regulation. For additional information, see OPM's fact sheet on the "Effect of Extended Leave Without Pay (or Other Nonpay Status) on Federal Benefits and Programs" at <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/effect-of-extended-leave-without-pay-lwop-or-other-nonpay-status-on-federal-benefits-and-programs/>.

J. Federal Employees on Military Duty

1. Will employees continue to receive a reservist differential payment (5 U.S.C. 5538) if they are affected by an administrative furlough from their Federal civilian position while on active duty?

A. It depends. In computing a reservist differential, the employing agency must compare the employee's projected civilian basic pay to the allocated military pay and allowances for each civilian pay period. If an employee is affected by a furlough from his or her Federal position while on active duty, the employing agency must reduce the employee's projected civilian basic pay during any pay period in which furlough time off occurs. If the allocated military pay and allowances are greater than or equal to the projected civilian basic pay adjusted for furlough time off, no reservist differential is payable for that pay period. If the projected civilian basic pay (as reduced to account for furlough time off) is greater than the allocated military pay and allowances, the difference represents the unadjusted reservist differential.

2. Will there be an impact on an employee's General Schedule or Federal Wage System within-grade increases (WGI) waiting period if the employee is affected by an administrative furlough while in an Absent – Uniformed Service status?

A. No. A furlough has no impact on an employee's General Schedule or Federal Wage System WGI waiting period if the employee is affected by a furlough while in an Absent – Uniformed Service status (i.e., Nature of Action Code 473, which is used when the employee has restoration rights). An absence for the purpose of engaging in military service is creditable service in the computation of waiting periods for successive WGIs when an employee returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation. (See 5 CFR 531.406(c)(1)(i) and 5 CFR 532.417(c)(4).)

K. Benefits under the Federal Employees' Compensation Act (FECA)

1. Are employees who are injured while on furlough or LWOP eligible to receive workers' compensation?

A. No. Federal workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. A Federal employee who is receiving workers' compensation payments under the FECA will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

2. How does an administrative furlough affect the compensation of an employee who is receiving FECA benefits and is under medical orders to work part-time?

A. When an employee is already out on total or partial wage loss benefits, FECA compensation continues at the usual rate. Claims for FECA compensation benefits submitted as a result of missing a partial day due to a furlough are not payable under the FECA.

3. How does an administrative furlough impact the compensation of an employee who is receiving FECA benefits and is required to work a modified light duty schedule?

A. FECA compensation benefits are not payable for work days lost as a result of administrative furlough.

4. How does a furlough affect Continuation of Pay (COP)?

A. If an employee sustains a traumatic injury and is receiving COP before furlough days have been scheduled, COP should continue. However, if an employee sustains a traumatic injury and has already been scheduled for one or more furlough days, then there would be no COP entitlement for any day that the employee was not scheduled to work due to an administrative furlough.

5. Are schedule awards or medical benefits affected by an administrative furlough?

A. No. Schedule award and medical benefits continue regardless.

Note to Section K: Any additional questions regarding Federal workers' compensation benefits should be directed to the Division of Federal Employees' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor. See <http://www.dol.gov/owcp/dfec>.

L. Scheduling Furlough Time Off

1. How should agencies schedule administrative furlough time off? Must all agencies follow the same procedures for furloughing employees?

A. An administrative furlough will impact each agency differently depending on the extent of the agency’s budget reduction. Agencies have discretion to implement such a furlough to best absorb budget reductions over the course of the fiscal year and do not need to follow the same procedures. For example, an agency may furlough employees for 1 day a pay period for a finite period of time, designate a number of furlough hours, shut down the entire agency for a defined number of days, designate specific dates as furlough days off, or allow employees to select their own furlough time off, etc.

2. How should agencies schedule administrative furlough time off for employees on flexible or compressed work schedules under an alternative work schedule (AWS) program?

A. Because the definition of a workday will vary based on the type of work schedule and/or appointment, it is best for an agency to develop a policy that provides equity and consistency, subject to all legal requirements and applicable agency policies or collective bargaining agreements. For ease of administration and equity, agencies may schedule furloughs for all employees (both alternative work schedule and regular tours of duty) in terms of hours. For example, in the event that all full-time employees are furloughed for 40 hours, for some employees the actual number of furlough days could be more or less than 5 days, depending on their work schedules.

Many employees who are on flexible work schedules normally have a great deal of flexibility in the starting and stopping times within their basic work schedule. When furloughing employees with a flexible work schedule, agencies should identify specific hours during which the employee is in furlough status—e.g., 8:00 am–4:00 pm. Thus, if an employee is called into work (e.g., due to an emergency), it will be clear as to whether the hours of work occur during or outside scheduled furlough hours. Any work ordered during scheduled furlough hours cancels the furlough for those hours, and such work would be subject to normal compensation requirements. (See Question C.6. See also Questions D.4., D.5., and D.6 dealing with employees working outside basic workweek hours during a day or week in which they are placed in administrative furlough status.)

3. How should agencies schedule administrative furlough time off for employees who do not work a standard work schedule (e.g., part-time or uncommon tour of duty)?

A. Agencies must enact furloughs in a manner that reduces operation risks and minimizes impacts on agency core mission in service of the American people, but should strive to impact employees in an equitable manner regardless of work schedule. Furloughs of part-time or uncommon tour of duty employees must comply with the procedures of 5 CFR part 752 or part 351, as applicable, if the employees are otherwise covered.

In determining furloughs for part-time employees, agencies should consider whether or not to prorate furlough hours requirements based on the number of scheduled part-time work hours relative to a full-time work schedule of 80 hours in a biweekly pay period to achieve the same percentage pay reduction for both full-time and part-time employees. For example, a part-time work schedule of 64 hours per biweekly pay period would equate to 64/80 of a full-time work schedule, or 80 percent. This percent could then be multiplied by the number of hours that a full-time employee is furloughed to derive the appropriate number of furlough hours for the part-time employee. Thus, if a full-time employee were required to be furloughed for 40 hours, a part-time employee with a 64-hour biweekly tour could be furloughed for 32 hours ($40 \times .80 = 32$).

In the case of employees with an uncommon tour of duty, such as firefighters and paramedics, agencies should consider the impact that a furlough has on regular pay (in percentage terms), rather than the impact on hours (in percentage terms). An uncommon tour of duty is a tour of duty in excess of 80 hours in a biweekly pay period that is established for the purpose of charging leave. Thus, it includes overtime hours for which an employee receives regular overtime pay or standby duty premium pay. (See definition of “uncommon tour of duty” in 5 CFR 630.201 and 630.210.) Generally, for employees on an uncommon tour of duty, furlough hours will reduce regular pay by a greater percentage than the percentage reduction in hours. In connection with the furlough of employees with an uncommon tour of duty, agencies should consider whether or not the number of furlough hours should be set in a manner that achieves the same percentage pay reduction experienced by full-time employees with an 80-hour biweekly tour of duty who are covered by the same furlough policy.

4. How should agencies schedule administrative furlough time off for employees who work on a seasonal or intermittent basis?

A. Whether either group is called for work during an administrative furlough is discretionary with agencies. Seasonal employees are recalled to duty at identified periods of the year in accordance with pre-established conditions. Intermittent employees are non-full-time employees without a regularly scheduled tour of duty.

M. Procedures—22 Workdays or Less

1. May an agency schedule administrative furlough days consecutively and discontinuously (e.g., one workday per week for 15 weeks)?

A. Yes. Nothing in law or regulation prohibits discontinuous furloughs, and they have been upheld by the Merit Systems Protection Board on appeal. Moreover, discontinuous furloughs can be advantageous to both employees and the agency by distributing the furlough days over time, thereby minimizing the financial impact on employees as well as lessening disruption of agency services to the public.

In *AFGE, Local 32 and OPM*, 22 FLRA 307 (1986), the Federal Labor Relations Authority held that a proposal giving the furloughed employee the right to determine whether his/her furlough was to be continuous or discontinuous is a negotiable 5 U.S.C. 7106(b)(3) “appropriate arrangement.”

For ease of administration and equity, agencies may also schedule furloughs for all employees (both alternative work schedule and regular tours of duty) in terms of hours. For example, all full-time employees would be furloughed for 40 hours, even though for some employees the actual number of furlough days could be more or less than 5 days.

2. How is an administrative furlough documented?

A. Agencies must prepare an SF-50, “Notification of Personnel Action,” for each employee subject to furlough (or a List Form of Notice may be prepared for a group of employees who are to be furloughed on the same day or days each pay period). Chapters 15 and 16 of [The Guide to Processing Personnel Actions](#) provide complete guidance on documenting a furlough.

3. If a discontinuous administrative furlough extends for more than 30 calendar days, is it a furlough covered by adverse action procedures in 5 CFR part 752, or is it covered by the reduction in force (RIF) procedures of 5 CFR part 351?

A. Based on the definition of “day” as “calendar day” (5 CFR 210.102 and 752.402), OPM has determined that 22 workdays equate to 30 calendar days for adverse action purposes for employees. Thus, a discontinuous furlough of 22 workdays or less would be covered by adverse action procedures, and one of more than 22 workdays would be covered by the RIF procedures of 5 CFR part 351. (If a holiday is included in a furlough of 22 *consecutive* workdays, the furlough might equate to more than 30 calendar days. For example, the month of November has two holidays: Veterans Day and Thanksgiving Day. Therefore, the number of calendar days will be extended beyond 30 by two days.)

4. What procedural rights would apply for an administrative furlough of 30 calendar days or less for employees covered under 5 CFR part 752?

A. For a short furlough of a covered employee, the law (5 U.S.C. 7513) gives a covered employee the following rights:

- At least 30 calendar days advance written notice by the agency stating the specific reasons for the proposed action. (Typically, the reasons for the action would involve a lack of work or funds.) The 30 calendar day period begins upon an employee’s *receipt* of the written notice. Therefore, agencies should plan accordingly to allow time for mailing the notice when hand-delivery is not possible. (See Sample Notice 1 for proposal to furlough and Sample Notice 2 for decision to furlough.)
- At least seven calendar days for the employee to answer orally and in writing to the

proposal notice and to furnish documentary evidence in support of his or her answer. (A summary of any oral answer must be made and maintained by the agency.)

- The right of the employee to be represented by an attorney or other representative.
- A written decision by the agency with the specific reasons for its action at the earliest time practicable.
- The right to appeal the agency's action to the Merit Systems Protection Board.

In addition, OPM's regulations (5 CFR 752.404) require that the agency inform the employee of the right to review the material it relied on to support the reasons for its action. The agency must designate an oral reply official who can either make or recommend a decision, and must issue its decision at or before the effective date of the action. The regulations (5 CFR 752.405) also provide that where applicable, the affected employee may elect to grieve under a negotiated grievance procedure (NGP) or appeal to the Merit Systems Protection Board, but not both.

Note: Under 5 CFR 752.404(b)(2), if the agency is furloughing some, but not all, employees in a competitive level, the notice of proposal must state the basis for selecting the particular employee as well as the reasons for the furlough. Agencies who anticipate furloughing some, but not all employees, should ensure the accuracy of established competitive levels in order to meet their obligations under this regulation. In general, the term competitive level refers to positions at the same grade level and classification series, the duties of which are interchangeable (see 5 CFR 351.403(a)). Where bargaining unit employees are concerned, additional procedural rights may be provided by their negotiated agreement.

Adverse action procedures in 5 CFR part 752, subpart F, covering Senior Executive Service (SES) career appointees and certain SES limited term or emergency employees do not apply to short furloughs because those procedures provide only for removal from the civil service or suspension for more than 14 days based upon misconduct, neglect of duty, malfeasance or failure to accept a directed reassignment or to accompany a position in a transfer of function.

4a. What supporting material must be made available for review by employees to support an administrative furlough action as required under 5 CFR 752.404?

A. Since decisions on whether to conduct an administrative furlough and the length of any furlough are based on each agency's unique circumstances, each agency would need to identify the appropriate documentation that supports its own particular reasons for any administrative furlough action. Because the reasons and methods to furlough may vary from agency to agency, (e.g. downsizing, reduced funding, lack of work, or any other budget situation) supporting documentation may also vary.

While it is the responsibility of each agency to make an independent determination of supporting documentation for any administrative furlough action due to sequestration, potential general documentation related to sequestration could include, but is not limited to:

- 1) Balanced Budget and Emergency Deficit Control Act of 1985
- 2) Budget Control Act of 2011 - <http://www.gpo.gov/fdsys/pkg/BILLS-112s365enr/pdf/BILLS-112s365enr.pdf>,
- 3) American Taxpayer Relief Act - <http://www.gpo.gov/fdsys/pkg/BILLS-112hr8enr/pdf/BILLS-112hr8enr.pdf>,
- 4) OMB Memorandum M-13-03, "Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources," dated January 14, 2013 - <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-03.pdf>,
- 5) OMB Memorandum M-13-05, "Agency Responsibilities for Implementation of Potential Joint Committee Sequestration," dated February 27, 2013 - <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-05.pdf>,
and
- 6) OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013, dated March 1, 2013 - http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/fy13omb/jcsequestrationreport.pdf

4b. What procedural rights apply to employees who are veterans covered under 5 U.S.C. chapter 75 and 5 CFR part 752 for an administrative furlough of 30 calendar days or less?

A. For a short furlough of a covered veteran employee, the law (5 U.S.C. 7513) gives a covered veteran employee the same procedural rights as other covered employees as explained in Question M.4. Employees should consult with their agency human resources office to determine whether they are covered by 5 U.S.C. 7513 and what procedures may apply to them.

5. What procedures are applicable to members of the Senior Executive Service affected by an administrative furlough of 30 calendar days or less?

A. Under SES furlough regulations at 5 CFR part 359, subpart H, an agency need not use competitive procedures in selecting SES appointees to be furloughed for 30 calendar days or less, or for 22 workdays or less if the furlough does not cover consecutive days; however, the agency must provide career SES appointees (other than reemployed annuitants) a 30-day advance written notice of a furlough of any length. The written notice must tell the appointee the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; and the appointee's appeal rights to the Merit Systems Protection Board. For a probationer, the notice should also explain the effect (if any) on the duration of the probationary period. However, the full notice period may be shortened, or waived, in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities. This regulation does not require that appointees be afforded an

opportunity to respond or that agencies issue a separate decision notice. A career appointee (other than a reemployed annuitant) who has been furloughed and believes 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations.

SES noncareer, limited term and limited emergency appointees and reemployed annuitants holding career SES appointments are not covered by 5 CFR part 359, subpart H, and may be furloughed under agency designated procedures, which need not include a 30-day advance written notice, an opportunity to respond, or a separate decision notice.

6. What procedures and appeal rights are applicable for probationers, employees under temporary appointments in the competitive service, employees who are nonpreference eligible employees in the excepted service with less than 2 years of continuous service, Schedule C employees, and others not covered by 5 U.S.C. chapter 75 but also affected by an administrative furlough?

A. There are no mandatory procedures; however, agencies should ensure that all administrative procedures required by negotiated agreements or internal personnel policies are followed, subject to any exceptions to those procedures that would apply in the event of an administrative furlough.

6a. What if an agency initiates an administrative furlough for a probationer, but the individual satisfactorily completes their probationary period before furlough days are taken or completed?

A. Once a probationer satisfactorily completes the required probationary period and meets the definition of "employee" under 5 U.S.C. 7511, the employee is entitled to the same procedural rights as other covered employees as explained in Question M.4.

Before any furlough days are taken after the individual has become an "employee" under 5 U.S.C. 7511, the agency should provide: at least 30 calendar days advance written notice; at least 7 calendar days for the employee answer orally and in writing; the right of the employee to be represented by an attorney or other representative; a written decision; and the right of the employee to appeal the agency's action to the Merit System Protection Board. See Question M.4. for additional information on these procedural rights.

7. How do agencies implement an administrative furlough for administrative law judges?

A. 5 U.S.C. 7521 provides that adverse action furloughs of 30 calendar days or less may be taken against an administrative law judge "only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board." The Merit Systems Protection Board has adopted procedures for implementing such an action, which are described in 5 CFR 1201.137-141.

8. How should the decision letter for an administrative furlough be framed if the agency

has not set a specific number of furlough days?

A. While it is desirable when possible to inform the affected employee of a specific number of furlough days in the decision letter, the agency needs only to set out the maximum time that may be involved, so employees have as much information as possible.

9. If an employee decides to challenge a discontinuous administrative furlough, from what point would the time for appeal to the Merit Systems Protection Board run?

A. Employees must file an appeal within 30 days after the effective date of their first furlough day, or 30 days after the date of their receipt of the decision notice, whichever is later.

10. May an agency provide an employee electronic notice of a furlough action?

A. Agencies that issue furlough notices should consult with their respective General Counsels to ensure each step of the process is consistent with regulatory and legal requirements. If an agency determines to electronically notify affected employees of a furlough action, OPM recommends that the agency include each employee's name, address, and/or e-mail address on both the proposal and decision notifications so that it is clear that an employee is receiving personal notification. Agencies should also consider including in the body of the electronic correspondence, the requirement that the employee provide an email acknowledgement of receipt. If an agency doesn't receive a requested acknowledgement of receipt of an e-mail notification, it should consider delivering a paper copy of the proposal and/or decision notifications to the employee at his or her home address by registered mail with a return receipt requested. Similarly, agencies must deliver hard copy furlough notices to those employees without agency email access.

Additionally, OPM recommends that agencies consider informing employees in advance of when and how the furlough notices will be issued and providing a contact person who can confirm whether or not an employee is subject to the furlough and answer questions.

Finally, agencies with bargaining unit employees are reminded that they must provide notice and opportunity to bargain over negotiable procedures and appropriate arrangements to any unions representing their employees.

11. What are an agency's regulatory obligations in providing an appellant the Merit Systems Protection Board (MSPB) appeal information in the adverse action furlough decision notice?

A. As summarized in the April 11, 2013, Federal Register (<http://www.gpo.gov/fdsys/pkg/FR-2013-04-11/pdf/2013-08503.pdf>) an agency must satisfy the obligation to provide a copy of the MSPB appeal form when issuing a decision notice. Providing this MSPB appeal hyperlink form electronically (<https://e-appeal.mspb.gov/>) will typically satisfy the requirement of ensuring that employees subject to a decision appealable to MSPB will have effective access to the MSPB regulations and appeal form. However, if

the employee informs the agency that he or she lacks Internet access, the agency is required to take steps to ensure that the employee has actual access to the MSPB's regulations and the appeal form, including providing the employee with a hard copy of these documents upon the employee's request. See Sample Notice 2 for sample decision notice language.

N. Procedures—More than 22 Workdays (Extended Furlough)

1. When is an agency required to use reduction in force (RIF) procedures to administratively furlough employees?

A. Agencies must follow RIF procedures for an extended furlough of more than 30 continuous calendar days, or of more than 22 discontinuous workdays (though, importantly, a furlough is a temporary placement in non-pay/non-duty status; it is not a permanent separation from service).

2. Is there a maximum period an employee may be administratively furloughed for an extended period?

A. Yes. An employee may be placed on an extended furlough only when the agency plans to recall the employee to his or her position within 1 year. Therefore, the furlough may not exceed 1 year.

3. If an agency needs to administratively furlough employees for more than 30 calendar days (or more than 22 workdays), must the complete 5 CFR part 351 procedures be followed?

A. Yes. The complete procedures in 5 CFR part 351 must be followed, including a minimum 60 days specific written notice of the furlough action. (Question 16 has additional information on notice requirements.) The only exception to the regular procedures involves assignment rights (i.e., "bump" and "retreat" rights; see question 4).

4. When does an employee who is reached for an extended furlough action during an administrative furlough have a right of assignment to another position?

A. An employee reached for release from the competitive level because of an extended furlough has assignment rights to other positions on the same basis as an employee reached for release as a result of other RIF actions (e.g., separation or downgrading).

Because of the requirement in 5 CFR 351.701(a) that assignment rights apply only to positions lasting at least 3 months, an employee reached for an extended continuous furlough does not have assignment rights to a position held by another employee who is not affected by the furlough unless the furlough extends for 90 or more consecutive days. Also, an employee reached for a discontinuous extended furlough action does not have assignment rights to another position.

The undue interruption standard could apply to an extended furlough over 90 consecutive days. (As defined in 5 CFR 351.203, “undue interruption” essentially means that a higher-standing employee who is otherwise qualified for the assignment may exercise the assignment right only if the employee is able to perform the work of the position of the lower-standing employee within 90 days of the assignment.) The agency must consider whether undue interruption would result from both (1) the displacement of a lower-standing employee from the competitive level affected by the furlough, and (2) the recall of both employees to their official positions at the end of the furlough period.

5. Are there any other situations in which agencies may restrict employees’ assignment rights in an administrative furlough situation?

A. An agency may make a temporary exception to order of release and assignment rights to keep the incumbent in his or her position for 90 days or less after the commencement of the furlough when needed to continue an activity without undue interruption. (For additional reasons that a temporary exception may be used, see 5 CFR 351.608(a).)

An agency may make a continuing exception to order of release and assignment rights to keep the incumbent in a position that no higher standing employee can take over within 90 days and without undue interruption to the activity. (See 5 CFR 351.607.)

6. Some employees within a competitive area are paid from appropriated funds. Some are paid from a variety of other funding sources, such as trust funds, working capital, user fees, etc. Are employees who are paid from these other sources exempt from an administrative furlough and the 5 CFR part 351 process?

A. Regardless of the source from which an employee is paid, each employee within a competitive area would be subject to displacement by higher standing employees within the same competitive area.

7. If a program, project, or activity (PPA) takes other actions to obviate or lessen the need for an extended administrative furlough, how will the employees in the PPA be affected by the process?

A. Even though their positions are not subject to furlough, the employees in the PPA would be subject to displacement by higher standing employees in other PPAs within the competitive area.

8. What action is taken if an employee refuses an offer of assignment during an administrative furlough?

A. The employee is furloughed from his or her position.

9. If an employee bumps or retreats to a different job as a result of an administrative furlough, is the employee temporarily assigned to that job?

A. No. The employee becomes the incumbent of that job even though the furlough anticipates the employee's eventual recall to his or her former job.

10. If circumstances change and the agency is unable to recall administratively furloughed employees at the point specified in their extended furlough notice, what additional action is required?

A. In this situation, the agency must issue those employees new notices of either an extended furlough or proposed RIF separation, as the situation requires. This new action must meet all the requirements in the 5 CFR part 351 regulations (for example, 60 days advance notice).

11. Do these requirements also apply if an agency finds that it can recall employees before they have reached the administrative furlough limits specified in their notice?

A. No.

12. Are employees who are appointed by the President with Senate confirmation (PAS), Schedule C employees, and members of the Senior Executive Service (SES) covered by extended furlough procedures of 5 CFR part 351 during an administrative furlough?

A. Extended furlough procedures of 5 CFR part 351 do not apply to an employee who is a member of the Senior Executive Service or to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of the Senate, except a postmaster. All Schedule C employees are covered by part 351 except those under appointments of 1 year or less who have less than 1 year of service.

13. What procedures are applicable to members of the Senior Executive Service (SES) affected by an administrative furlough of more than 30 calendar days, or more than 22 discontinuous workdays?

A. Career SES members (other than reemployed annuitants) are covered by separate furlough procedures in 5 CFR part 359, subpart H, which provide that an agency must use competitive procedures in selecting SES career appointees for furloughs of more than 30 calendar days, or for more than 22 workdays if the furlough does not cover consecutive calendar days. SES regulations at 5 CFR part 359, subpart F, do not apply, but agencies may use the same competitive procedures they have established for SES RIF. Any competitive procedures used must be made known to the SES members. These career appointees are entitled to a 30-day advance written notice of a furlough, which must tell the appointee the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; and the

appointee's appeal rights to the Merit Systems Protection Board. For a probationer, the notice should also explain the effect (if any) on the duration of the probationary period. However, the full notice period may be shortened, or waived, in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities. (See, for example, <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough> for information on shutdown furloughs.) This regulation does not require that appointees be afforded an opportunity to respond or that agencies issue a separate decision notice. A career appointee (other than a reemployed annuitant) who has been furloughed and believes 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations.

SES noncareer, limited term and limited emergency appointees and reemployed annuitants holding career SES appointments are not covered by 5 CFR part 359, subpart H, and may be furloughed under agency designated procedures, which need not include a 30-day advance written notice, an opportunity to respond, or a separate decision notice.

14. What happens to temporary employees serving under appointments limited to 1 year or less in extended administrative furlough situations?

A. An agency may not retain a temporary employee in pay status to furlough a competing employee in the same competitive level. Temporary employees may be either separated or furloughed in such situations, but they are not entitled to the protections of adverse actions or 5 CFR part 351 procedures when this occurs. As a matter of good human resources management, however, the agency should try to give these employees as much advance written notice as possible.

Time spent in furlough status by temporary employees counts the same as time in a pay status toward their appointment's not-to-exceed date and the 2-year limit on their overall service specified in 5 CFR 316.401(c).

15. How do agencies administratively furlough administrative law judges for more than 30 calendar days (or more than 22 workdays)?

A. Administrative law judges are subject to the procedures in 5 CFR part 351. However, since judges are not given performance ratings, the provisions dealing with the effect of performance ratings on retention standing would not apply.

16. What notice must an agency provide an employee of an extended administrative furlough action?

A. An agency must give an employee covered by 5 CFR part 351 a minimum 60-day specific written notice before the effective date of any action, including furlough. The statutory basis for the notice requirements is found in 5 U.S.C. 3502(d). The notice requirements are further implemented through regulations published in 5 CFR part 351, subpart H.

The same notice requirements are applicable to both a continuous and a discontinuous furlough.

17. What option is available if an agency is unable to provide an employee with the minimum required notice of an extended administrative furlough?

A. When the action is caused by unforeseeable circumstance, an agency may request OPM to authorize a notice period of less than 60 days. However, the agency must still provide each employee with a minimum of 30 calendar days specific written notice of the action. (See 5 U.S.C. 3502(e) and 5 CFR 351.801(b).)

18. Section 351.806 of 5 CFR states that during the notice period when, “in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee . . . in a nonpay status without his or her consent.” If an agency is unable to give 60 calendar days notice in an emergency (or longer period if required by administrative or negotiated provisions), may an agency use 5 CFR 351.806 to place employees on administrative furlough before the notice period is satisfied?

A. Yes.

19. Is the agency required (or permitted) to register employees administratively furloughed under 5 CFR part 351 in the agency’s Reemployment Priority List, or is the employee eligible for priority consideration under placement programs such as Career Transition Assistance Program or the Interagency Career Transition Assistance Program?

A. No. All of these programs are available only to employees who are separated, not to employees who are furloughed.

20. During an administrative furlough, competitive service employees may appeal the action to the Merit Systems Protection Board (MSPB). What about excepted service employees?

A. Excepted service employees, as well as competitive service employees, who are covered by 5 CFR part 351 may appeal or grieve as follows: An employee covered by a negotiated grievance procedure that does not exclude 5 CFR part 351 actions must use the negotiated grievance procedure. See 5 U.S.C. § 7121, *et seq.* Otherwise, an employee may appeal to MSPB. See 5 CFR 351.202, 351.901, and 1201.3(c).

21. What if an agency plans for and gives notice of an administrative furlough of 22 workdays or less, but then determines that another furlough is necessary for different reasons? Must the agency use 5 CFR part 351 furlough procedures if it determines that an additional furlough is necessary when the additional furlough follows a 22 workday or less furlough?

A. If an agency's initial assessment resulted in a furlough of 22 workdays or less, OPM recommends that the agency complete that furlough and then issue new furlough notices under either 5 CFR part 752 or 5 CFR part 351, as appropriate depending on the length of the newly required furlough, in the event it determines that additional savings are necessary for different reasons.

O. Labor Management Relations Implications

1. When an agency is required to effect an administrative furlough, what is the agency's obligation to bargain?

A. The decisions whether to furlough employees and which activities to except from a furlough are management rights that are not subject to bargaining. See 5 U.S.C. 7106(a). However, when an agency determines that an administrative furlough is necessary, agencies have a duty to notify their exclusive representatives, if any, prior to initiating and implementing any furlough actions. Upon request, agencies must bargain over any negotiable impact and implementation proposals the union may submit, unless the matter of furloughs is already covered by a collective bargaining agreement.

Agencies should be aware that their collective bargaining agreements may also contain provisions with respect to the time frame within which to provide the labor organization notice of a change in conditions of employment. It is advisable to check the agency's individual labor agreements for applicable notice provisions, and for agencies to comply with those provisions.

Agency contracts may also contain provisions regarding adverse actions and reductions in force (RIF) with which agencies must comply in giving notice to bargaining unit employees of pending furloughs. It is advisable to check the agency's individual labor agreements for applicable adverse action and reduction in force notice provisions, and to comply with those provisions.

However, in the event that agencies are required to absorb unexpected substantial budget cuts during a short-term continuing resolution or because of the limited time remaining in the fiscal year to absorb these unexpected budget cuts, then agencies might be required to furlough without delay because the cuts must be absorbed during the term of the continuing resolution or remainder of the fiscal year and cannot be deferred until later in the year or into a new budget year. In this event, OPM regulation 5 CFR 752.404(d)(2) states that written notice of furlough to individual employees and opportunity to be heard are not required because of unforeseeable circumstances. Unforeseeable circumstances could include

unexpected cuts by the Congress to an agency's budget late in the fiscal year. This regulation does not apply to the statutory requirement that agencies provide appropriate notice to labor organizations of changes in conditions of employment.

1a. Must agencies complete collective bargaining prior to issuing any furlough notices to bargaining unit employees?

A. To the extent required by law, agencies must satisfy applicable collective bargaining obligations prior to issuing any furlough notices to bargaining unit employees. Issuance of a furlough notice itself has been found to constitute a change in employees' conditions of employment, which means that unless the matter is already "covered by" a collective bargaining agreement, an agency must provide a union with advance notice of the proposed change (e.g. furlough notices being sent to employees) and an opportunity to bargain over any aspects of the change that are negotiable.

2. May an agency effect an administrative furlough for employees in a bargaining unit before negotiations are completed?

A. If the parties bargain to impasse and the union does not invoke the services of the Federal Service Impasses Panel in a timely manner, the agency may furlough employees without further delay provided the agency gives the union adequate notice of its intent to implement its last bargaining offer on a specific date. If the union invokes the services of the Federal Service Impasses Panel by that date, the agency may not furlough employees unless it can show it is necessary to do so without further delay.

Agencies required to absorb substantial budget cuts during a short term continuing resolution or because of the limited time remaining in the fiscal year to absorb those cuts might be required to furlough without further delay because the budget cuts must be absorbed during the term of the continuing resolution or the current fiscal year and cannot be deferred until later in the year or into a new budget year. However, in the case of cuts that can be absorbed over the course of the fiscal year, it would be difficult to demonstrate that the furloughs could not be delayed pending resolution of the bargaining impasses. If bargaining is not completed and the agency must furlough employees, the agency should continue to bargain and, if possible, implement any agreement retroactively. We caution agencies that this should be a last resort approach. All attempts should be made to complete the collective bargaining process first, if possible.

3. **While no decision has been made to administratively furlough employees, our union has submitted a midterm bargaining request on furlough procedures regarding any possible future administrative furlough. Our collective bargaining agreement is silent on furlough procedures and the union is invoking its right to initiate mid-term bargaining on matters not covered by the agreement. Do we have an obligation to bargain when no decision has been made to furlough employees?**

A. Even though no decision has been made to furlough employees, it is possible you have a duty to bargain regarding the union initiated mid-term bargaining request, assuming the matter is not already covered by your collective bargaining agreement. The law requires an agency to bargain during the term of a collective bargaining agreement on negotiable union-initiated proposals concerning matters that are not expressly contained in, or otherwise covered by, the collective bargaining agreement, unless the union has waived its right to bargain about the subject matter involved. With this in mind, you will have to evaluate the circumstances of your situation to determine whether you have a duty to bargain on furlough procedures.

4. **Along with a bargaining request on furloughs, our union has submitted an information request under 5 U.S.C. 7114 seeking information such as the agency administrative furlough plan and a list of employees expected to be furloughed, and whether or not the furloughs are planned to be continuous or discontinuous. Do we have to provide this information?**

A. It depends. An agency is required to provide data that is normally maintained, reasonably available, and necessary to perform the representational duties of a union. A union requesting information must establish a particularized need for the information by articulating, with specificity, why it needs the requested information, including the uses to which the union will put the information and the connection between those uses and the union's representational responsibilities under the statute. The union must establish that the requested information is required in order for the union to adequately represent its members. An agency denying a request for information must assert and establish any countervailing anti-disclosure interests. An agency may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying "no." With this in mind, you will have to evaluate the circumstances of your situation to determine whether you should provide the requested information.

5. **If a bargaining unit employee decides to challenge a discontinuous administrative furlough, what is the timeframe for the employee to file a grievance under the negotiated grievance procedure (NGP)?**

A. The time limits and other procedures applicable to bargaining unit employees are spelled out in applicable provisions of negotiated agreements.

6. May a manager or supervisor have a meeting with employees in a bargaining unit to discuss an administrative furlough without a union representative present?

A. The law grants a union the right to be represented at certain meetings between managers and one or more bargaining unit employees if the meeting concerns issues such as personnel policies or practices or other general conditions of employment. Under the law, this meeting is referred to as a “formal discussion.” With this in mind, you will have to evaluate the circumstances of your situation to determine whether the meeting constitutes a formal discussion. If you have determined the meeting is a formal discussion, advance notice of the meeting must be provided to the union. See 5 U.S.C. 7114(a)(2)(A).

P. Travel

1. Must agencies cover travel expenses during a furlough day, if an employee’s travel status requires his/her stay to include that furlough day?

A. Yes. Agencies must provide per diem or actual expenses to employees whose travel status requires a stay that includes a furlough day.

2. Can an employee be engaged in official travel during furlough hours?

A. No. By statutory definition in 5 U.S.C. 7511(a)(5), a furlough under 5 U.S.C. chapter 75 can apply only when an employee is “without **duties**.” Official travel is a duty within the meaning of the term “duties” in 5 U.S.C. 7511(a)(5). Thus, even if the official travel does not qualify as compensable hours of work, the scheduling of official travel would automatically cancel furlough status during affected hours—just as would the scheduling of work. (See Question A.4. regarding when employees are in furlough status—i.e., only during designated hours *within* the employee’s tour of duty established for leave usage purposes.)

Note: As used in Questions P.2.-P.6., “official travel” refers to actual time spent traveling on officially authorized Government business and does not include time spent between travel trips at a temporary location away from the employee’s official duty station.

3. If official travel cancels furlough status during affected hours, how are those travel hours treated?

A. For days other than holidays, official travel during previously designated furlough hours would be considered compensable hours of work, since those furlough hours would have been within the employee’s regularly scheduled administrative workweek. Any official travel within an employee’s regularly scheduled administrative workweek qualifies as compensable hours of work under 5 U.S.C. 5542(b)(2)(A).

Under certain conditions, an employee may be legitimately scheduled to be furloughed on a holiday (during holiday hours within the employee’s normal tour of duty). (See Section F.) In the case of holidays, official travel during previously designated furlough hours would be

compensated by either holiday premium pay or holiday time off pay. If the travel time qualifies as work under 5 U.S.C. 5542(b)(2)(B), the employee would be entitled to holiday premium pay for those travel hours under 5 U.S.C. 5546(b). If the travel time does not qualify as work under 5 U.S.C. 5542(b)(2)(B), the employee would be entitled to holiday time off pay for those travel hours.

4. Can official travel hours outside the employee’s basic workweek that are compensable hours of work be substituted and paid at a basic rate under the LWOP substitution rule?

A. Yes. Travel time outside the basic workweek that qualifies as work (i.e., meets one of conditions in 5 U.S.C. 5542(b)(2)(B)) is covered by the LWOP substitution rule in 5 CFR 550.112(d), just like any other period of work. (See Questions D.4. and D.5.)

5. Can official travel hours outside the employee’s basic workweek for which an employee earns compensatory time off for travel be substituted and paid at a basic rate under the LWOP substitution rule?

A. No. Hours that are credited under the compensatory time off for travel provision in 5 U.S.C. 5550b and 5 CFR part 550, subpart N, are hours that are not otherwise compensable under title 5. The LWOP substitution rule in 5 CFR 550.112(d) applies to a period of qualifying work—that is, service that would qualify as work for the purpose of applying overtime thresholds and would generate compensation.

6. Can an employee *earn* compensatory time off for travel for official travel time during furlough hours?

A. No. As explained in Question P.2., official travel would cancel the employee’s furlough status. As explained in Question P.3., official travel during previously designated furlough hours would be compensable under the normal pay rules. Since the official travel hours would already be compensable, the employee could not earn compensatory time off for travel for those hours. (Under 5 U.S.C. 5550b, an employee may earn compensatory time off for travel for a period of time only if that period of time is not otherwise compensable.)

7. Can an employee *use* compensatory time off for travel during furlough hours?

A. No. No paid time off may be used during furlough hours. Under 5 U.S.C. 7511(a)(5), the term “furlough” is defined as a period during which an employee is without duties and pay. Use of compensatory time off for travel results in pay and thus is inconsistent with furlough status. (See Question E.1.)

Q. Foreign Area Allowances, Differentials, and Danger Pay

1. Do administrative furloughs interrupt or reduce civilian Living Quarters Allowances (LQA) or a Post Cost of Living Allowances (COLA)?

A. An administrative furlough doesn't interrupt Post COLA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the Post COLA is interrupted for the duration of the furlough status. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2) LQA continues without interruption while the employee is in nonpay status not in excess of 30 consecutive calendar days at any one time. For periods in nonpay status longer than 30 consecutive calendar days, LQA payment shall be suspended as of the day the employee enters such status, and payment is not to be made for any part of such period. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2 and DSSR 132.2b(2))

2. Do administrative furloughs interrupt Danger Pay or Post Hardship Differentials for civilians stationed at a those posts? Do they impact differential eligibility for TDY employees at such posts?

A. Yes. Employees do not receive Danger Pay or Post Hardship Differential for any furlough days. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 052.2)

Furlough days do not count toward differential eligibility for TDY employees. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 052.2 and DSSR 541)

3. Do administrative furloughs interrupt Difficult-To-Staff Incentive Differentials (SND) for civilians stationed at a those posts?

A. No. Length of furlough does not affect SND eligibility. This benefit is based on continuing presence at post. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 1020)

4. Do administrative furloughs interrupt evacuation payments/Subsistence Expense Allowances (SEAs) for civilians evacuated and working from safehavens?

A. An administrative furlough doesn't interrupt an SEA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the SEA is interrupted for the duration of the furlough status. (Source:

http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2)

- 5. I have transferred back to Washington, DC, from a foreign post and am using the subsistence expense portion of the Home Service Transfer Allowance. Do administrative furloughs interrupt my eligibility for reimbursement?**

A. An administrative furlough doesn't interrupt an HSTA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the HSTA is interrupted for the duration of the furlough status. (Source:

http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2)

- 6. I am transferring from Washington, DC, to Pakistan. I've been authorized the pre-departure subsistence expense portion of the Foreign Transfer Allowance. Do administrative furloughs interrupt my eligibility for reimbursement?**

A. An administrative furlough doesn't interrupt an FTA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the FTA are interrupted for the duration of the furlough status. (Source:

http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2)

- 7. I am stationed at a foreign post and my family is on Separate Maintenance Allowance (SMA) in the United States. Do administrative furloughs interrupt the SMA?**

A. An administrative furlough doesn't interrupt an SMA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the SMA is interrupted for the duration of the furlough status. (Source:

http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2)

R. VERA/VSIP

1. Can agencies offer early retirements (VERAs) or separation incentives (VSIPs) to furloughed employees? Can VERA/VSIP be offered during sequestration? Can VERA/VSIP be offered in lieu of a furlough?

A. Both Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payments (VSIP) are programs to incentivize voluntary separations to avoid involuntary personnel actions associated with an agency's decision to restructure its workforce. Agencies with OPM-approved VERA and or VSIP may continue offering these options to covered employees during a furlough.

VERA and VSIP result in permanent separations from the agency workforce. (Please note that VSIP recipients may not be reemployed by the Federal Government within 5 years unless they repay the VSIP to the agency that paid it.) Furloughs are associated with temporary issues, such as lack of work or funds, with the intention that employees would return to their jobs after the furlough. The agency would decide which option to take based on its situation, e.g., the need to permanently reduce or restructure its workforce or to save funds by furloughing employees.

S. Federal Employees Health Benefits Program

1. If an employee is furloughed, does their FEHB coverage continue or terminate?

A. The employee's FEHB coverage will continue if the employee's salary is sufficient to pay the premiums. If pay becomes insufficient to cover premiums, an employee that has FEHB coverage and participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) has several options available.

If the furlough results in pay for a regular pay period to be insufficient for the employee's employing office to withhold the employee's share of premium from that pay (after the agency applies all deductions in accordance with the required order of precedence, see Question D.1.), the employing office must notify the employee and give the employee an opportunity to elect to either continue or terminate FEHB coverage. If the employee does not respond to this notice within the time for response, the employing office will terminate the FEHB coverage. In some instances, an employee may cancel FEHB coverage. See Questions S.7., S.8., and S.9. for more information.

2. Can an employee terminate FEHB coverage because he/she thinks it's not affordable?

A. No, the employee's view of his/her ability to afford FEHB coverage is not a basis for terminating coverage. However, if the employee has insufficient pay to cover the employee share of the premium (as explained in Question S.1.), the employee may choose to terminate coverage.

3. How can an employee continue FEHB coverage if his or her pay is not enough to cover the premium?

A. If an employee elects to continue FEHB coverage, the employee may directly pay the employing office to keep premiums current, or the employee may incur a debt that the employing office will recover when the employee's pay becomes sufficient to cover the premium.

4. What happens if FEHB coverage terminates for insufficient pay during furlough?

A. If an employee elects to terminate FEHB coverage, or if the employee does not respond to the election notice, the coverage will end retroactive to the last day of the last pay period in which the premium was withheld from pay. The employee and any covered family members are entitled to a 31-day temporary extension of coverage which commences retroactively to the day after the coverage ended. The employee will also have the right to convert to an individual contract for health benefits.

5. If an employee's coverage terminates, can the employee re-enroll once pay returns to a level that covers the employee's share of the FEHB premium?

A. Yes. An employee may re-enroll in FEHB upon returning to sufficient pay status and does not have to wait for an open season to re-enroll. The employee must reenroll within 60 days of becoming eligible as a result of renewed sufficient pay. Otherwise, the employee will be required to wait for an open season or a Qualifying Life Event (QLE) that allows for enrollment outside of open season.

6. How will the employee's termination affect his or her 5-year participation for purposes of continuing FEHB after retirement?

A. For purposes of meeting the 5-year participation requirement, counting of the time the employee is covered under FEHB will *stop* when the employee's enrollment terminates and *resume* upon re-enrollment *provided* the employee reenrolls within 60 days of becoming eligible as a result of renewed sufficient pay. In other words, the employee does not start a new 5-year participation period in this circumstance. However, the period of time in which the employee is not covered due to insufficient pay will be considered a period of ineligibility for FEHB, and will not be held against the employee for purposes of meeting the 5-year continuous coverage requirement.

An employee who does not re-enroll within 60 days but postpones re-enrollment until the next open season must begin a new 5-year participation period for purposes of continuing FEHB coverage into retirement.

7. Can an employee who participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) just cancel FEHB coverage if the employee is furloughed?

A. No. For employees participating in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis), an administrative furlough is not a Qualifying Life Event (QLE) that would allow a cancellation.

If the administrative furlough causes an employee's pay for a pay period to become insufficient for the employing office to withhold his or her share of the FEHB premium for that pay period, the employing office must give the employee an opportunity to elect to continue his or her FEHB and incur a debt or to terminate enrollment. The employing office will terminate FEHB coverage if no response is timely received. This termination, either by election or by default, is not a cancellation for FEHB purposes.

8. What options are available to an employee who does not participate in premium conversion (therefore, paying his or her share of FEHB premiums after taxes) and gets furloughed?

A. An employee who specifically waived premium conversion (therefore, paying their share of FEHB premiums after taxes), and whose pay for a pay period is insufficient to cover the employee's share of premium, will be offered the same choices available to an employee covered by Question S.7. However, unlike an employee who participates in premium conversion, he or she may cancel FEHB coverage at any time. He or she does not need a QLE.

9. If an employee cancels his or her FEHB enrollment, will the employee forfeit rights to a 31-day temporary extension, Temporary Continuation of Coverage and conversion to an individual policy, coverage while receiving workers' compensation, continuation into retirement, and coverage for survivors?

A. An employee who elects to cancel coverage should be made fully aware that if coverage is cancelled:

(1) the employee and all eligible family members do not get a 31-day temporary extension of coverage upon cancellation, and the employee may not reenroll in FEHB until he or she has another QLE that permits enrollment, or the next FEHB Open Season, even upon transfer to another Federal agency;

(2) if the employee separates from employment without reenrolling before separation, he or she will not be eligible to purchase temporary continuation of coverage (TCC) or an individual conversion policy;

(3) if the employee is injured and receives benefits from the Office of Workers' Compensation Programs (OWCP) during the time coverage is cancelled, the employee will

not have an FEHB enrollment to continue during the period of OWCP coverage;

(4) if the employee retires while coverage is cancelled, the employee will not have a FEHB enrollment to continue into retirement. Moreover, even if the employee while still employed reenrolls in FEHB on account of a QLE or at FEHB Open Season, the period of cancellation is considered a break in FEHB coverage that may preclude his or her ability to continue FEHB coverage into retirement;

(5) if an employee dies while coverage is cancelled, there will be no self and family enrollment for survivors to continue, even if they are eligible for a survivor annuity.

10. Can an employee make an enrollment change because the employee is under an administrative furlough?

A. No. An administrative furlough is not a QLE that would permit an employee to change his or her FEHB plan or option. An employee who participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) may not change to a self only enrollment.

Note that an employee who waived premium conversion (therefore, paying his or her share of FEHB premiums after taxes) may change to self only at any time. However, the employee should be aware that this will deprive his or her covered family members of FEHB coverage and the employee cannot change back to self and family until the employee has a QLE or the next FEHB Open Season. In the event of the employee's death, there will be no FEHB enrollment for surviving family members to continue, even if they are eligible for a survivor annuity.

11. Will full-time employees receive a lower, pro-rated Government share of FEHB premiums if their hours are reduced under an administrative furlough?

A. No. FEHB law (title 5, U.S. Code, section 8906(b)(3)) requires the Government contribution toward FEHB premiums to be prorated (thus a larger employee share) for *part-time career employees*, i.e. employees with a documented regularly scheduled workweek of 16-32 hours per week. An administrative furlough does not change an employee's *regular work schedule*, e.g., from full-time to part-time.

Thus, as long as a full-time employee does not change to *part-time career employment*, the employee remains entitled to a full Government contribution and the proration does not apply even if the number of hours per pay period is reduced during the furlough to within 16-32 hours per week.

12. Will part-time employees receive a lower prorated Government share of the FEHB premiums if their hours are reduced under an administrative furlough?

A. No. The Government contribution toward the FEHB premium for an employee working part-time is prorated based on the employee's *regular work schedule*. An employee's Notification of Personnel Action (SF 50) documents the employee's work schedule and number of part-time hours the employee is scheduled to work per pay period (blocks 32 and 33). This part-time schedule should be the part-time schedule established for leave usage purposes (i.e., the schedule from which leave is charged for absences). A furlough action will place the employee in a non-duty/non-pay status during an otherwise scheduled workday, but it does not change the employee's *regular work schedule*. Therefore, the Government's prorated share of FEHB premium will not decrease.

Note to Section S: Additional Sources of Information

A list of QLEs for the FEHB Program may be obtained at http://www.opm.gov/forms/pdf_fill/sf2809.pdf.

OPM's FEHB webpage on Leave Without Pay and Insufficient Pay Status may be found at <http://www.opm.gov/healthcare-insurance/healthcare/reference-materials/reference/leave-without-pay-status-and-insufficient-pay>.

T. Federal Employees' Group Life Insurance Program

1. Will an employee continue to be covered under the Federal Employees' Group Life Insurance (FEGLI) Program during an administrative furlough that results in a reduction of hours and pay during a pay period, if there is sufficient pay in the pay period to cover the employee's share of the FEGLI premium for that pay period?

A. If the furlough is for only part of a pay period and the pay for that pay period is sufficient to cover the full FEGLI premium, then the full FEGLI premium will be withheld and the employee will continue to be covered under FEGLI, even during the furlough period.

2. Will an employee continue to be covered under FEGLI during an administrative furlough that results in no pay at all for at least one pay period and less than 12 months?

A. The employee's FEGLI coverage continues while in a leave without pay (LWOP) status due to furlough for up to 12 months, without cost to the employee or to the agency. Neither the employee nor the agency incurs a debt during this period of furlough. This provision does not apply if the employee in LWOP status is receiving workers' compensation from OWCP.

3. Will an employee continue to be covered under FEGLI during an administrative furlough that results in no pay at all for more than 12 months?

A. Generally, Basic and Optional insurance of an insured employee who is in LWOP status stops on the date the employee completes 12 months in LWOP status. Your life insurance coverage terminates at the end of this 12-month period, with a 31-day extension of coverage and right to convert to an individual policy.

4. What happens if, due to an administrative furlough that results in a reduction of hours and pay during a pay period, an employee's regular pay for a pay period, after all other deductions, will not be enough to cover the employee's share of premium for all of the employee's FEGLI Options?

A. As a general matter, if an employing agency determines that an employee's regular pay for a pay period, after all other deductions, will not be enough to cover the employee's share of premium for all of the employee's FEGLI Options, the employing agency must notify the employee. The employing office must provide the employee with a choice to either terminate some or all FEGLI coverage, or to make premium payments directly.

If the employee elects to continue coverage and pay directly, the process is detailed in the FEGLI regulations at 5 CFR 870.405(c). See <http://www.opm.gov/healthcare-insurance/life-insurance/reference-materials/#url=Regulations>.

If the employee elects to terminate coverage, any amount available for life insurance withholdings must be applied first to Basic, with any remainder applied to Optional insurance (first to Option B, then Option A, then Option C). If the employee does not respond to the election notice in a timely manner, the employing agency will terminate coverage in the order stated above to the extent required due to insufficient pay. Terminated coverage is subject to a free 31-day extension of coverage and the employee has a right to convert.

As provided for in 5 CFR 870.603, when group coverage terminates for any reason other than voluntary cancellation, an employee may apply to convert all or any part of his or her Basic and Optional insurance to an individual policy. An employee who elects to make premium payments directly and whose coverage is cancelled for nonpayment is not entitled to a 31-day extension of coverage and is not entitled to convert to an individual policy. For more information regarding conversion of insurance, please see 5 CFR 870.603.

5. If an employee's FEGLI coverage is terminated for insufficient pay during a furlough because the employee initially declined to elect direct premium payments, can the employee reinstate the FEGLI coverage when the furlough ends or pay becomes sufficient?

A. Yes the employee may reinstate any FEGLI coverage terminated for insufficient pay, back to the original elections, upon return to sufficient pay.

6. Will an employee incur a debt to the agency if the agency underwithholds FEGLI premium as a result of insufficient pay during a furlough?

A. Yes, the agency may consider underwithholding to be a debt. In such cases, agencies must follow their regular processes (including any applicable processes set forth by statute) regarding the collection of these debts.

Sample Notice 1
Furlough Proposal Due to Planned Reduction In Agency Expenditures (5 CFR Part 752)

[Note: This is the advance written notice required by 5 U.S.C. 7513, when an agency effects an administrative furlough in order to absorb reductions in funding over a period of time. This sample has been written for the scenario where an agency chooses to furlough on discontinuous days. Agencies who choose to furlough on a continuous-day basis should amend the sample accordingly.]

This memorandum notifies you that [agency name] proposes to furlough you no earlier than 30 days from receipt of this notice. The furlough is being proposed under the authority of 5 CFR part 752, subpart D [briefly explain reason for furlough, e.g., because the agency has received a 20 percent reduction in salaries and expenses (S&E) funding and the present rate of spending when annualized will result in an expenditure in excess of our authorized budget]. This furlough is proposed to promote the efficiency of the service by avoiding a deficit of funds in FY [year].

If other employees in your competitive level (i.e., generally, positions at the same grade level and classification series, the duties of which are generally interchangeable – see 5 CFR 351.403(a)) are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency, or (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, the agency must include them in this listing.]*

We plan to apply the following procedures and conditions related to the furlough:

1. The furlough will be on discontinuous (intermittent) days, beginning [date], through approximately [date]. Full time employees will be furloughed no more than 22 workdays or 176 hours. If you are a part-time employee, your furlough time off will be prorated, based on your work schedule.

[Note: The agency determines the maximum number of pay periods over which 22 furlough days would suffice to meet agency spending levels. For example, if an agency's spending limits require 5 furlough days per pay period, employees would reach the 22-day limit in approximately 10 weeks.]

2. Due to the uncertain and potential fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, if the decision is made to furlough, you will be advised in advance of each pay period of the number of furlough hours required to allow this agency to meet its financial obligations. In any case, however, you will not be furloughed for more than [number] hours for each pay period between [date] and [date].

3. You may request a specific schedule for furlough time off subject to management approval based upon mission and workload considerations.
4. Annual, sick, court, or military leave which has been approved for a day which is later designated as a furlough day will be recorded as a furlough and you will be placed in a nonpay status for the day. However, when you receive the notice of your furlough dates, you may request that the furlough time off be rescheduled, as provided in paragraph 3 above, if you wish to use leave as approved.

At this time, we do not reasonably anticipate the need for furlough beyond 22 workdays. However, should additional furlough days be necessary, employees will be given another notice. We recognize the difficult personal financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [contact name, phone number, and email address].

You will be allowed seven calendar days from receipt of this letter to respond orally and/or in writing, to review the supporting material, and to furnish any affidavits or other supporting documentary evidence in your answer. You have the right to be represented in this matter by an attorney or other person you may choose. If you are in active duty status, you and/or your representative, if an agency employee, will be allowed up to four hours of official time to review the supporting material, seek assistance, prepare your reply, secure affidavits and statements, consider appropriate courses of action, and make a response. Contact your supervisor to arrange for official time. The deciding official has designated representatives to hear oral replies in his/her behalf. To arrange for an oral reply or review the supporting materials, please contact the appropriate individuals listed below:

[contact names, phone numbers, and email addresses.]

Your written reply should be mailed to the deciding official, Mr./Ms.[name and title],[address] or may be delivered to [address/room number].

A final written decision, including an explanation of the specific reasons for the action taken, will be given to you as soon as possible after the seven days allowed for your reply.

No decision to furlough you has been made or will be made until full consideration is given to your reply.

Proposing Official Date

I acknowledge receipt of this notice.

Employee's signature Date

Sample Notice 2
Notice of Decision to Furlough (5 CFR Part 752)

By written notice of [date], you were notified of a proposal to furlough you pursuant to the authority in 5 CFR part 752, subpart D.

All written and oral replies received in response to that notice have been reviewed and carefully considered. I have determined that all of the reasons for the proposed furlough, as stated in the notice of the proposal, remain valid. The procedures and conditions related to the furlough as proposed have been determined to be the most equitable means of implementing the furlough. Therefore, you will be required to be on a discontinuous furlough during the period beginning [date] through [date].

In accordance with the procedures and conditions outlined in the notice of proposal, dated [insert date], if you are a full-time employee, you will be furloughed for no more than [number] hours in each of the pay periods or parts thereof, between [date] and [date]. The maximum furlough time for full-time employees will be no more than 22 workdays, or 176 hours. For full-time employees, this maximum is based on a regular work schedule of 80 hours per pay period. If you are a part-time employee, the number of hours required for furlough will be prorated according to your specific work schedule.

Your supervisor will inform you of the amount of furlough time off required prior to each pay period. To schedule your furlough time off, contact your supervisor.

When you are on furlough, you will be in a nonpay, nonduty status. Also, during any furlough period, you will not be permitted to serve as an unpaid volunteer, but must remain away from your workplace.

If you have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment you may appeal this action to the Merit Systems Protection Board (MSPB). If you are a preference eligible employee in an excepted service appointment you may appeal to the MSPB if you have completed one year of current continuous service in the same position or positions similar to the one you now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less. You have the right to be represented in this matter by an attorney or other person you may choose.

If you have the right of appeal and wish to appeal this action to the MSPB, you must file the appeal within 30 days after the effective date of your first furlough day, or 30 days after the date of your receipt of this decision, whichever is later. If you do not submit an appeal within this timeframe, the MSPB will dismiss it as untimely filed unless a good reason for delay is shown. You may obtain a copy of the appeals form and a copy of the Board's regulations from the MSPB

website at <http://www.mspb.gov>.

Your appeal must be filed with the MSPB regional or field office serving the area of your duty station when the action was taken. Based upon your duty station, the appropriate field office is [*identify appropriate regional office*]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>.

The Board will send an Acknowledgment Order and copy of your appeal to [*contact information including the official's mailing address, email address, telephone and fax number.*]

If you are a bargaining unit employee, you may grieve this action in accordance with the applicable negotiated agreement [*negotiated agreement citation*] or you may appeal to the MSPB in accordance with the procedures outlined above, but not both. Your election to proceed under one process will be considered made when you timely file a grievance in writing, or timely file a notice of appeal, whichever event occurs first. To obtain information on filing a grievance under the negotiated grievance procedure, contact [*name of exclusive union representative*].

[Under the Board's October 2012 regulations, notices must also include:

Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:

- (1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;*
- (2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;*
- (3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and*
- (4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.]*

Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.]

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [*contact name, phone number, and email address*].

Deciding Official _____
Date

I acknowledge receipt of this decision.

Employee's signature _____
Date

Sample Notice 3
Notice of Career SES Furlough (5 CFR Part 359)

This is a sample of the 30 day advance written notice of furlough required for career SES appointees by 5 CFR part 359, subpart H. It should be used only as an illustration in preparing an agency's own notice, which must be based on specific circumstances in the agency. This sample communicates the agency's decision to implement an administrative furlough on discontinuous days (i.e., 22 workdays or less). Agencies choosing to furlough on a continuous-day basis (i.e., 30 calendar days or less) should amend the sample accordingly.

This memorandum notifies you that [agency name] intends to furlough you no earlier than 30 calendar days from receipt of this notice. This furlough is being taken pursuant to the authority in 5 CFR part 359, subpart H [briefly explain the reason for furlough, e.g., "because the agency has received a 20 percent reduction in salaries and expenses (S&E) funding, and the present rate of spending, when annualized, will result in an expenditure in excess of our authorized budget"]. Although many actions are being taken within the agency to curtail spending, this furlough is being taken to avoid a deficit of funds in FY [year].

If other employees in your organization are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency, or (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, the agency must include them in this listing.]*

We plan to apply the following procedures and conditions related to the furlough:

1. The furlough will be on discontinuous [intermittent] days, beginning [date], through [date]. Full time employees will be furloughed no more than 22 workdays or 176 hours. If you are a part-time employee, your furlough time will be prorated, based on your work schedule.

[Note: The agency determines the maximum number of pay periods over which 22 furlough days would suffice to meet agency spending levels. For example, if an agency's spending limits require 5 furlough days per pay period, employees would reach the 22-day limit in approximately 10 weeks.]

2. Due to uncertain and potential fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, you will be advised in advance of each pay period of the number of furlough hours required to allow this agency to meet its financial obligations. In any case, however, you will not be furloughed for more than [number] hours for each pay period between [date] and [date].

3. You may request a specific schedule for furlough time off subject to management approval based upon mission and workload considerations.

4. Annual, sick, court, or military leave which has been approved for a day which is later designated as a furlough day will be recorded as a furlough and you will be placed in a nonpay status for the day. However, when you receive the notice of your furlough dates, you may request that the furlough time off be rescheduled, as provided in paragraph 3 above, if you wish to use leave as approved.

When you are on furlough, you will be in a nonpay, nonduty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer but must remain away from your workplace. At this time, we do not reasonably anticipate the need for furlough of more than 22 workdays; however, should additional days be necessary to meet this agency's financial obligations, affected appointees will be given another notice consistent with the provisions of 5 CFR part 359 subpart H.

Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359 subpart H or this agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board (MSPB). Career SES appointees may inspect the regulations and records pertinent to this action at the following location [identify location and times, as appropriate].

If you wish to appeal this action to the MSPB, you must file the appeal within 30 days after the effective date of your first furlough day, or 30 days after the date of your receipt of this decision, whichever is later. If you do not submit an appeal within this timeframe, the MSPB will dismiss it as untimely filed unless a good reason for delay is shown. You may obtain a copy of the appeals form and a copy of the Board's regulations from the MSPB website at <http://www.mspb.gov>.

Your appeal must be filed with the MSPB regional or field office serving the area of your duty station when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>.

The Board will send an Acknowledgment Order and copy of your appeal to [contact information including the official's mailing address, email address, telephone and fax number.] You also have the right to be represented in this matter by an attorney or other person you may choose.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [contact name, phone number, and email address].

Issuing Official

I acknowledge receipt of this notice.

Employee's signature

Date

[Note: For a probationary SES employee, an agency should advise that, as provided in 5 CFR 317.503(d)(2): 1) time in a nonpay status (e.g., LWOP and furlough) while in an SES position is credited up to a total of 30 calendar days (or 22 workdays) toward completion of the SES probationary period; and 2) after 30 calendar days, the probationary period is extended by adding time to it equal to that served in a nonpay status.]

Sample Notice 4
Furlough Due to Planned Reduction in Agency Expenditures (5 CFR Part 351)
More Than 22 Discontinuous Workdays

[Note: This is a sample written notice for a furlough of more than 22 discontinuous days under the reduction in force procedures of 5 CFR 351 (implementing 5 U.S.C. 3502(d)) when an agency effects an administrative furlough to absorb funding reductions. Agencies choosing to furlough on a continuous basis for more than 90 calendar days may have to conduct full reduction in force procedures (, such as round I competition to remain in the competitive level and round II to determine assignment rights to another position).]

SUBJECT: Specific Notice of Furlough under Reduction in Force Procedures

I regret to inform you that [agency name] will furlough you for 25 discontinuous workdays between [date] and [date]. You will be placed in a non-duty and non-pay status on your designated furlough days. You will continue in your position of record on your non-furlough days.

[Insert the reason for furlough, e.g., The [agency name] has received a 20 percent reduction in salaries and expenses funding. At the present rate of spending, this reduction will result in an expenditure in excess of our authorized budget. Although we have taken other cost-cutting measures, furlough is required to avoid a deficit of funds in FY [year]. You are included in the furlough because you occupy a position that is directly affected by the funding reduction.]

This action is taken in accordance with the reduction in force (RIF) regulations in title 5, Code of Federal Regulations, part 351. Importantly though, while this action is taken in accordance with RIF regulations, a furlough is a temporary action, not a permanent separation from service. We have determined that assigning you to a different position for [number of days] per pay period would result in an undue interruption to required work. Therefore, under 5 CFR 351.607, you do not have a right to another position in your competitive level or within your competitive area.

Your retention standing as of the first furlough date is as follows:

- Competitive area:
- Service [*i.e., competitive or excepted*]:
- Position title, series, and grade:
- Competitive level:
- Tenure and subgroup:
- Service computation date (SCD):
- Three most recent performance rating with years credited:
- Adjusted SCD (SCD-RIF):

Your furlough will be on discontinuous (intermittent) days, beginning [date] through [date]. As a full-time employee, you will be furloughed 25 workdays or 200 work hours. You may request a specific schedule for your discontinuous furlough days or switch your designated furlough day(s)

within a pay period through a written request to your supervisor. We will consider all change requests with approvals based on position function, workload considerations, and employee retention standing.

[If part-time: As a part-time employee with a work schedule of [xx] hours per pay period, your prorated furlough is XX work hours to be served within your designated work schedule.]

Annual, sick, court, or military leave which was approved for a designated furlough day is hereby cancelled. However, you may request that the furlough day be rescheduled if you wish to use leave as approved.

Attachment 1 has general information about leave and benefits during a furlough. Attachment 2 has information on *[State]* unemployment insurance program.

At this time, we do not reasonably anticipate the need for furlough beyond 25 workdays. However, should additional furlough days be necessary, you will be issued another notice.

You may review the information related to your furlough action. Copies of retention registers, RIF regulations, and related records are available in the Human Resources Office. You may make an appointment to review this material by contacting *[HRO name and contact information]*.

You may appeal this action to the Merit Systems Protection Board (MSPB). You may file an appeal within 30 calendar days after the effective date of your first furlough day. If you do not file an appeal within this 30-day time limit, the MSPB may dismiss it unless you can show good cause for the delay. A copy of the appeal form and the MSPB's regulations are available on the Board's website at www.mspb.gov. You should send your appeal to the MSPB office at *[appropriate office address]*. The Board will send an Acknowledgment Order and copy of your appeal to *[contact information including the official's mailing address, email address, telephone and fax number.]* *[Note: MSPB appeal rights for furloughs apply to non-bargaining unit employees or bargaining unit employees where the negotiated grievance procedure excludes furloughs from coverage.]*

[If the employee is a bargaining unit employee and furloughs are covered under the negotiated grievance procedure: You may grieve this action in accordance with the applicable negotiated agreement [negotiated agreement citation] in accordance with the procedures outlined in the agreement. To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].

[Under the Board's October 2012 regulations, notices must also include:

Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:

(1) Whether the election of any applicable grievance procedure will result in

waiver of the employee's right to file an appeal with the Board;

(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;

(3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and

(4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.]

Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.]

This furlough under the RIF regulations does not reflect on your service, performance, or conduct. It is taken solely for the reason stated in this notice.

We recognize the difficult personal financial implications of any furlough, no matter its length. We will make every effort to keep you informed as additional information regarding agency funding level becomes available. If you have questions, contact [*contact name, phone number, and email address*].

Agency Official Signature

Date

Attachments

I acknowledge receipt of this notice.

Printed name

Employee signature

Date

Table of Recent Changes to Guidance for Administrative Furloughs

Date	Question	Change	Description
June 10, 2013	Note	New	Added a note regarding the applicability of the guidance (located before Section A)
	P.2.	New	Effect of scheduling official travel during designated furlough hours
	P.3.	New	Treatment of official travel hours during previously designated furlough hours
	P.4.	New	Treatment of official travel hours outside the basic workweek that are compensable hours of work
	P.5.	New	Treatment of official travel hours outside the basic workweek that are credited as compensatory time off for travel
	P.6.	New	Inability to earn compensatory time off for travel for travel hours during previously designated furlough hours
	P.7.	New	Inability to use compensatory time off during furlough hours
May 23, 2013	G.3.	Revised	Directs readers to new Section T (Federal Employees' Group Life Insurance Program)
	T.1.	New	Impact of employee receiving sufficient pay in pay period to cover employee's share of premium
	T.2.	New	Impact of employee receiving no pay for at least 1 pay period but less than 12 months
	T.3.	New	Impact of employee receiving no pay for more than 12 months
	T.4.	New	Impact of employee's pay in pay period being insufficient to cover premium for all FEGLI options
	T.5.	New	Reinstatement of FEGLI coverage after coverage is terminated because of insufficient pay and employee declines to make direct premium payments
	T.6.	New	Employee's debt to agency if agency underwithholds FEGLI premium as a result of insufficient pay
April 25, 2013	A.4.	New	Explanation of what it means to be in a furlough status
	A.5.	New	Clarification that furlough does not affect an employee's status as full-time or part-time
	C.3.	Revised	Added a link to a relevant Office of Government Ethics legal advisory
	C.6.	New	Effect of an agency ordering an employee to work during his or her scheduled furlough hours
	E.5.	New	Retroactive substitution of annual leave for furlough hours taken in certain limited circumstances
	E.6.	New	Retroactive substitution of excused absence for furlough hours taken in certain limited circumstances

DCMA Administrative Record for FY 2013 Furlough Appeals

	L.2.	Revised	Added language about identifying specific furlough hours for employees on a flexible work schedule
	M.4a.	New	Appropriate supporting documentation for an administrative furlough action
	M.4b.	New	Procedural rights applicable to veterans for an administrative furlough of 30 calendar days or less
	M.6a.	New	Procedural rights for a probationer who completes his or her probationary period before fulfilling the agency's furlough time off requirement
	M.11.	New	Obligation to provide Merit Systems Protection Board (MSPB) appeal information in adverse action furlough decision notices
	N.21.	Revised	Clarified the previous language about the appropriate procedures to use if an agency determines an additional furlough is necessary
April 2, 2013	G.1.	Revised	Directs readers to new Section S (Federal Employees Health Benefits Program)
	Section K Title	Revised	Changed title of Section K from "Injury While on Furlough" to "Benefits under the Federal Employees' Compensation Act (FECA)"
	K.1.	Revised	Minor edits to guidance involving workers' compensation benefits under the FECA
	K.2.–K.5.	New	Department of Labor guidance on workers' compensation benefits during an administrative furlough
	Section K Note	New	Note regarding additional information on Federal workers' compensation benefits
	M.2.	Revised	Directs readers to OPM's SF-50 processing guidance in its entirety for a fuller understanding of the requirements
	S.1.	New	Continuation of FEHB coverage
	S.2.	New	Ability to afford FEHB coverage
	S.3.	New	Continuing FEHB coverage if pay is insufficient to cover premium
	S.4.	New	Termination of FEHB coverage for insufficient pay
	S.5.	New	Re-enrollment following termination of FEHB coverage
	S.6.	New	Impact of terminating FEHB coverage on 5-year participation requirement for purposes of continuing coverage after retirement
	S.7.	New	Cancellation of FEHB coverage for employees participating in premium conversion
	S.8.	New	Options available to employees not participating in FEHB premium conversion
	S.9.	New	Impact of cancelling FEHB coverage
	S.10.	New	FEHB enrollment changes

DCMA Administrative Record for FY 2013 Furlough Appeals

	S.11.	New	Government share of FEHB premiums
	S.12.	New	Government share of FEHB premiums for part-time employees
	Section S Note	New	Note regarding additional information on FEHB Program
March 25, 2013	A.3.	Revised	Added language generally describing shutdown furloughs
	Q.1.	New	Living Quarters Allowance and Post Cost of Living Allowance
	Q.2.	New	Danger Pay, Post Hardship Differential, and differential eligibility for TDY employees
	Q.3.	New	Difficult-To-Staff Incentive Differential
	Q.4.	New	Subsistence Expense Allowance
	Q.5.	New	Home Service Transfer Allowance
	Q.6.	New	Foreign Transfer Allowance
	Q.7.	New	Separate Maintenance Allowance
	R.1.	Moved	VERA/VSIP guidance formerly posted as Question H.1. of OPM's "Supplemental Guidance for Sequestration and Administrative Furloughs," which was removed from the OPM website on March 25, 2013
March 8, 2013	B.1.	Revised	Factors used in determining coverage of furlough
	B.6.	Revised	Treatment of detailees
	B.8.	New	Volunteering for leave without pay
	H.2.	Revised	Resources for Thrift Savings Plan guidance
	H.3.	New	Resources for Thrift Savings Plan guidance
	L.3.	Revised	Scheduling furlough time off for employees with part-time or uncommon tours of duty
	M.10.	New	Providing electronic notice of a furlough action
March 5, 2013	B.5.	New	Treatment of detailees
	B.6.	New	Treatment of detailees
	B.7.	New	Treatment of detailees
	E.2.	Revised	Treatment of employees on approved leave without pay
	E.3.	Revised	Taking leave without pay under the Family and Medical Leave Act (FMLA)
	H.1.	Revised	Resources for unemployment compensation guidance
	O.1.	Revised	Collective bargaining obligations
	O.1a.	New	Satisfying collective bargaining obligations before issuing furlough notices
February 27, 2013	P.1.	New	Travel expenses during a furlough
February 26, 2013	E.4.	New	Accrual of annual and sick leave
	G.6.	New	Retirement annuity benefits
February 20, 2013	D.4.	New	Assigning work hours outside the basic workweek
	D.5.	New	Compensating employees who work hours outside the basic workweek

DCMA Administrative Record for FY 2013 Furlough Appeals

	D.6.	New	Earning credit hours
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UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
Employee Services
Pay and Leave
1900 E Street, NW
Washington, DC 20415



COMPTROLLER

UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

MAR 5 2013

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Additional Guidance for Handling Budgetary Uncertainty in Fiscal Year 2013

The purpose of this memorandum is to provide some additional guidance to the Deputy Secretary of Defense's memorandum on "Handling Budgetary Uncertainty in Fiscal Year 2013," dated January 10, 2013, to ensure consistency in the treatment of issues across the Department of Defense (DoD) as the reductions levied by sequestration and a year-long continuing resolution are implemented. All of these policies are effective immediately.

Congressional Travel Support

The Department will enforce strictly DoD's policies in its support of travel by congressional delegations (CODELs) and congressional staff delegations (STAFFDELS). It is DoD's policy that support for approved travel of members and employees of Congress shall be provided on an economical basis upon request from Congress, pursuant to law or where necessary to carry out DoD duties and responsibilities. Organizations need to ensure that travel of members and employees of Congress is sponsored by the DoD *only* where the purpose of the travel is of primary interest to and bears a substantial relationship to programs or activities of DoD and is not solely for the purpose of engendering goodwill or obtaining possible future benefits. Specific guidance is included in DoD Directive 4515.12 (DoD Support for Travel of Members and Employees of Congress) dated January 15, 2010. Some specific policies worth highlighting include:

- Military airlift will not be used for CODELs if commercial airlift is reasonably available.
 - Within the Continental United States (CONUS), no CODELs may use military airlift as commercial airlift is readily available.
 - Military airlift may be authorized for CODELs when in a Combatant Commander's theater if commercial airlift is limited or unsafe; every effort must be made to minimize costs.
 - Spouses may accompany members if there is an official function as long as they pay their own expenses and do not increase the number or size of aircraft required.
- Minimum number of congressional members for military airlift originating in CONUS.
 - No less than 5 members for large aircraft
 - No less than 3 members for small aircraft
- Tickets purchased by DoD for CODELs, STAFFDELS, and liaison escorts.
 - Must be economy class; individuals may upgrade at their own expense.
 - DoD does not pay for a member's personal staff traveling to his/her home State/District; this includes travel, lodging, meals, or escorts.



- All itineraries for CODELs/STAFFDELS must be approved by the escorting Service's 2-star Legislative Affairs Director to ensure that the itinerary is an efficient use of taxpayer's funds.

Tuition Assistance

All Services should consider significant reductions in funding new tuition assistance applicants after the date of this memorandum for the duration of the current fiscal situation.

Civilian Monetary Awards

Consistent with guidance from the Office of Management and Budget (OMB Bulletin #M-13-05, Agency Responsibilities for Implementation of Potential Joint Committee Sequestration), the Department will not issue discretionary monetary awards for its civilian employees, which should occur *only if* legally required, until further notice. For bargaining unit employees, all bargaining obligations must be fulfilled prior to implementing the OMB guidance.

Participation in International Events

The Department should limit its participation in international events except in those instances where individuals are supporting Foreign Military Sales and the funds supporting these efforts are not being sequestered because the accounts are exempt from sequestration.

Demonstration Flying

All aerial demonstrations, including flyovers, jump team demonstrations, and participation in civilian air shows and military open houses will cease as of April 1, 2013. Flyovers in support of military funerals will be given special consideration. To ensure consistency across the Department all exceptions and waivers for demonstration flying will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval.

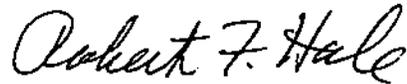
Support to Non-DoD Organizations

All military support to non-DoD organizations for outreach activities will cease, except when the Department has authority to retain any reimbursement and is fully reimbursed for all incremental costs incurred in providing the support. This includes, but is not limited to, military equipment displays at civilian air shows, parades, and civic events. Fleet/ Service weeks as well as military open houses, and local community relations activities are permitted as long as the support/equipment can be provided locally and at no cost to the Department. To ensure consistency across the Department, all exceptions and waivers for support to non-DoD organizations and special events will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval.

Military Musical Unit (and Ceremonial Unit) Travel

Military musical and ceremonial units will not be permitted to travel beyond the local area immediately surrounding their respective duty stations except when all transportation, lodging, and subsistence, are provided by the requesting organization and can be accepted in accordance with existing law and Department policies, or where the Department has authority to retain any reimbursement and is fully reimbursed by the requesting organization for all incremental costs. Units may continue to perform locally both on and off military installations as long as those performances can be conducted at no cost to the Department. To ensure consistency across the Department all exceptions and waivers will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval.

Additional guidance will be provided as issues surface that require a DoD-wide policy.



Robert F. Hale

cc:

Director of National Intelligence

DISTRIBUTION:

SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR 01 2013

The Honorable Nathan Deal
Governor
State of Georgia
Atlanta, GA 30334

Dear Governor Deal:

As you are likely aware, due to the inability of Congress to reach a deal on balanced deficit reduction to avoid sequestration, the President will be required by law to issue a sequestration order later today canceling approximately \$85 billion in budgetary resources across the Federal Government, of which nearly \$41 billion would come from the Department of Defense (DoD). Another sequestration order could be issued later this month, which could result in a combined reduction for DoD of as much as \$46 billion – roughly a 9 percent reduction in our entire budget except for military personnel funding, which current law permitted the President to exempt.

These cuts must be fully accommodated during the remaining seven months of Fiscal Year (FY) 2013. In addition, the current DoD appropriation (the so-called Continuing Resolution) does not allocate adequate funding for current operations, which greatly adds to the Department's FY 2013 budgetary problems. Because your State plays an important part in supporting DoD and our national security, we wanted to provide you with the information we currently have available about how these unfortunate budgetary adjustments impact us, and in turn what it means for our installations and contractors in Georgia.

We do not yet have a complete inventory of the required cutbacks, but I can provide some examples: The Army would lose \$233 million in base operations funding across Georgia, including cuts at Fort Benning, Fort Gordon, and Fort Stewart. The Air Force would suffer a cut of at least \$152 million to their operations in the State, including reductions in facilities projects at Moody and Robbins Air Force Bases. We are still assessing detailed changes and will be able to provide additional information on cutbacks in Georgia as we compile a more complete list.

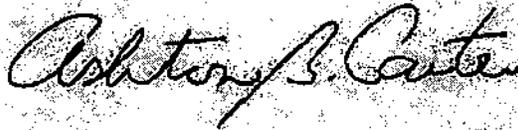


In addition, to accommodate all the cutbacks that would be imposed in the absence of further Congressional action, we will be forced to place most of our DoD civilian employees on unpaid furlough status for up to 22 discontinuous workdays. Almost certainly, this unfortunate action has already had serious adverse effects on the morale and productivity of the approximately 37,000 DoD civilian employees who work in Georgia. If we have to impose these furloughs, it will mean roughly a 20 percent pay cut over a nearly six month period for these dedicated civil servants, who in turn will presumably spend less in your economy. We estimate that a 22-workday furlough could result in a payroll reduction of about \$203 million just in Georgia.

Lastly, it should be noted that sequestration will also affect Defense contractors and, therefore, the industrial base in your State.

While these reductions are unfortunate and will be damaging, the Department is doing everything within our power to minimize adverse effects on our national security mission. In addition, we are prepared to work closely with you to manage these reductions to the extent that we can. Should Congress take subsequent actions that change the level or nature of these reductions, we are committed to working closely with you to manage changes quickly.

Thank you for your continued partnership with the Department of Defense and for your cooperation as we work together to accommodate these unfortunate circumstances.





DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR 01 2013

The Honorable Jerry Brown
Governor
State of California
Sacramento, CA 95814

Dear Governor Brown:

As you are likely aware, due to the inability of Congress to reach a deal on balanced deficit reduction to avoid sequestration, the President will be required by law to issue a sequestration order later today canceling approximately \$85 billion in budgetary resources across the Federal Government, of which nearly \$41 billion would come from the Department of Defense (DoD). Another sequestration order could be issued later this month, which could result in a combined reduction for DoD of as much as \$46 billion – roughly a 9 percent reduction in our entire budget except for military personnel funding, which current law permitted the President to exempt.

These cuts must be fully accommodated during the remaining seven months of Fiscal Year (FY) 2013. In addition, the current DoD appropriation (the so-called Continuing Resolution) does not allocate adequate funding for current operations, which greatly adds to the Department's FY 2013 budgetary problems. Because your State plays an important part in supporting DoD and our national security, we wanted to provide you with the information we currently have available about how these unfortunate budgetary adjustments impact us, and in turn what it means for our installations and contractors in California.

We do not yet have a complete inventory of the required cutbacks, but I can provide some examples: The Navy could be forced to cancel maintenance on 5 ships in San Diego and aircraft maintenance in North Island. The Army would lose \$54 million in base operations funding across California, including cuts at the Presidio of Monterrey and Fort Irwin. Operations at Sierra Army Depot could experience a reduction of as much as \$167 million. The Air Force would suffer a cut of at least \$26 million to their operations in the State, including reductions in facilities projects at Beale, Edwards, Travis, and Vandenberg Air Force Bases. We are still assessing detailed changes and will be able to provide additional information on cutbacks in California as we compile a more complete list.

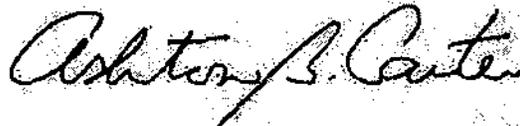


In addition, to accommodate all the cutbacks that would be imposed in the absence of further Congressional action, we will be forced to place most of our DoD civilian employees on unpaid furlough status for up to 22 discontinuous workdays. Almost certainly, this unfortunate action has already had serious adverse effects on the morale and productivity of the approximately 64,000 DoD civilian employees who work in California. If we have to impose these furloughs, it will mean roughly a 20 percent pay cut over a nearly six month period for these dedicated civil servants, who in turn will presumably spend less in your economy. We estimate that a 22-workday furlough could result in a payroll reduction of about \$420 million just in California.

Lastly, it should be noted that sequestration will also affect Defense contractors and, therefore, the industrial base in your State.

While these reductions are unfortunate and will be damaging, the Department is doing everything within our power to minimize adverse effects on our national security mission. In addition, we are prepared to work closely with you to manage these reductions to the extent that we can. Should Congress take subsequent actions that change the level or nature of these reductions, we are committed to working closely with you to manage changes quickly.

Thank you for your continued partnership with the Department of Defense and for your cooperation as we work together to accommodate these unfortunate circumstances.





DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR 01 2013

The Honorable Robert Bentley
Governor
State of Alabama
Montgomery, AL 36130

Dear Governor Bentley:

As you are likely aware, due to the inability of Congress to reach a deal on balanced deficit reduction to avoid sequestration, the President will be required by law to issue a sequestration order later today canceling approximately \$85 billion in budgetary resources across the Federal Government, of which nearly \$41 billion would come from the Department of Defense (DoD). Another sequestration order could be issued later this month, which could result in a combined reduction for DoD of as much as \$46 billion – roughly a 9 percent reduction in our entire budget except for military personnel funding, which current law permitted the President to exempt.

These cuts must be fully accommodated during the remaining seven months of Fiscal Year (FY) 2013. In addition, the current DoD appropriation (the so-called Continuing Resolution) does not allocate adequate funding for current operations, which greatly adds to the Department's FY 2013 budgetary problems. Because your State plays an important part in supporting DoD and our national security, we wanted to provide you with the information we currently have available about how these unfortunate budgetary adjustments impact us, and in turn what it means for our installations and contractors in Alabama.

We do not yet have a complete inventory of the required cutbacks, but I can provide some examples: The Army would lose \$91 million in base operations funding across Alabama, including cuts at Fort Rucker and Fort McClellan. Depot operations at Anniston could experience a reduction of as much as \$710 million. The Air Force would suffer a cut of at least \$8 million to their operations in the State, including reductions in facilities projects at Maxwell Air Force Base. We are still assessing detailed changes and will be able to provide additional information on cutbacks in Alabama as we compile a more complete list.

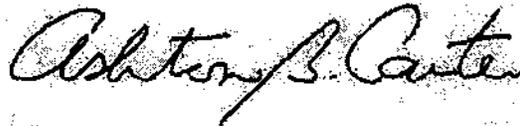


In addition, to accommodate all the cutbacks that would be imposed in the absence of further Congressional action, we will be forced to place most of our DoD civilian employees on unpaid furlough status for up to 22 discontinuous workdays. Almost certainly, this unfortunate action has already had serious adverse effects on the morale and productivity of the approximately 27,000 DoD civilian employees who work in Alabama. If we have to impose these furloughs, it will mean roughly a 20 percent pay cut over a nearly six month period for these dedicated civil servants, who in turn will presumably spend less in your economy. We estimate that a 22-workday furlough could result in a payroll reduction of about \$184 million just in Alabama.

Lastly, it should be noted that sequestration will also affect Defense contractors and, therefore, the industrial base in your State.

While these reductions are unfortunate and will be damaging, the Department is doing everything within our power to minimize adverse effects on our national security mission. In addition, we are prepared to work closely with you to manage these reductions to the extent that we can. Should Congress take subsequent actions that change the level or nature of these reductions, we are committed to working closely with you to manage changes quickly.

Thank you for your continued partnership with the Department of Defense and for your cooperation as we work together to accommodate these unfortunate circumstances.





DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR 01 2013

The Honorable Robert F. McDonnell
Governor
Commonwealth of Virginia
Richmond, VA 23219

Dear Governor McDonnell:

As you are likely aware, due to the inability of Congress to reach a deal on balanced deficit reduction to avoid sequestration, the President will be required by law to issue a sequestration order later today canceling approximately \$85 billion in budgetary resources across the Federal Government, of which nearly \$41 billion would come from the Department of Defense (DoD). Another sequestration order could be issued later this month, which could result in a combined reduction for DoD of as much as \$46 billion – roughly a 9 percent reduction in our entire budget except for military personnel funding, which current law permitted the President to exempt.

These cuts must be fully accommodated during the remaining seven months of Fiscal Year (FY) 2013. In addition, the current DoD appropriation (the so-called Continuing Resolution) does not allocate adequate funding for current operations, which greatly adds to the Department's FY 2013 budgetary problems. Because your State plays an important part in supporting DoD and our national security, we wanted to provide you with the information we currently have available about how these unfortunate budgetary adjustments impact us, and in turn what it means for our installations and contractors in Virginia.

We do not yet have a complete inventory of the required cutbacks, but I can provide some examples: The Navy will have to cancel maintenance on 11 ships in Norfolk and to defer four projects at Dahlgren, Oceana, and Norfolk. The Army would lose \$146 million in base operations funding across Virginia, including cuts at Fort Lee and Fort Belvoir. The Air Force would suffer a cut of about \$8 million to their facilities projects at Langley Air Force Base. We are still assessing detailed changes and will be able to provide additional information on cutbacks in Virginia as we compile a more complete list.

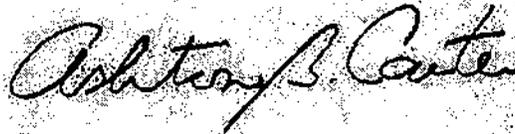


In addition, to accommodate all the cutbacks that would be imposed in the absence of further Congressional action, we will be forced to place most of our DoD civilian employees on unpaid furlough status for up to 22 discontinuous workdays. Almost certainly, this unfortunate action has already had serious adverse effects on the morale and productivity of the approximately 90,000 DoD civilian employees who work in Virginia. If we have to impose these furloughs, it will mean roughly a 20 percent pay cut over a nearly six month period for these dedicated civil servants, who in turn will presumably spend less in your economy. We estimate that a 22-workday furlough could result in a payroll reduction of about \$661 million just in Virginia.

Lastly, it should be noted that sequestration will also affect Defense contractors and, therefore, the industrial base in your State.

While these reductions are unfortunate and will be damaging, the Department is doing everything within our power to minimize adverse effects on our national security mission. In addition, we are prepared to work closely with you to manage these reductions to the extent that we can. Should Congress take subsequent actions that change the level or nature of these reductions, we are committed to working closely with you to manage changes quickly.

Thank you for your continued partnership with the Department of Defense and for your cooperation as we work together to accommodate these unfortunate circumstances.





DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR 01 2013

The Honorable John Kasich
Governor
State of Ohio
Columbus, OH 43215

Dear Governor Kasich:

As you are likely aware, due to the inability of Congress to reach a deal on balanced deficit reduction to avoid sequestration, the President will be required by law to issue a sequestration order later today canceling approximately \$85 billion in budgetary resources across the Federal Government, of which nearly \$41 billion would come from the Department of Defense (DoD). Another sequestration order could be issued later this month, which could result in a combined reduction for DoD of as much as \$46 billion – roughly a 9 percent reduction in our entire budget except for military personnel funding, which current law permitted the President to exempt.

These cuts must be fully accommodated during the remaining seven months of Fiscal Year (FY) 2013. In addition, the current DoD appropriation (the so-called Continuing Resolution) does not allocate adequate funding for current operations, which greatly adds to the Department's FY 2013 budgetary problems. Because your State plays an important part in supporting DoD and our national security, we wanted to provide you with the information we currently have available about how these unfortunate budgetary adjustments impact us, and in turn what it means for our installations and contractors in Ohio.

We do not yet have a complete inventory of the required cutbacks, but I can provide some examples: The Army would lose \$2 million in base operations funding across Ohio, including cuts at Camp Perry. The Air Force would suffer a cut of at least \$3 million to their operations in the State, including reductions in facilities projects at Wright Patterson Air Force Base. We are still assessing detailed changes and will be able to provide additional information on cutbacks in Ohio as we compile a more complete list.

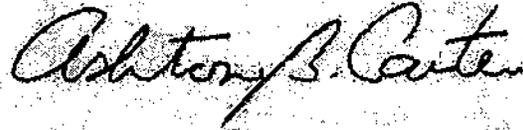
In addition, to accommodate all the cutbacks that would be imposed in the absence of further Congressional action, we will be forced to place most of our DoD civilian employees on unpaid furlough status for up to 22 discontinuous workdays. Almost certainly, this unfortunate action has already had serious adverse effects on the morale and productivity of the approximately 26,000 DoD civilian employees who work in Ohio. If we have to impose these furloughs, it will mean roughly a 20 percent pay cut over a nearly six month period for these dedicated civil servants, who in turn will presumably spend less in your economy. We estimate that a 22-workday furlough could result in a payroll reduction of about \$166 million just in Ohio.



Lastly, it should be noted that sequestration will also affect Defense contractors and, therefore, the industrial base in your State.

While these reductions are unfortunate and will be damaging, the Department is doing everything within our power to minimize adverse effects on our national security mission. In addition, we are prepared to work closely with you to manage these reductions to the extent that we can. Should Congress take subsequent actions that change the level or nature of these reductions, we are committed to working closely with you to manage changes quickly.

Thank you for your continued partnership with the Department of Defense and for your cooperation as we work together to accommodate these unfortunate circumstances.

A handwritten signature in cursive script, reading "Ashton B. Carter". The signature is written in black ink and is centered on the page.



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR 01 2013

The Honorable Rick Scott
Governor
State of Florida
Tallahassee, FL 32399

Dear Governor Scott:

As you are likely aware, due to the inability of Congress to reach a deal on balanced deficit reduction to avoid sequestration, the President will be required by law to issue a sequestration order later today canceling approximately \$85 billion in budgetary resources across the Federal Government, of which nearly \$41 billion would come from the Department of Defense (DoD). Another sequestration order could be issued later this month, which could result in a combined reduction for DoD of as much as \$46 billion – roughly a 9 percent reduction in our entire budget except for military personnel funding, which current law permitted the President to exempt.

These cuts must be fully accommodated during the remaining seven months of Fiscal Year (FY) 2013. In addition, the current DoD appropriation (the so-called Continuing Resolution) does not allocate adequate funding for current operations, which greatly adds to the Department's FY 2013 budgetary problems. Because your State plays an important part in supporting DoD and our national security, we wanted to provide you with the information we currently have available about how these unfortunate budgetary adjustments impact us, and in turn what it means for our installations and contractors in Florida.

We do not yet have a complete inventory of the required cutbacks, but I can provide some examples: The Navy faces the loss of \$135 million in funding for aircraft depot maintenance in Jacksonville and \$3.2 million for four demolition projects in Pensacola. The Army would lose \$7 million in base operations funding across Florida, including cuts at Camp Blanding. The Air Force would suffer a cut of at least \$37 million to their operations in the State, including reductions in facilities projects at Cape Canaveral and at Eglin, MacDill, Patrick, and Tyndall Air Force Bases. We are still assessing detailed changes and will be able to provide additional information on cutbacks in Florida as we compile a more complete list.



In addition, to accommodate all the cutbacks that would be imposed in the absence of further Congressional action, we will be forced to place most of our DoD civilian employees on unpaid furlough status for up to 22 discontinuous workdays. Almost certainly, this unfortunate action has already had serious adverse effects on the morale and productivity of the approximately 31,000 DoD civilian employees who work in Florida. If we have to impose these furloughs, it will mean roughly a 20 percent pay cut over a nearly six month period for these dedicated civil servants, who in turn will presumably spend less in your economy. We estimate that a 22-workday furlough could result in a payroll reduction of about \$185 million just in Florida.

Lastly, it should be noted that sequestration will also affect Defense contractors and, therefore, the industrial base in your State.

While these reductions are unfortunate and will be damaging, the Department is doing everything within our power to minimize adverse effects on our national security mission. In addition, we are prepared to work closely with you to manage these reductions to the extent that we can. Should Congress take subsequent actions that change the level or nature of these reductions, we are committed to working closely with you to manage changes quickly.

Thank you for your continued partnership with the Department of Defense and for your cooperation as we work together to accommodate these unfortunate circumstances.





DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR 01 2013

The Honorable Tom Corbett
Governor
Commonwealth of Pennsylvania
Harrisburg, PA 17120

Dear Governor Corbett:

As you are likely aware, due to the inability of Congress to reach a deal on balanced deficit reduction to avoid sequestration, the President will be required by law to issue a sequestration order later today canceling approximately \$85 billion in budgetary resources across the Federal Government, of which nearly \$41 billion would come from the Department of Defense (DoD). Another sequestration order could be issued later this month, which could result in a combined reduction for DoD of as much as \$46 billion -- roughly a 9 percent reduction in our entire budget except for military personnel funding, which current law permitted the President to exempt.

These cuts must be fully accommodated during the remaining seven months of Fiscal Year (FY) 2013. In addition, the current DoD appropriation (the so-called Continuing Resolution) does not allocate adequate funding for current operations, which greatly adds to the Department's FY 2013 budgetary problems. Because your State plays an important part in supporting DoD and our national security, we wanted to provide you with the information we currently have available about how these unfortunate budgetary adjustments impact us, and in turn what it means for our installations and contractors in Pennsylvania.

We do not yet have a complete inventory of the required cutbacks, but I can provide some examples: The Army would lose \$7 million in base operations funding across Pennsylvania, including cuts at Carlisle Barracks and Fort Indiantown Gap. In addition, depot operations at Tobyhanna and Letterkenny could experience a reduction of as much as \$751 million. We are still assessing detailed changes and will be able to provide additional information on cutbacks in Pennsylvania as we compile a more complete list.

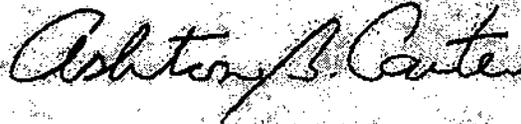


In addition, to accommodate all the cutbacks that would be imposed in the absence of further Congressional action, we will be forced to place most of our DoD civilian employees on unpaid furlough status for up to 22 discontinuous workdays. Almost certainly, this unfortunate action has already had serious adverse effects on the morale and productivity of the approximately 26,000 DoD civilian employees who work in Pennsylvania. If we have to impose these furloughs, it will mean roughly a 20 percent pay cut over a nearly six month period for these dedicated civil servants, who in turn will presumably spend less in your economy. We estimate that a 22-workday furlough could result in a payroll reduction of about \$155 million just in Pennsylvania.

Lastly, it should be noted that sequestration will also affect Defense contractors and, therefore, the industrial base in your State.

While these reductions are unfortunate and will be damaging, the Department is doing everything within our power to minimize adverse effects on our national security mission. In addition, we are prepared to work closely with you to manage these reductions to the extent that we can. Should Congress take subsequent actions that change the level or nature of these reductions, we are committed to working closely with you to manage changes quickly.

Thank you for your continued partnership with the Department of Defense and for your cooperation as we work together to accommodate these unfortunate circumstances.





DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR 01 2013

The Honorable Martin O'Malley
Governor
State of Maryland
Annapolis, MD 21401

Dear Governor O'Malley:

As you are likely aware, due to the inability of Congress to reach a deal on balanced deficit reduction to avoid sequestration, the President will be required by law to issue a sequestration order later today canceling approximately \$85 billion in budgetary resources across the Federal Government, of which nearly \$41 billion would come from the Department of Defense (DoD). Another sequestration order could be issued later this month, which could result in a combined reduction for DoD of as much as \$46 billion – roughly a 9 percent reduction in our entire budget except for military personnel funding, which current law permitted the President to exempt.

These cuts must be fully accommodated during the remaining seven months of Fiscal Year (FY) 2013. In addition, the current DoD appropriation (the so-called Continuing Resolution) does not allocate adequate funding for current operations, which greatly adds to the Department's FY 2013 budgetary problems. Because your State plays an important part in supporting DoD and our national security, we wanted to provide you with the information we currently have available about how these unfortunate budgetary adjustments impact us, and in turn what it means for our installations and contractors in Maryland.

We do not yet have a complete inventory of the required cutbacks, but I can provide some examples: The Army would lose \$95 million in base operations funding across Maryland, including cuts at Fort Meade and Aberdeen Proving Ground. The Air Force would suffer a cut of at least \$10 million to their operations in the State, including reductions in facilities projects at Andrews Air Force Base. The Navy would face the loss of \$9 million in funding for a demolition project at Patuxent River Naval Air Station. We are still assessing detailed changes and will be able to provide additional information on cutbacks in Maryland as we compile a more complete list.

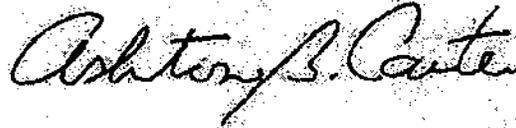


In addition, to accommodate all the cutbacks that would be imposed in the absence of further Congressional action, we will be forced to place most of our DoD civilian employees on unpaid furlough status for up to 22 discontinuous workdays. Almost certainly, this unfortunate action has already had serious adverse effects on the morale and productivity of the approximately 46,000 DoD civilian employees who work in Maryland. If we have to impose these furloughs, it will mean roughly a 20 percent pay cut over a nearly six month period for these dedicated civil servants, who in turn will presumably spend less in your economy. We estimate that a 22-workday furlough could result in a payroll reduction of about \$359 million just in Maryland.

Lastly, it should be noted that sequestration will also affect Defense contractors and therefore, the industrial base in your State.

While these reductions are unfortunate and will be damaging, the Department is doing everything within our power to minimize adverse effects on our national security mission. In addition, we are prepared to work closely with you to manage these reductions to the extent that we can. Should Congress take subsequent actions that change the level or nature of these reductions, we are committed to working closely with you to manage changes quickly.

Thank you for your continued partnership with the Department of Defense and for your cooperation as we work together to accommodate these unfortunate circumstances.





DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR 01 2013

The Honorable Jay Inslee
Governor
State of Washington
Olympia, WA 98504

Dear Governor Inslee:

As you are likely aware, due to the inability of Congress to reach a deal on balanced deficit reduction to avoid sequestration, the President will be required by law to issue a sequestration order later today canceling approximately \$85 billion in budgetary resources across the Federal Government, of which nearly \$41 billion would come from the Department of Defense (DoD). Another sequestration order could be issued later this month, which could result in a combined reduction for DoD of as much as \$46 billion – roughly a 9 percent reduction in our entire budget except for military personnel funding, which current law permitted the President to exempt.

These cuts must be fully accommodated during the remaining seven months of Fiscal Year (FY) 2013. In addition, the current DoD appropriation (the so-called Continuing Resolution) does not allocate adequate funding for current operations, which greatly adds to the Department's FY 2013 budgetary problems. Because your State plays an important part in supporting DoD and our national security, we wanted to provide you with the information we currently have available about how these unfortunate budgetary adjustments impact us, and in turn what it means for our installations and contractors in the State of Washington.

We do not yet have a complete inventory of the required cutbacks, but I can provide some examples: The Army would lose \$124 million in base operations funding across Washington, including cuts at Joint Base Lewis-McCord. The Air Force would suffer a cut of at least \$3 million, including reductions in facilities projects at Fairchild Air Force Base. The Navy would face cancellation of aircraft depot maintenance at Whidbey Island and a demolition project in Bremerton. We are still assessing detailed changes and will be able to provide additional information on cutbacks in Washington as we compile a more complete list.

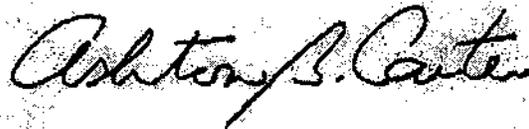


In addition, to accommodate all the cutbacks that would be imposed in the absence of further Congressional action, we will be forced to place most of our DoD civilian employees on unpaid furlough status for up to 22 discontinuous workdays. Almost certainly, this unfortunate action has already had serious adverse effects on the morale and productivity of the approximately 29,000 DoD civilian employees who work in Washington. If we have to impose these furloughs, it will mean roughly a 20 percent pay cut over a nearly six month period for these dedicated civil servants, who in turn will presumably spend less in your economy. We estimate that a 22-workday furlough could result in a payroll reduction of about \$175 million just in Washington State.

Lastly, it should be noted that sequestration will also affect Defense contractors and, therefore, the industrial base in your State.

While these reductions are unfortunate and will be damaging, the Department is doing everything within our power to minimize adverse effects on our national security mission. In addition, we are prepared to work closely with you to manage these reductions to the extent that we can. Should Congress take subsequent actions that change the level or nature of these reductions, we are committed to working closely with you to manage changes quickly.

Thank you for your continued partnership with the Department of Defense and for your cooperation as we work together to accommodate these unfortunate circumstances.





DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR 01 2013

The Honorable Rick Perry
Governor
State of Texas
Austin, TX 78701

Dear Governor Perry:

As you are likely aware, due to the inability of Congress to reach a deal on balanced deficit reduction to avoid sequestration, the President will be required by law to issue a sequestration order later today canceling approximately \$85 billion in budgetary resources across the Federal Government, of which nearly \$41 billion would come from the Department of Defense (DoD). Another sequestration order could be issued later this month, which could result in a combined reduction for DoD of as much as \$46 billion -- roughly a 9 percent reduction in our entire budget except for military personnel funding, which current law permitted the President to exempt.

These cuts must be fully accommodated during the remaining seven months of Fiscal Year (FY) 2013. In addition, the current DoD appropriation (the so-called Continuing Resolution) does not allocate adequate funding for current operations, which greatly adds to the Department's FY 2013 budgetary problems. Because your State plays an important part in supporting DoD and our national security, we wanted to provide you with the information we currently have available about how these unfortunate budgetary adjustments impact us, and in turn what it means for our installations and contractors in Texas.

We do not yet have a complete inventory of the required cutbacks, but I can provide some examples: The Army would lose \$233 million in base operations funding across Texas, including cuts at Fort Bliss, Fort Hood, and Fort Sam Houston. Depot operations at Red River and Corpus Christi could experience a reduction of as much as \$1.4 billion. The Air Force would suffer a cut of at least \$92 million, including reductions in facilities projects at Lackland, Randolph, and Sheppard Air Force Bases. The Navy and Marine Corps would face reduced procurement of the Joint Strike Fighter. We are still assessing detailed changes and will be able to provide additional information on cutbacks in Texas as we compile a more complete list.

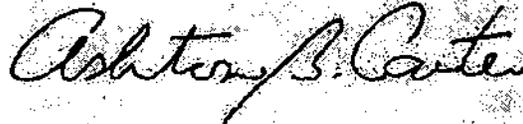


In addition, to accommodate all the cutbacks that would be imposed in the absence of further Congressional action, we will be forced to place most of our DoD civilian employees on unpaid furlough status for up to 22 discontinuous workdays. Almost certainly, this unfortunate action has already had serious adverse effects on the morale and productivity of the approximately 52,000 DoD civilian employees who work in Texas. If we have to impose these furloughs, it will mean roughly a 20 percent pay cut over a nearly six month period for these dedicated civil servants, who in turn will presumably spend less in your economy. We estimate that a 22-workday furlough could result in a payroll reduction of about \$291 million just in Texas.

Lastly, it should be noted that sequestration will also affect Defense contractors and, therefore, the industrial base in your State.

While these reductions are unfortunate and will be damaging, the Department is doing everything within our power to minimize adverse effects on our national security mission. In addition, we are prepared to work closely with you to manage these reductions to the extent that we can. Should Congress take subsequent actions that change the level or nature of these reductions, we are committed to working closely with you to manage changes quickly.

Thank you for your continued partnership with the Department of Defense and for your cooperation as we work together to accommodate these unfortunate circumstances.



**Memorandum of Understanding
Between
The Defense Contract Management Agency
And
The American Federation of Government Employees, Council 170**

Process Covering Potential for Administrative Furlough for FY 2013

On 20 February 2013 DoD notified Congress of the potential for an administrative furlough for up to 22 workdays in FY13. DoD also notified the National Unions (those with national consultation rights) on 20 February 2013.

The legal maximum for an administrative furlough (without using Reduction In Force procedures) is 22 discontinuous days (176 hours).

Any decision to hold a furlough will come from the Office of the Secretary of Defense, on or after 1 March 2013, depending on sequestration events. The provisions in this Memorandum of Understanding are the results of collaboration between DCMA HQ and AFGE Council 170 and will be applied agency-wide without further negotiation below the level of recognition (DCMA HQ and AFGE Council 170). Negotiations below the level of recognition (DCMA HQ and AFGE Council 170) are not authorized. Provisions contained in this plan may be subject to further collaboration depending on actual DoD furlough guidance.

DCMA will follow parameters established by DoD:

- Conduct furlough equitably across DoD
- General rule is that full-time employees will be furloughed 16 hours per pay period across 11 pay periods (176 total furlough hours starting 25 April 2013). There are 11 pay periods between 25 April 2013 and 27 September 2013.
- Exceptions:
 - Employees deployed in a combat zone
 - Foreign Nationals
- Involve unions in the Pre-Decisional Involvement (PDI) and Impact and Implementation (I&I) process
- Part-time employees will be furloughed on a pro-rata basis based on average number of hours worked per pay period (e.g. 20 hours/week – 88 hours furlough; 32 hour/week – 132 hours furlough)

March 1, 2013

- Temporary employees, term employees and re-employed annuitants may be released or included in the furlough
- Premium pay may not be used to offset effects of a furlough (overtime, compensatory time)

Additional DCMA established parameters:

- Minimize adverse impact to mission
- Ensure continuity of operations
- The only civilian exceptions will be for individuals deployed for CCAS and Locally Engaged Staff in DCMA International
- To the extent practical, consider employee preferences in all furlough scheduling decisions

Scheduling:

- Full-time employees furloughed 16 hours per pay period for 11 pay periods beginning 25 April 2013 (part-time employees pro-rated based on average hours worked per pay period).
- The proposed furlough notice to be given to employees at least 30 days prior to the furlough start date will include a suspense date by which employees should provide their supervisors with their proposed furlough schedule for 16 hours per pay period beginning 25 April 2013 and ending 21 September 2013.
- To the extent possible, furlough will be scheduled in full 8 hour days instead of scheduling multiple hours across several days during the same week.
- Supervisors will work with employees to set furlough schedules based on mission requirements and employee considerations.
- The first consideration of supervisors in making decisions about employee proposed furlough days must be mission requirements. Supervisors will then consider employee financial implications (i.e. vacation arrangements already purchased or other financial penalties); previously approved leave; child-care; elder-care; and transportation arrangements/costs or other employee hardships. If a supervisor must decide between multiple requests for the same furlough day and none of the above considerations apply, then the service computation date for leave (SCD leave) will be used to determine the most senior person for approval.
- Proposed furlough days will be submitted and approved using the same process currently used for the request and approval of work schedules.
- To the extent possible, employees will be furloughed 16 hours per pay period but hours in a week or pay period may be modified to accommodate specific situations. Extended

March 1, 2013

TDY or training may occur that will require furlough days to be taken on an alternate furlough schedule. For example, an employee attends a 2 week training course so is not furloughed that pay period. The 16 hours of furlough "missed" will be redistributed immediately before and/or after the training.

- Furlough hours may not be "grouped" at the beginning of the furlough period or "postponed" until the end of the furlough period, e.g. an employee may not take the total 176 hours at the end of April/beginning of May or at the end of August/beginning of September.
- Supervisors must consider the impact of furlough on current work schedules and telework arrangements. Work schedules and telework arrangements may need to be modified to ensure maximum efficiency of operations (changes will be made in accordance with CBA procedures).
- Furlough proposal notices given to employees will include a statement that telework arrangements and work schedules may be impacted.
- Organizations will consider mission impact to determine if certain furlough days/hours will be required (e.g. contractor plant is closed every other Friday so all employees will be furloughed for a full day every other Friday while the remainder of the 16 hours will be scheduled the following week).
- The effects of furlough cannot be offset with contractors, military personnel or premium pay.

Furlough Notices:

- Notice Requirements:
 - Notice in writing with a 30-day notice period
 - 7 calendar day reply period
 - Right to representation in making a reply
 - Written decision
 - Notice of right to grieve under the negotiated grievance procedure OR appeal to the MSPB
- Proposal notices will be issued to employees on or about 18 March 2013, providing a 7 calendar day reply period.
- Decision notices will be issued to employees not later than 24 April 2013.

Work Force Communication:

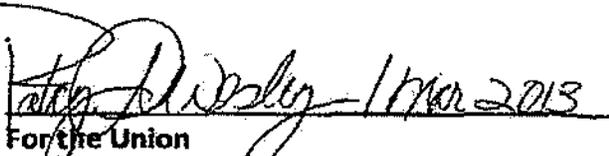
- HC Messengers
- DCMA Furlough Website – deploy 1 March 2013
 - OPM Guidance

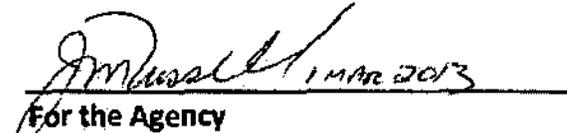
March 1, 2013

- FAQs
- Furlough e-mail in-box link for employee questions
- DCMA developed guidance
 - Information about how best to mitigate impact of financial decisions on security clearance
- EAP information about assistance available
- Periodic Director/Deputy Director updates via multi-media broadcast or On-point Memorandums

Furlough Documentation:

- After completion of furlough one SF50 will be prepared for each employee specifying beginning and ending dates of furlough and total number of hours furloughed.
- SF-50s will be available to employees in eOPF after they are processed.


For the Union
Patcy A. Wesley, President C-170


For the Agency
James Russell, Deputy Director

March 1, 2013

Presidential Documents

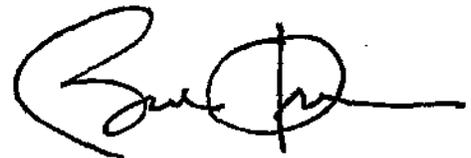
Order of March 1, 2013

Sequestration Order for Fiscal Year 2013 Pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act, as Amended

By the authority vested in me as President by the laws of the United States of America, and in accordance with section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (the "Act"), 2 U.S.C. 901e, I hereby order that budgetary resources in each non-exempt budget account be reduced by the amount calculated by the Office of Management and Budget in its report to the Congress of March 1, 2013.

Pursuant to sections 250(c)(6), 251A, and 255(e) of the Act, budgetary resources subject to sequestration shall be new budget authority, unobligated balances of defense function accounts carried over from prior fiscal years, direct spending authority, and obligation limitations.

All sequestrations shall be made in strict accordance with the requirements of section 251A of the Act and the specifications of the Office of Management and Budget's report of March 1, 2013, prepared pursuant to section 251A(11) of the Act.



THE WHITE HOUSE,
Washington, March 1, 2013.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

12

March 1, 2013

M-13-06

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Jeffrey D. Zients
Deputy Director for Management

SUBJECT: Issuance of the Sequestration Order Pursuant To Section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985, as Amended

This memorandum is to inform executive departments and agencies (agencies) that the President has issued a sequestration order (order) in accordance with section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (BBEDCA), 2 U.S.C. 901a. The order requires that budgetary resources in each non-exempt budget account be reduced by the amount calculated by the Office of Management and Budget (OMB) in its report to Congress of March 1, 2013, entitled *OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013* (sequestration report).

Due to the failure of the Joint Select Committee on Deficit Reduction, the President was required by law to issue an order canceling \$85 billion in budgetary resources across the Federal Government for the remainder of Fiscal Year (FY) 2013. OMB has calculated that, over the course of the fiscal year, the order requires a 7.8 percent reduction in non-exempt defense discretionary funding and a 5.0 percent reduction in non-exempt nondefense discretionary funding. The sequestration also requires reductions of 2.0 percent to Medicare, 5.1 percent to other non-exempt nondefense mandatory programs, and 7.9 percent to non-exempt defense mandatory programs. The sequestration report provides calculations of the amounts and percentages by which various budgetary resources are required to be reduced, and a listing of the reductions required for each non-exempt budget account.

Agencies shall apply the same percentage reduction to all programs, projects, and activities within a budget account, as required by section 256(k)(2) of BBEDCA, 2 U.S.C. 906(k)(2). Agencies should operate in a manner that is consistent with guidance provided by OMB in Memorandum 13-03, *Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources* and Memorandum 13-05, *Agency Responsibilities for Implementation of Potential Joint Committee Sequestration*.



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Presenter: Secretary of Defense Chuck Hagel and Deputy Secretary of Defense Ashton B. Carter

March 01, 2013

DOD Press Briefing on Sequestration from the Pentagon

SECRETARY OF DEFENSE CHUCK HAGEL: Deputy Secretary Carter and I wanted to take a few minutes this afternoon to talk a little bit about sequestration and what was announced today. Many of you saw the President a few hours ago. And I'll make a statement, and then the Deputy Secretary and I will entertain questions. So, thank you for coming.

I just spent an hour, actually an hour-and-a-half, with the Joint Chiefs to talk about this issue and to talk about consequences, and how we will continue to adjust to the realities that face our country and face this institution.

In particular, I'd like to address the uncertainty that sequestration is causing, [and] will continue to cause this department. But at the outset of my remarks, let me make it clear that this uncertainty puts at risk our ability to effectively fulfill all of our missions. Leadership in the Pentagon, all of us, have two serious concerns; first, the abrupt and arbitrary cuts imposed by sequester; and second, the lack of budget management flexibility that we now face under the current continuing resolution.

Over the past two months, DOD has begun to see the effects and consequences of that uncertainty. As sequester continues, we will be forced to assume more risk, with steps that will progressively have far-reaching effects.

Let me highlight a couple of actions that we are taking as a result of these budget constraints. The Navy will gradually stand down at least four wings. The first wing will stand down in April.

Effective immediately, Air Force flying hours will be cut back. This will have a major impact on training and readiness.

The Army will curtail training for all units except those deploying to Afghanistan, adversely impacting nearly 80 percent of Army operational units.

Later this month, we intend to issue preliminary notifications to thousands of civilian employees who will be furloughed. These steps come on top of those the department began in January to slow spending in view of this uncertainty. Those included delaying deployment of naval assets; imposing civilian hiring freezes; beginning to lay off temporary and term employees; sharply cutting back facilities maintenance; and beginning reviews to delay contracts.

If sequester continues and the continuing resolution is extended in its current form, other damaging effects will become apparent. Our number one concern is our people, military and civilian, the millions of men and women of this department who work very hard every day to ensure America's security.

I know that these budget cuts will cause pain, particularly among our civilian workforce and their families. I'm also concerned, as we all are, about the impact on readiness that these cuts will have across our force.

For these reasons, the department's senior leadership and I will continue to work with the administration and Congress to help resolve this uncertainty. Specifically, we need a balanced deficit reduction plan that leads to an end to sequestration. And we need Congress to pass appropriations bills for DOD and all federal agencies.

We will need to make hard choices. And I will do everything within my power to see that America upholds its commitment to our allies and our partners and, most importantly, to our service members and their families.

Today, America has the best fighting force in the world capable of responding to any challenge. This unnecessary budget crisis makes that job much harder. But we will continue to ensure America's security. Thank you.

I'll take a couple of questions, and then I'll ask Ash for his responses.

(CROSSTALK)

Q: Mr. Secretary, thank you.

You, having laid out a number of consequences there, you — the language you used was not as dramatic as been used by others in this building in recent months of talking about "catastrophic" and "disastrous" results if sequestration happened.

Are you of the view that this is not a situation which the U.S. will be reduced to a second-rate military power?

And may I ask a question also on Syria: What's your view about whether the U.S. ought to be doing more militarily to help the rebels?

SEC. HAGEL: Well, Bob, your first question, America, as I concluded in my remarks, has the best fighting force, the most capable fighting force, the most powerful fighting force in the world. The management of this institution, starting with the Joint Chiefs, are not gonna allow this — this capacity to erode.

DCMA Administrative Record for FY 2013 Furlough Appeals

We will manage these issues. These are adjustments. We anticipated these kinds of realities. And we will do what we need to do to assure the capabilities of -- of our forces.

On Syria, I think it's clear what our policy -- the administration's policy is on Syria: non-lethal assistance. Secretary of State Kerry has recently commented, as you know, following his trip around the world. And I think the policy that the United States has is the correct policy.

Q: Sequestration has been described as a slope not a cliff. So in your opinion, how long can sequestration go on before there is real damage to the defense of the United States?

SEC. HAGEL: We are adjusting for the realities not just of what happened today, but, as I noted in my remarks, we have a continuing resolution that expires on March 27th that's an additional complication.

I have confidence in the -- the president and the Congress that decisions, consensus, to -- at some point to avert tremendous damage to this -- this institution.

This is the security of the United States of America we're talking about. That is the highest order of any government, any leader. And we will -- we will do what is necessary, what it takes to assure that security, as I noticed before and mentioned in my -- in my comments.

Q: Mr. Secretary, your predecessor and many other senior leaders of the department have expressed concern that the budget uncertainties with sequestration and the C.R. are going to prevent the department from implementing the defense strategy that the Obama administration unveiled last year.

Do you share that view? And, if so, when do you think you need to start modifying the strategy?

SEC. HAGEL: Well, as I said, first, adjustments are being made, and we've anticipated the required adjustments to our budget to assure the capabilities and readiness of our -- of our forces.

As to the issue of the President's strategic guidance, that is the policy. In my opinion, I think our leadership's opinion, it's the correct policy.

We have been implementing that strategic guidance over the last year. We will continue to implement that -- that policy.

Q: (inaudible), Swiss Television.

Given your role inside NATO, what is going to happen to NATO? And are you in contact or will you be in contact with the allies and the secretary general to explain the situation?

SEC. HAGEL: Well, we have been in touch with our NATO allies. We, as you know, are in constant communication with our NATO allies. I think that they are not unmindful and not unaware of this issue that we are currently engaged in.

Our NATO allies have difficulties as well, with their economic issues. And the fact is NATO represents probably the most successful collective security relationship in the history of man.

That relationship remains strong; will continue to remain strong; must remain strong.

Q: Mr. Secretary, just to clarify something you said earlier, when you said the consensus will be reached to avert tremendous damage to the institution, are you saying you think there'll be some sort of an agreement made on sequestration or...

SEC. HAGEL: I said -- I said I hoped that and I have confidence that we will eventually see a consensus. And that's the only way that we're going to get out of it. This is a partnership. This is a -- this is a republic, and it is the executive and the congressional branches working together to find a way out.

If you listen to our leaders, all are saying the same thing. We need to find a way to resolve the issue. And that -- that's the only way out.

(CROSSTALK)

SEC. HAGEL: I'm going to leave. This gentleman, who some of you may know, are not unfamiliar, Ash Carter, who, as you know is our deputy secretary and has had a very significant role, a leadership role, on this particular issue as well as others.

And I might say, as I ask him to come to the podium, I appreciate very much his leadership and his focus on what not only has been going on here, but his years of service to this institution. And it's -- it's a benefit to our country, and it's a benefit to this institution, especially at a difficult time like this.

So I don't want to say anything more about him, other than that.

Ash, thank you.

Q: A couple questions. Can you flesh out over the next couple weeks what practical impacts we will -- the Pentagon and its forces will see from sequestration, versus three or four months now, but over the next two weeks what will we see?

DEPUTY SECRETARY OF DEFENSE ASHTON B. CARTER: Let me start with the Army. You'll see the Army beginning to curtail training at, for example, the National Training Center. If we go to the Air Force now, you'll see the Air Force beginning to curb flying hours. And that means that the nuclear-capable Air Force, that part of the Air Force that is participating in operations in Afghanistan, we will protect them, and that means that the cuts caused by sequestration, also the continuing resolution, will fall more heavily on other parts of the combat Air Force. They'll need to cease training, which means they won't be ready for other conflicts, which is a serious impact.

You've already seen the Navy begin to make adjustments in terms of how many ships are at sea. And you will see each of our program managers -- remember, sequester affects each of 2,500 individual investment programs individually. And so we're working with our industry partners on each of those, and you'll then begin to make adjustments, for example, in the number of weapons systems in a given category that are being purchased. So a different kind of arrangement -- fewer weapons systems in a contract that we anticipated were going to be put in a contract.

That's the kind of thing you'll see. And as the secretary indicated and as the president indicated earlier today, this progressively builds over -- over coming months and constitutes a serious problem, particularly in the readiness accounts.

Q: And one follow-up. Don't the services have flexibility within their individual -- their O&M accounts to protect the operations -- the operating forces account that actually bankrolls training?

DR. CARTER: They do have some flexibility even under sequestration with O&M accounts. They are using that flexibility. They're using that flexibility to protect operations in Afghanistan. So we are not curbing or withholding in any way training from units that are going to Afghanistan. What that means, though, is that the burden falls more heavily upon the rest of the Air Force.

A lot of people ask why does so much happen so fast. And you begin to see some of the reason for that. You have the combination of sequester and the continuing resolution. You have the fact that we're trying to protect the war in Afghanistan. You have the fact that only half of the fiscal year is left.

DCMA Administrative Record for FY 2013 Furlough Appeals

And so what remains even in those O&M accounts, even after that we move everything around -- and -- and what Secretary Hagel just said is we're doing everything we possibly can to protect national security and minimize damage. But the reality is, even after you've done all of that, even in the O&M accounts, which are the largest, you still don't have enough money left to do the training that underlies readiness. And that's why the readiness crisis that the chiefs referred to is very real. It builds as the year goes along.

Q: (inaudible), thank you, sir.

You talked about the programs that you're concerned about. Now, which people are you most concerned about today, now that the sequester is official? Are there any immediate impacts on personnel and their families (inaudible)?

DR. CARTER: I -- I think the impacts are immediate in all three of the populations that we depend on for national defense. First, for the troops themselves, of course, the president has exempted the pay for military personnel from sequester -- the right decision.

However, our military personnel will still feel things immediately. For example, if you planned to fly or to train in the next few months, that's their duty. That's their profession. That's their responsibility to our national security. They're not going to be able to do that. They'll feel that immediately.

Second, our civilian workforce. As you know, our civilian workforce is about 800,000 strong. Those people, too, are dedicated to the defense mission. They live all over the country, which I remind you, 86 percent of them live completely outside the Washington area; 89 percent. Forty-four percent of them are veterans. So they're dedicated to the mission, too. And as the year goes on, many of them will be subject to furlough.

Third, and finally, the contractor workforce that depends on us, and we in turn depend on them. We -- we don't make anything here in the Pentagon. So we depend upon the industrial base to make our weapons systems, which, second only to our people, what make us, as the Secretary Hagel said, the greatest military in the world.

Many of them will be affected very directly by this, because we'll be cutting back on contractor spend.

Remember, we have to find \$46 billion -- \$46 billion -- between now and the end of the year. And -- and the civilian and military workforce, per se, will only provide of those savings -- even if we do drastic things there -- a few billion dollars. The rest of that will affect the contractors.

So all three of those populations upon whom we depend, the effects will be serious and immediate.

Q: The -- in your view, how many of these initial cuts will have lasting effects that will trickle on and be felt in the years ahead?

DR. CARTER: That's a good question.

Q: Will readiness -- or if it's not immediate, how soon until the cuts that will impact readiness for years to come?

DR. CARTER: It's a good question. Once again, in this as in every other area, we're doing everything we can to minimize lasting damage. But you can't eliminate it. Let me give you two examples right away.

When you can't afford to begin overhaul or maintenance of a ship and you defer that maintenance, what that means -- our shipyards have their -- their planned maintenance planned out heel -- heel to toe through many years. And so once you've created a gap this year that gap propagates into the future.

Another example. I -- I explained that the Air Force wasn't going to be able to afford to have many of the pilots in combat aircraft -- Air Force train in the latter part of the year. Well, if you stop training for a while and you're a combat pilot, then you'd lose your rating and eventually can't fly at all. Because we can't allow you to fly if you can't fly safely. So you not only can't fly safely, you obviously can't fly proficiently if you can't even fly safely.

Then you have to go back to the long building back process of getting your readiness back.

So this is not something that, even if it's temporary -- and the secretary explained that everybody hopes that in -- in some way both sequester and the problems or experiences (inaudible) associated with a continuing resolution will be resolved through legislation and a -- a large budget deal of some kind.

But even were that to occur some months from now, there would be lasting damage from this. It's very serious.

Q: (inaudible), ABC News.

Of all of the cuts that you see potentially coming down the pipeline, what gives the Pentagon the greatest pause?

And can you tell us at midnight today what are the specific threats to the Pentagon that you feel -- the cuts that you could be seeing immediately right at midnight tonight?

DR. CARTER: The -- right at midnight tonight and then building, as I said, through the days and weeks and months into the future, we will begin curbing training for units.

So let me just take that example and sort of play that out. What does that mean for national security? What it means is that as the -- as the year goes on, apart from Afghanistan, apart from nuclear deterrence through two missions we are strictly protecting, the readiness of the other units to respond to other contingencies will gradually decline. That's not safe. And that we're trying to minimize that in every way we possibly can.

But reduced readiness is a serious matter. As -- as the chiefs have emphasized and as the Secretary emphasized.

Q: (inaudible) do you have any -- do you have any concerns that the lack of any clear impact on national security, short of something obvious and tangible, will make people think the Pentagon can simply absorb these cuts?

And (inaudible) a lot of these things are kind of down the road. They're -- you know, they're -- they're -- people will be less ready, they'll be less capable. But it might not be something obvious. Does that concern you that it might not be tangible enough to really sound alarms with the American public?

DR. CARTER: Well, we have been trying now for 16 months to sound the alarm about sequestration. We're describing to you in all the detail that we can how each and every part of this enterprise will be affected adversely -- the people, the weapons programs, readiness.

We're not going to take actions that are unnecessary just to do something, to use your word, "obvious." But all this is going to be abundantly obvious, starting tomorrow and building through the year. And I think people when they -- those who do not appreciate how serious this is, as the year goes on, it will be unmistakable. This is not subtle. This is an abrupt, serious curbing of activity in each and every one of our key categories of activity in the Department of Defense. It's not subtle.

(CROSSTALK)

Q: Thank you very much.

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There's a contrarian narrative out there. I'm sure you've heard it. I'd (inaudible) to hear your response. It says the war in Iraq is over. The winding down in Afghanistan; Al Qaeda central is diminished; we're not in a nuclear standoff with Russia; China's a competitor, not an enemy.

So even if we stipulate sequester is a clumsy tool, why can't and why shouldn't this department be forced to operate on less after 10 years of so much money coming your way?

DR. CARTER: Well, first of all, beginning back a year ago, the department embarked on \$487 billion in defense cuts, exactly in accordance with what you just said. That in fact built upon \$300 billion or so that Secretary Gates had begun back in the so-called "efficiency initiative." So we understand that as the wars in Iraq and Afghanistan wind down, that our overall budget authority will go down and that will make a contribution to -- to deficit reduction. The -- but sequestration is a different matter. It is abrupt. It is abrupt. And on top of sequestration, we have a continuing resolution in force which creates its own set of problems. I won't go into, but in some categories are just as serious.

So, the net of this is, as I described, something that is abrupt. It's deleterious. It's a very real detriment to defense. We should only get the money that we deserve and that the nation needs. We understand that, and that is the principle upon which built the new strategy last year. And that's right, and the secretary alluded to that.

This country's turning a strategic corner, and that's the broader point, I think, that you're -- you're making, Tom. We're coming out of the era of Iraq and Afghanistan. We're trying to address the national security problems that are going to define this country's future and this world's future. And we're prepared to do that.

And we also understand that we're going to have less resources than we did in that last decade. All of that is understood. This is a different matter. This is something that is not managerially or, from a national security point of view, prudent.

Q: Mr. Secretary, you mentioned before how the civilian workforce has a mission with the department also.

DR. CARTER: I'm sorry -- the...

Q: The civilian workforce has a mission.

DR. CARTER: Yes, indeed.

Q: And feels they have the mission. What do you say to a GS-5 or somebody contemplating a career -- a civilian career with the military (inaudible). Do you still think it's a good idea, given the uncertainty that this causes?

DR. CARTER: Well, I mean, we're realistic. We -- our civilians who make important contributions to defense, otherwise they wouldn't be part of the defense establishment. As I explained, 44 percent of them are veterans. They do real things that are really important to us.

And they've had their pay frozen for years. Now, they're subject to furlough. And as I talk to -- and you say, "why would anybody join our ranks under those circumstances." And the reason is -- the reason you'd want it to be, they join with us, and I hope they'll stick with us, because of mission, because they're committed to what we do, which is defend the country and help to make a better world.

That's why they do it.

(CROSSTALK)

DR. CARTER: Thank you all very much.

Q: Thank you.

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27		1/14/2013	OMB Memo, "Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources"	Agency
28		1/10/2013	DSD, "Handling Budgetary Uncertainty in FY 2013"	Agency
29		1/2/2013	"American Taxpayer Relief Act of 2012"	Agency
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D. C. 20503

February 27, 2013

M-13-05

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Danny Werfel
Controller

A handwritten signature in black ink, appearing to read "D. Werfel", written over the printed name and title.

SUBJECT: Agency Responsibilities for Implementation of Potential Joint Committee
Sequestration

Unless Congress acts to amend current law, the President is required to issue a sequestration order on March 1, 2013, canceling \$85 billion in budgetary resources across the Federal Government. Because these cuts must be achieved over the remaining seven months of the fiscal year, the Office of Management and Budget (OMB) estimates that the effective percentage reductions are approximately 9 percent for nondefense programs and 13 percent for defense programs. These reductions will result in significant and harmful impacts to national security and domestic priorities.

The President has been clear that sequestration is bad policy that was never intended to be implemented, and the Administration remains hopeful that Congress will act to avoid it through an agreement on balanced deficit reduction. However, because legislation may not be enacted to avoid sequestration before the current deadline of March 1, 2013, executive departments and agencies (agencies) with sequestrable accounts have been engaged in planning activities to operate at the lower, post-sequestration funding levels should it be necessary.

This guidance builds on prior communications with agencies about the implementation of sequestration, and addresses questions that have been raised as to certain categories of planning activities.

Agency Planning Activities

OMB Memorandum 13-03, *Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources*, directed agencies to begin planning activities to operate with reduced budgetary resources in the event that sequestration occurs. Agencies' planning efforts must be guided by the principle of protecting the agency's mission to serve the public to the greatest extent practicable. Planning efforts should be done with sufficient detail and clarity to determine the specific actions that will be taken to operate under the lower level of budgetary resources

required by sequestration. For example, agencies should identify any major contracts that they plan to cancel, re-scope or delay as well as any grants that they plan to cancel, delay, or for which they plan to change the payment amount. Similarly, agencies should identify the number of employees who will be furloughed, the length of expected furloughs, the timing of when furlough notices will be issued, and the manner in which furloughs will be administered. In some cases, agencies may not be able to ascertain all of this information prior to March 1. However, agencies should continue to engage in intense and thorough planning activities to determine all specific actions that will be taken as soon as practicable.

Communications

To the extent permitted by law, agencies should inform their various partners and stakeholders in a timely and complete manner of the impact of sequestration so that third parties are able to adjust their operations and plans as appropriate. Accordingly, at this time, agencies should be actively and continuously communicating with affected stakeholders—including States, localities, tribal governments, Federal contractors, Federal grant recipients, and Federal employees—regarding elements of the agency's planning that have a direct impact on these groups. These communications will vary greatly by agency and by stakeholder, but agencies should be as specific as possible in order to provide sufficient detail to be helpful to these stakeholders in understanding the implications of the reduced budget authority resulting from sequestration.

With regard to any planned personnel actions to reduce Federal civilian workforce costs, consistent with Section 3(a)(ii) of Executive Order 13522, agencies must allow employees' exclusive representatives to have pre-decisional involvement in these matters to the fullest extent practicable and permitted under the law. In particular, in instances where agencies are considering potential furloughs, agencies have a duty to notify their exclusive representatives and, upon request, bargain over any negotiable impact and implementation proposals the union may submit, unless the matter of furloughs is already covered by a collective bargaining agreement. Agencies should ensure that they are fully aware of and in compliance with any and all collective bargaining requirements, and should consult with their General Counsel or appropriate labor relations office for questions regarding these requirements and appropriate interaction with employees and unions on these matters.

Acquisition

Due to the Government's large acquisition footprint, sequestration will inevitably affect agency contracting activities and require agencies to reduce contracting costs where appropriate. As with all actions taken as a result of sequestration, agencies should ensure that any contract actions are both cost-effective and minimize negative impact on the agency's mission to the extent practicable.

Program, acquisition, financial/budget management, information technology, and legal personnel should work together to make determinations regarding contracts in light of sequestration. As a general matter, agencies should only enter into new contracts or exercise options when they support high-priority initiatives or where failure to do so would expose the

government to significantly greater costs in the future. Agencies may also consider de-scoping or terminating for convenience contracts that are no longer affordable within the funds available for Fiscal Year 2013, should no other options exist to reduce contracting costs in these instances. Should such steps be necessary, agencies must evaluate the associated costs and benefits of such actions, and appropriately inform and negotiate with contractors. Finally, agencies should take all appropriate steps to minimize to the extent practicable the impact on small businesses of reduced contracting activities.

Financial Assistance

Given the widespread use of grants, loans and other Federal financial assistance to non-federal entities (e.g., State, local and tribal governments, non-profit organizations, and companies), sequestration will impact the funding of these activities.

As a general matter, agencies should ensure that any new financial assistance obligations or funding increases under existing agreements are consistent with the need to protect the agency's mission at the post-sequestration level. In light of sequestration, agencies may also consider delaying awarding of new financial assistance obligations, reducing levels of continued funding, and renegotiating or reducing the current scope of assistance. Agencies may be forced to reduce the level of assistance provided through formula funds or block grants. Should any such steps be necessary, agencies should evaluate the associated costs and benefits of such actions and appropriately engage and inform recipient(s) as early as possible.

Increased Scrutiny of Certain Activities

In determining the appropriate manner to achieve funding reductions, agency heads must also ensure that their agencies have risk management strategies and internal controls in place that provide heightened scrutiny of certain types of activities funded from sequestered accounts. To the extent these accounts remain at the post-sequestration funding level, increased scrutiny should apply to:

- hiring new personnel;¹
- issuing discretionary monetary awards to employees, which should occur only if legally required until further notice; and
- incurring obligations for new training, conferences, and travel (including agency-paid travel for non-agency personnel).

In light of the reduced budgetary resources available due to sequestration, expending funds on these activities at this time would in many circumstances not be the most effective way to protect agency mission to the extent practicable. Therefore, agency leadership should review processes and controls around these activities, and ensure that these activities are conducted only

¹ Agencies must also ensure that appropriate controls are in place to prevent the increased use of contractors to perform work due to any restrictions on hiring. Agencies should bear in mind the statutory restrictions contained in 10 U.S.C. 2461 and 41 U.S.C. 1710 on the conversion of functions from performance by Federal employees to performance by contractors.

to the extent they are the most cost-effective way to maintain critical agency mission operations under sequestration.

Please contact your OMB Resource Management Office (RMO) if you have any questions about or need assistance with this guidance.

DCMA Administrative Record for FY 2013 Furlough Appeals
OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000



READINESS AND
FORCE MANAGEMENT

MEMORANDUM FOR: SEE DISTRIBUTION

FEB 21 2013

SUBJECT: Total Force Management and Budgetary Uncertainty

- Reference:
- (a) Deputy Secretary of Defense Memorandum, "Handling Budget Uncertainty in Fiscal Year 2013", dated 10 January 2013
 - (b) Under Secretary of Defense of Personnel & Readiness Memorandum, "Prohibition on Converting Certain Functions to Contract Performance", dated 1 December 2011
 - (c) Deputy Secretary of Defense Memorandum, "Guidance for Limitation on Aggregate Annual Amount Available for Contracted Services", dated 3 June 2012
 - (d) Under Secretary of Defense of Personnel & Readiness Memorandum, "Guidance Related to the Utilization of Military Manpower to Perform Certain Functions", dated 2 March 2012
 - (e) DoD Instruction 1100.22, "Guidance for Determining Workforce Mix", dated 12 April 2010

This memorandum provides guidance for the management of the Total Force (active and reserve military, government civilians, and contracted support) during this time of continued budget uncertainty. The Department must maintain the viability of the All-Volunteer Force and sustain its operational readiness in the most cost-conscious manner. To do so, the Department must also maintain a properly sized, highly capable civilian workforce that is aligned to mission and workload; complements and delivers support to the military; supports the well-being of the warfighters and their families; and recognizes evolving critical demands while guarding against an erosion of organic skills and an overreliance on contracted services. Finally, the use of contracted services must continue to be reviewed to ensure the most appropriate, cost effective, and efficient support aligned to mission.

As DoD Components begin to take actions consistent with reference (a) – including the implementation of civilian hiring freezes, the release of term or temporary civilian employees, and other personnel related actions – they must be mindful of the Department's obligations to manage the Total Force consistent with Title 10 statutory requirements and references (b) through (e). These considerations are required in planning for the potential reduction or unavailability of fiscal year 2013 funds (with the exception of funds for military personnel) associated with sequester or the continuing resolution.

Consistent with section 2461 of title 10, United States Code, and reference (b), the conversion of functions or work performed by, or designated for performance by, civilian employees to contract performance without a public-private competition is expressly prohibited. Currently such competitions are prohibited under section 325 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84). Workload currently performed by, or designated for performance by, civilian employees may not be transferred or assumed by contractors performing against prior year obligations. Most importantly, contractors may not perform inherently governmental work, and section 2464 of title 10, United States Code expressly prohibits contracting of certain functions (enclosure 1). DoD

Component heads, as well as field commanders and line managers, are urged to be particularly vigilant to prevent the inappropriate conversion of work to contract performance.

Additionally, limits on contracted support spending enacted in section 808 of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112-81, and implemented via reference (c) still apply. The statutory obligations in section 2330a of title 10, United States Code, to minimize reliance on contract performance of work closely associated with inherently governmental functions (see illustrative examples at enclosure 2) remain in force. Moreover, the guidance in reference (c) to achieve reductions of such reliance, as well as in staff augmentation contract support, remains in effect. Planning for budgetary uncertainty does not relieve DoD Components from compliance with these mandates.

As we continue planning during this period of budgetary uncertainty, the Department must also ensure military personnel are not inappropriately utilized, particularly in a manner that may degrade readiness or result in unnecessary costs to the Department. Consistent with references (d) and (e), except in extraordinary, and typically temporary, circumstances, individual military personnel or units should not perform functions or work that is not military essential (see illustrative examples in enclosure 3). The use of "borrowed" or "repurposed" military can harm readiness and operational capabilities by diverting service members from training or performance of military essential functions, particularly when military members are required to work outside of their occupational specialties. In addition to the risk of hollowing the force, this practice could adversely impact the All-Volunteer Force and have negative effects on the recruitment, retention, and career progression of individual members. During this period of budgetary uncertainty, military units may perform work previously performed by civilian employees or contracted support as part of a rotation base for an operational capability (if this has been reflected in Operational Orders), provided this is done on a limited and temporary basis. In the event of sequestration, where military personnel accounts are exempted, there may be instances where military personnel can be used on a short-term, emergency basis to satisfy a demand that is of mission critical importance.

Please ensure maximum distribution of this memorandum throughout your organization, particularly to your manpower, personnel, and resourcing communities. Questions regarding application and implementation of this memorandum should be addressed to the following points of contact within the Office of Total Force Planning & Requirements: Mr. Thomas Hessel (thomas.hessel@osd.mil or 703-697-3402), and Ms. Amy Parker (amy.parker@osd.mil or 703-697-1735). Thank you for your support in the mitigating risks from budgetary uncertainty that could adversely affect the sustainability and readiness of the All Volunteer Force.



Frederick Vollrath
Principal Deputy Assistant Secretary of Defense for
Readiness and Force Management
Performing the Duties of the Assistant Secretary of
Defense for Readiness and Force Management

Enclosures: As stated

DISTRIBUTION:
SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
COMMANDERS OF THE COMBATANT COMMANDS
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
DIRECTOR, OPERATIONAL TEST AND EVALUATION
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

Non-Exhaustive Examples of Inherently Governmental Functions
(Extract from Office of Federal Procurement Policy Letter 11-1 (September 12, 2011))

1. The direct conduct of criminal investigation.
2. The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).
3. The command of military forces.
4. Combat.
5. Security provided under any of the circumstances set out below. This provision should not be interpreted to preclude contractors taking action in self-defense or defense of others against the imminent threat of death or serious injury. (a) Security operations performed in direct support of combat as part of a larger integrated armed force. (b) Security operations performed in environments where, in the judgment of the responsible Federal official, there is significant potential for the security operations to evolve into combat. (c) Security that entails augmenting or reinforcing others (whether private security contractors, civilians, or military units) that have become engaged in combat.
6. The conduct of foreign relations and the determination of foreign policy.
7. The determination of agency policy, such as determining the content and application of regulations.
8. The determination of budget policy, guidance, and strategy.
9. The determination of Federal program priorities or budget requests.
10. The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.
11. The direction and control of Federal employees.
12. The direction and control of intelligence and counter-intelligence operations.
13. The approval of position descriptions and performance standards for Federal employees.
14. The determination of what government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices with specified ranges and subject to other reasonable conditions deemed appropriate by the agency).
15. In Federal procurement activities with respect to prime contracts:
 - (a) determining what supplies or services are to be acquired by the government
 - (b) participating as a voting member on any source selection boards;
 - (c) approving of any contractual documents, including documents defining requirements, incentive plans and evaluation criteria;
 - (d) determining that prices are fair and reasonable;
 - (e) awarding contracts;
 - (f) administering contracts (including ordering changes in contract performance or contract quantities, making final determinations about a contractor's performance, including approving award fee determinations or past performance evaluations and taking action based on those evaluations, and accepting or rejecting contractor products or services);
 - (g) terminating contracts
 - (h) determining whether contract costs are reasonable, allocable, and allowable;
 - (i) And participating as a voting member on performance evaluation boards.

16. The selection of grant and cooperative agreement recipients including: (a) approval of agreement activities; (b) negotiating the scope of work to be conducted under grants/cooperative agreements; (c) approval of modifications to grant/cooperative agreement budgets and activities; and (d) performance monitoring.
17. The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency response to the administrative appeals of denials of Freedom of Information Act requests.
18. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in government programs.
19. The approval of Federal licensing actions and inspections.
20. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as title 31 United States Code section 952 (relating to private collection contractors) and title 31 United States Code section 3718 (Relating to private attorney collection services), but not including (a) collection of fees, fines, penalties, costs or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is predetermined or can be readily calculated and the funds collected can be readily controlled using standard cash management techniques; and (b) routine voucher and invoice examination.
21. The control of the Treasury accounts.
22. The administration of public trusts.
23. The drafting of official agency proposals for legislation, Congressional testimony responses to Congressional correspondence, or responses to audit reports from an inspector general, the Government Accountability Office, or other Federal audit entity.
24. Representation of the government before administrative and judicial tribunals, unless statute expressly authorizes the use of attorney whose services are procured through contract.

Statutory Restrictions on Contracting
(Title 10 United States Code Section 2465)

- (a) Except as provided in subsection (b), funds appropriated to Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of fire-fighting 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.

**Non-Exhaustive Examples of Closely Associated With Inherently Governmental Functions
(Extract from Office of Federal Procurement Policy Letter 11-1 (September 12, 2011))**

1. Services in support of inherently governmental functions, including, but not limited to the following:
 - a. Performing budget preparation activities, such as workload modeling, fact finding, efficiency studies, and should-cost analysis.
 - b. Undertaking activities to support agency planning and reorganization.
 - c. Providing support for developing policies, including drafting documents, and conducting analyses, feasibility studies, and strategy options.
 - d. Providing services to support the development of regulations and legislative proposals pursuant to specific policy direction.
 - e. Supporting acquisition, including in the areas of:
 - i. Acquisition planning, such as by conducting market research; developing inputs for government cost estimates, and drafting statements of work and other pre-award documents.
 - ii. Source selection, such as by preparing a technical evaluation and associated documentation; participating as a technical advisor to a source selection board or as a nonvoting member of a source selection evaluation board; and drafting the price negotiations memorandum.
 - iii. Contract management, such as by assisting in the evaluation of a contractor's performance (e.g. by collecting information performing an analysis, or making a recommendation for a proposed performance rating), and providing support for assessing contract claims and preparing termination settlement documents.
 - f. Preparation of responses to Freedom of Information Act requests.
2. Work in a situation that permits or might permit access to confidential business information or other sensitive information (other than situations covered by the National Industrial Security Program described in Federal Acquisition Regulation 4.402(b)).
3. Dissemination of information regarding agency policies or regulations, such as conducting community relations campaigns, or conducting agency training courses.
4. Participation in a situation where it might be assumed that participants are agency employees or representatives, such as attending conferences on behalf of an agency.
5. Services as arbitrators or provision of alternative dispute resolution (ADR) services.
6. Construction of buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.
7. Provision of inspection services.
8. Provision of legal advice and interpretations of regulations and statutes to government officials.
9. Provision of non-law enforcement security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

**Examples of Military Essential Functions
(summarized from DoD Instruction 1100.22)**

1. Missions involving operational risks and combatant status under the Law of War.
2. Specialized collective and individual training requiring military unique knowledge and skills based on recent operational experience
3. Independent advice to senior civilian leadership in Department requiring military unique knowledge and skills based on recent operational experience
4. Command and control arrangements best performed within the Uniform Code of Military Justice.
5. Rotation base for an operational capability.
6. Career progression.
7. Esprit de corps (such as military recruiters, military bands)



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

FEB 20 2013

MEMORANDUM FOR DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES.

SUBJECT: Preparations for Potential Sequestration on March 1 and Furlough Notifications

For more than a year and a half, the President, the Joint Chiefs of Staff, and I have repeatedly voiced our deep concerns over the half a trillion dollars in automatic across-the-board cuts that would be imposed under sequestration and the severe damage that it would do to both this Department and our national defense.

The Administration continues to work with Congress to reach agreement on a balanced deficit reduction plan to avoid these cuts. Meanwhile, because another trigger for sequestration is approaching on March 1st, the Department's leadership has begun extensive planning on how to implement the required spending reductions. These cuts will be magnified because the Department has been forced to operate under a six-month continuing resolution that has already compelled us to take steps to reduce spending.

In the event of sequestration, we will do everything we can to continue to perform our core mission of providing for the security of the United States, but there is no mistaking that the rigid nature and scale of the cuts forced upon this Department will result in a serious erosion of readiness across the force.

I have also been deeply concerned about the potential direct impact of sequestration on you and your families. We are doing everything possible to limit the worst effects on DoD personnel – but I regret that our flexibility within the law is extremely limited. The President has used his legal authority to exempt military personnel funding from sequestration, but we have no legal authority to exempt civilian personnel funding from reductions. As a result, should sequestration occur and continue for a substantial period, DoD will be forced to place the vast majority of its civilian workforce on administrative furlough.

Today, I notified Congress that furloughs could occur under sequestration. I can assure you that, if we have to implement furloughs, all affected employees will be provided at least 30 days' notice prior to executing a furlough and your benefits will be protected to the maximum extent possible. We will work to ensure that furloughs are executed in a consistent and appropriate manner, and we will also continue to engage in discussions with employee unions as appropriate. More information and answers to frequently asked questions regarding furloughs can be found at www.opm.gov/furlough, under the "administrative furlough" section.



OSD001644-13

Working with your component heads and supervisors, the Department's leaders will continue to keep you informed. As we deal with these difficult issues, I want to thank you for your patience, hard work, and continued dedication to our mission of protecting the country.

Our most important asset in the Department is our world-class personnel. You are fighting every day to keep our country strong and secure, and rest assured that the leaders of this Department will continue to fight with you and for you.

A handwritten signature in black ink, appearing to be "Johnston", with a long horizontal flourish extending to the right.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 14, 2013

M-13-03

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Jeffrey D. Zients 
Deputy Director for Management

SUBJECT: Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources

In the coming months, executive departments and agencies (agencies) will confront significant uncertainty regarding the amount of budgetary resources available for the remainder of the fiscal year. In particular, unless Congress acts to amend current law, the President is required to issue a sequestration order on March 1, 2013, canceling approximately \$85 billion in budgetary resources across the Federal Government. Further uncertainty is created by the expiration of the Continuing Appropriations Resolution, 2013 (CR) on March 27, 2013. This memorandum directs agencies to take certain steps to plan for and manage this budgetary uncertainty.

The Administration continues to urge Congress to take prompt action to address the current budgetary uncertainty, including through the enactment of balanced deficit reduction to avoid sequestration. Should Congress fail to act to avoid sequestration, there will be significant and harmful impacts on a wide variety of Government services and operations. For example, should sequestration remain in place for an extended period of time, hundreds of thousands of families will lose critical education and wellness services through Head Start and nutrition assistance programs. The Department of Defense will face deep cuts that will reduce readiness of non-deployed units, delay needed investments in equipment and facilities, and cut services for military families. And Federal agencies will likely need to furlough hundreds of thousands of employees and reduce essential services such as food inspections, air travel safety, prison security, border patrols, and other mission-critical activities.

At this time, agencies do not have clarity regarding the manner in which Congress will address these issues or the amount of budgetary resources that will be available through the remainder of the fiscal year. Until Congress acts, agencies must continue to prepare for the possibility that they will need to operate with reduced budgetary resources.

Prior to passage of the American Taxpayer Relief Act of 2012 (ATRA), the President was required to issue a sequestration order on January 2, 2013. Although the ATRA postponed this date by two months, agencies had already engaged in extensive planning for operations under post-sequestration funding levels before this postponement was effected. In light of persistent budgetary uncertainty, all agencies should continue these planning activities, in coordination with the Office of Management and Budget (OMB), and should intensify efforts to identify actions that may be required should sequestration occur.

Agencies should generally adhere to the following guiding principles, to the extent practicable and appropriate, in preparing plans to operate with reduced budgetary resources in the event that sequestration occurs:

- use any available flexibility to reduce operational risks and minimize impacts on the agency's core mission in service of the American people;
- identify and address operational challenges that could potentially have a significant deleterious effect on the agency's mission or otherwise raise life, safety, or health concerns;
- identify the most appropriate means to reduce civilian workforce costs where necessary – this may include imposing hiring freezes, releasing temporary employees or not renewing term or contract hires, authorizing voluntary separation incentives and voluntary early retirements, or implementing administrative furloughs (appropriate guidance for administrative furloughs can be found on the OPM website [\[here\]](#)); consistent with Section 3(a)(ii) of Executive Order 13522, allow employees' exclusive representatives to have pre-decisional involvement in these matters to the fullest extent practicable;
- review grants and contracts to determine where cost savings may be achieved in a manner that is consistent with the applicable terms and conditions, remaining mindful of the manner in which individual contracts or grants advance the core mission of the agency;
- take into account funding flexibilities, including the availability of reprogramming and transfer authority; and,
- be cognizant of the requirements of the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. §§ 2101-2109.

While agency plans should reflect intensified efforts to prepare for operations under a potential sequestration, actions that would implement reductions specifically designed as a response to sequestration should generally not be taken at this time. In some cases, however, the overall budgetary uncertainty and operational constraints may require that certain actions be taken in the immediate- or near-term. Agencies presented with these circumstances should continue to act in a prudent manner to ensure that operational risks are avoided and adequate funding is available for the remainder of the fiscal year to meet the agency's core requirements and mission. Should circumstances require an agency to take actions that would constitute a change from normal practice and result in a reduction of normal spending and operations in the

immediate- or near-term, the agency must coordinate closely with its OMB Resource Management Office (RMO) before taking any such actions.

All agencies should work with their OMB RMO on the appropriate timing to submit draft contingency plans for operating under sequestration for review. Furthermore, should Congress take action that affects the current budgetary uncertainty, OMB will provide agencies with additional guidance as appropriate.



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

JAN 10 2013

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
DIRECTOR, OPERATIONAL TEST AND EVALUATION
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Handling Budgetary Uncertainty in Fiscal Year 2013

Two sources of uncertainty are creating budgetary challenges for the Department of Defense (DoD) in 2013. The first is the fact that the Department is operating under a Continuing Resolution (CR) through at least March 27, 2013. Because most operating funding was planned to increase from Fiscal Year (FY) 2012 to FY 2013, but is instead being held at FY 2012 levels under the CR, funds will run short at current rates of expenditure if the CR continues through the end of the fiscal year in its current form. The Secretary will continue to urge the Congress to enact appropriations bills for FY 2013. But if the CR were to be extended through the end of the fiscal year, it would hinder our ability to maintain a ready force.

The second source of uncertainty is the potential sequestration recently deferred from January 2, 2013 to March 1, 2013 by the American Taxpayer Relief Act of 2012. The possibility of sequestration occurring as late as the beginning of the sixth month of the fiscal year creates significant additional uncertainty for the management of the Department.

Either of these problems, in isolation, would present serious budget execution challenges to the Department, negatively impacting readiness and resulting in other undesirable outcomes. This situation would be made even more challenging by the need to protect funds for wartime operations.

Near-Term Actions

Given the overall budgetary uncertainty faced by the Department, and in particular the immediate operational issues presented by the CR, it is prudent to take certain steps now in order to help avoid serious future problems. I therefore authorize all Defense Components to begin implementing measures that will help mitigate our budget execution risks. For now, and to the extent possible, any actions taken must be reversible at a later date in the event that Congress acts to remove the risks I have described. The actions should be structured to minimize harmful effects on our people and on operations and unit readiness.

Categories of approved actions are identified in Table 1. The authority to implement these actions shall remain in effect until they are revoked in a subsequent memorandum from my office. If Components believe they must take actions that go beyond the categories listed in Table 1, they should present the options for my review and approval prior to their implementation.

Intensified Planning for Longer-Term Budgetary Uncertainty

Given the added challenge of a potential sequestration in March, we must also intensify efforts to plan future actions that might be required should that happen. This planning does not assume these unfortunate events will occur, only that we must be ready.

As they formulate draft plans, Components should follow the guidance that directs the Department to take all possible steps to mitigate harmful effects associated with this budgetary uncertainty and to maintain a strong defense. The details of the guidance are summarized below:

- For the operating portions of the DoD budget:
 - Exempt all military personnel funding from sequestration reductions, in accordance with the decision made by the President in July 2012.
 - Fully protect funding for wartime operations.
 - Fully protect Wounded Warrior programs.
 - To the extent feasible, protect programs most closely associated with the new defense strategy.
 - Reduce civilian workforce costs using the following actions (all subject to mission-critical exemptions, and appropriate consultation with union representatives consistent with Executive Order 13522):
 - Release temporary employees and do not renew term hires.
 - Impose hiring freezes.
 - Authorize voluntary separation incentives and voluntary early retirements to the extent feasible.
 - Consider the possibility of furloughs of up to 30 calendar days or 22 discontinuous workdays.
 - To the extent feasible, protect family programs.

- To the extent feasible, protect funding most directly associated with readiness; focus the necessary cuts on later deploying units.
- For the investment portions of the DoD budget (procurement, RDT&E, construction):
 - Protect investments funded in Overseas Contingency Operations if associated with urgent operational needs.
 - To the extent feasible, protect programs mostly closely associated with the new defense strategy.
 - Take prudent steps to minimize disruption and added costs (e.g., avoid penalties associated with potential contract cancellations where feasible; prudently manage construction projects funded with prior-year monies).

While we are hopeful of avoiding budgetary problems, draft Component plans should reflect the possibility that we may have to operate under a year-long CR and that sequestration takes place. Table 2 shows the types of information that should be included in the plans. Components should submit these draft plans to the Under Secretary of Defense (Comptroller) by February 1, 2013. The Under Secretary of Defense (Comptroller) will work with the Components to adjust this schedule if changes are required due to the deadlines for the preparation of the FY 2014 President's Budget submission.

I appreciate your patience as we work through these difficult budgetary times. The Department will continue to do its best to resolve these budgetary uncertainties in a manner that permits us to support our current defense strategy and maintain a strong defense.

If addressees have questions about this memorandum, they should direct them to the Under Secretary of Defense (Comptroller).

A handwritten signature in black ink that reads "Ashton Carter". The signature is written in a cursive, flowing style.

Attachments:
As stated

Table 1. Categories of Approved Near-Term Actions

- Freeze civilian hiring (with exceptions for mission-critical activities*).
- Provide authority to terminate employment of temporary hires and to notify term employees that their contracts will not be renewed (with exceptions for mission-critical activities and when appropriate in terms of personnel timing*).
- Reduce base operating funding.
- Curtail travel, training, and conferences (all with exceptions for mission-critical activities* including those required to maintain professional licensure or equivalent certifications).
- Curtail facilities maintenance or Facilities Sustainment, Restoration, and Modernization (FSRM) (with exceptions for mission-critical activities*).
 - If necessary, services/agencies are authorized to fund FSRM at levels below current guidance.
- Curtail administrative expenses such as supply purchases, business IT, ceremonies, etc. (with exceptions for mission-critical activities*).
- Review contracts and studies for possible cost-savings.
- Cancel 3rd and 4th quarter ship maintenance availabilities and aviation and ground depot-level maintenance activities. Take this action no earlier than February 15, 2013.
- Clear all R&D and production contracts and contract modifications that obligate more than \$500 million with the USD(AT&L) prior to award.
- For Science and Technology accounts, provide the USD(AT&L) and the Assistant Secretary of Defense (Research & Engineering) with an assessment of the impact that budgetary uncertainty may have on meeting Departmental research priorities.

*Approvals will be granted by Component heads or by senior officials designated by the Component head.

Components with personnel serving Combatant Commanders (COCOMs) must consult with the COCOMs before implementing actions that affect them. Disputes will be brought to the attention of the Chairman of the Joint Chiefs of Staff for further resolution.

Components receiving reimbursements should coordinate with customer before taking actions that would affect the customer's mission.

Table 2. Information to Be Included in Draft Implementation Plans

The following information should be provided at the Component level. Information by commands and bases/installations is not required.

- For operating accounts, identify major actions to include, at a minimum:
 - Extent of civilian hiring freezes; expected number of temps/terms released; expected number, duration, and nature of furloughs.
 - Reductions in flying hours, steaming days, vehicle miles, and other operations/training/support activities that affect force readiness.
 - Areas of budgets experiencing disproportionate cuts.
- For investment accounts:
 - Plans for large programs (ACAT 1D and 1C, and MAIS programs).
 - Include major changes in unit buys, delays, etc.
 - Significant changes in all joint programs.
- Identify and prioritize any essential reprogramming actions with offsets.



UNITED STATES PUBLIC LAWS

112th Congress 2nd Session

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PUBLIC LAW 112-240 [H.R. 8]

JAN. 02, 2013

AMERICAN TAXPAYER RELIEF ACT OF 2012

112 P.L. 240; 126 Stat. 2313; 2013 Enacted H.R. 8; 112 Enacted H.R. 8

BILL TRACKING REPORT: 112 Bill Tracking H.R. 8
FULL TEXT VERSION(S) OF BILL: 112 H.R. 8
CIS LEGIS. HISTORY DOCUMENT: 112 CIS Legis. Hist. P.L. 240

An Act

Entitled the "American Taxpayer Relief Act of 2012".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[*1] SECTION 1. <26 USC 1 note> SHORT TITLE, ETC.

(a) Short Title.--This Act may be cited as the "American Taxpayer Relief Act of 2012".

(b) Amendment of 1986 Code.--Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) Table of Contents.--The table of contents for this Act is as follows:

Sec. 1. Short title, etc.

TITLE I--GENERAL EXTENSIONS

- Sec. 101. Permanent extension and modification of 2001 tax relief.
- Sec. 102. Permanent extension and modification of 2003 tax relief.
- Sec. 103. Extension of 2009 tax relief.
- Sec. 104. Permanent alternative minimum tax relief.

TITLE II--INDIVIDUAL TAX EXTENDERS

- Sec. 201. Extension of deduction for certain expenses of elementary and secondary school teachers.
- Sec. 202. Extension of exclusion from gross income of discharge of qualified principal residence indebtedness.
- Sec. 203. Extension of parity for exclusion from income for employer-provided mass transit and parking benefits.
- Sec. 204. Extension of mortgage insurance premiums treated as qualified residence interest.
- Sec. 205. Extension of deduction of State and local general sales taxes.
- Sec. 206. Extension of special rule for contributions of capital gain real property made for conservation purposes.
- Sec. 207. Extension of above-the-line deduction for qualified tuition and related expenses.
- Sec. 208. Extension of tax-free distributions from individual retirement plans for charitable purposes.
- Sec. 209. Improve and make permanent the provision authorizing the Internal Revenue Service to disclose certain return and return information to certain prison officials.

TITLE III--BUSINESS TAX EXTENDERS

- Sec. 301. Extension and modification of research credit.

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- Sec. 302. Extension of temporary minimum low-income tax credit rate for non-federally subsidized new buildings.
- Sec. 303. Extension of housing allowance exclusion for determining area median gross income for qualified residential rental project exempt facility bonds.
- Sec. 304. Extension of Indian employment tax credit.
- [**2314] Sec. 305. Extension of new markets tax credit.
- Sec. 306. Extension of railroad track maintenance credit.
- Sec. 307. Extension of mine rescue team training credit.
- Sec. 308. Extension of employer wage credit for employees who are active duty members of the uniformed services.
- Sec. 309. Extension of work opportunity tax credit.
- Sec. 310. Extension of qualified zone academy bonds.
- Sec. 311. Extension of 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements.
- Sec. 312. Extension of 7-year recovery period for motorsports entertainment complexes.
- Sec. 313. Extension of accelerated depreciation for business property on an Indian reservation.
- Sec. 314. Extension of enhanced charitable deduction for contributions of food inventory.
- Sec. 315. Extension of increased expensing limitations and treatment of certain real property as section 179 property.
- Sec. 316. Extension of election to expense mine safety equipment.
- Sec. 317. Extension of special expensing rules for certain film and television productions.
- Sec. 318. Extension of deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.
- Sec. 319. Extension of modification of tax treatment of certain payments to controlling exempt organizations.
- Sec. 320. Extension of treatment of certain dividends of regulated investment companies.
- Sec. 321. Extension of RIC qualified investment entity treatment under FIRPTA.
- Sec. 322. Extension of subpart F exception for active financing income.
- Sec. 323. Extension of look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules.
- Sec. 324. Extension of temporary exclusion of 100 percent of gain on certain small business stock.
- Sec. 325. Extension of basis adjustment to stock of S corporations making charitable contributions of property.
- Sec. 326. Extension of reduction in S-corporation recognition period for built-in gains tax.
- Sec. 327. Extension of empowerment zone tax incentives.
- Sec. 328. Extension of tax-exempt financing for New York Liberty Zone.
- Sec. 329. Extension of temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands.
- Sec. 330. Modification and extension of American Samoa economic development credit.
- Sec. 331. Extension and modification of bonus depreciation.

TITLE IV--ENERGY TAX EXTENDERS

- Sec. 401. Extension of credit for energy-efficient existing homes.
- Sec. 402. Extension of credit for alternative fuel vehicle refueling property.
- Sec. 403. Extension of credit for 2- or 3-wheeled plug-in electric vehicles.
- Sec. 404. Extension and modification of cellulosic biofuel producer credit.
- Sec. 405. Extension of incentives for biodiesel and renewable diesel.
- Sec. 406. Extension of production credit for Indian coal facilities placed in service before 2009.
- Sec. 407. Extension and modification of credits with respect to facilities producing energy from certain renewable resources.
- Sec. 408. Extension of credit for energy-efficient new homes.
- Sec. 409. Extension of credit for energy-efficient appliances.
- Sec. 410. Extension and modification of special allowance for cellulosic biofuel plant property.
- Sec. 411. Extension of special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities.
- Sec. 412. Extension of alternative fuels excise tax credits.

TITLE V--UNEMPLOYMENT

- Sec. 501. Extension of emergency unemployment compensation program.
- Sec. 502. Temporary extension of extended benefit provisions.

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- Sec. 503. Extension of funding for reemployment services and reemployment and eligibility assessment activities.
- Sec. 504. Additional extended unemployment benefits under the Railroad Unemployment Insurance Act.

TITLE VI--MEDICARE AND OTHER HEALTH EXTENSIONS

Subtitle A--Medicare Extensions

- Sec. 601. Medicare physician payment update.
- [**2315] Sec. 602. Work geographic adjustment.
- Sec. 603. Payment for outpatient therapy services.
- Sec. 604. Ambulance add-on payments.
- Sec. 605. Extension of Medicare inpatient hospital payment adjustment for low-volume hospitals.
- Sec. 606. Extension of the Medicare-dependent hospital (MDH) program.
- Sec. 607. Extension for specialized Medicare Advantage plans for special needs individuals.
- Sec. 608. Extension of Medicare reasonable cost contracts.
- Sec. 609. Performance improvement.
- Sec. 610. Extension of funding outreach and assistance for low-income programs.

Subtitle B--Other Health Extensions

- Sec. 621. Extension of the qualifying individual (QI) program.
- Sec. 622. Extension of Transitional Medical Assistance (TMA).
- Sec. 623. Extension of Medicaid and CHIP Express Lane option.
- Sec. 624. Extension of family-to-family health information centers.
- Sec. 625. Extension of Special Diabetes Program for Type I diabetes and for Indians.

Subtitle C--Other Health Provisions

- Sec. 631. IPPS documentation and coding adjustment for implementation of MS-DRGs.
- Sec. 632. Revisions to the Medicare ESRD bundled payment system to reflect findings in the GAO report.
- Sec. 633. Treatment of multiple service payment policies for therapy services.
- Sec. 634. Payment for certain radiology services furnished under the Medicare hospital outpatient department prospective payment system.
- Sec. 635. Adjustment of equipment utilization rate for advanced imaging services.
- Sec. 636. Medicare payment of competitive prices for diabetic supplies and elimination of overpayment for diabetic supplies.
- Sec. 637. Medicare payment adjustment for non-emergency ambulance transports for ESRD beneficiaries.
- Sec. 638. Removing obstacles to collection of overpayments.
- Sec. 639. Medicare advantage coding intensity adjustment.
- Sec. 640. Elimination of all funding for the Medicare Improvement Fund.
- Sec. 641. Rebasement of State DSH allotments.
- Sec. 642. Repeal of CLASS program.
- Sec. 643. Commission on Long-Term Care.
- Sec. 644. Consumer Operated and Oriented Plan program contingency fund.

TITLE VII--EXTENSION OF AGRICULTURAL PROGRAMS

- Sec. 701. 1-year extension of agricultural programs.
- Sec. 702. Supplemental agricultural disaster assistance.

TITLE VIII--MISCELLANEOUS PROVISIONS

- Sec. 801. Strategic delivery systems.
- Sec. 802. No cost of living adjustment in pay of members of congress.

TITLE IX--BUDGET PROVISIONS

Subtitle A--Modifications of Sequestration

- Sec. 901. Treatment of sequester.
- Sec. 902. Amounts in applicable retirement plans may be transferred to designated Roth accounts without distribution.

112 P.L. 240, *; 126 Stat. 2313, **;
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Subtitle B--Budgetary Effects
Sec. 911. Budgetary effects.

TITLE I--GENERAL EXTENSIONS

[*101] Sec. 101. PERMANENT EXTENSION AND MODIFICATION OF 2001 TAX RELIEF.

(a) Permanent Extension.--

(1) <26 USC 1 note> In general.-- The Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking title IX.

(2) <26 USC 121 note> Conforming amendment.-- The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 is amended by striking section 304.

[**2316] (3) <26 USC 1 note> Effective date.-- The amendments made by this subsection shall apply to taxable, plan, or limitation years beginning after December 31, 2012, and estates of decedents dying, gifts made, or generation skipping transfers after December 31, 2012.

(b) Application of Income Tax to Certain High-Income Taxpayers.--

(1) Income tax rates.----

(A) <26 USC 1> Treatment of 25-, 28-, and 33-percent rate brackets.--Paragraph (2) of section 1(i) is amended to read as follows:

"(2) 25-, 28-, and 33-percent rate brackets.--The tables under subsections (a), (b), (c), (d), and (e) shall be applied--

"(A) by substituting '25%' for '28%' each place it appears (before the application of subparagraph (B)),

"(B) by substituting '28%' for '31%' each place it appears, and

"(C) by substituting '33%' for '36%' each place it appears.".

(B) 35-percent rate bracket.--Subsection (i) of section 1 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) Modifications to income tax brackets for high-income taxpayers.----

"(A) 35-percent rate bracket.--In the case of taxable years beginning after December 31, 2012--

"(i) the rate of tax under subsections (a), (b), (c), and (d) on a taxpayer's taxable income in the highest rate bracket shall be 35 percent to the extent such income does not exceed an amount equal to the excess of--

"(I) the applicable threshold, over

"(II) the dollar amount at which such bracket begins, and

"(ii) the 39.6 percent rate of tax under such subsections shall apply only to the taxpayer's taxable income in such bracket in excess of the amount to which clause (i) applies.

"(B) Applicable threshold.--For purposes of this paragraph, the term 'applicable threshold' means--

"(i) \$ 450,000 in the case of subsection (a),

"(ii) \$ 425,000 in the case of subsection (b),

"(iii) \$ 400,000 in the case of subsection (c), and

"(iv) 1/2 the amount applicable under clause (i) (after adjustment, if any, under subparagraph (C)) in the case of subsection (d).

"(C) Inflation adjustment.--For purposes of this paragraph, with respect to taxable years beginning in calendar years after 2013, each of the dollar amounts under clauses (i), (ii), and (iii) of subparagraph (B) shall be adjusted in the same manner as under paragraph (1)(C)(i), except that subsection (f)(3)(B) shall be applied by substituting '2012' for '1992'.".

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(2) Phaseout of personal exemptions and itemized deductions.----

[**2317] <26 USC 68> (A) Overall limitation on itemized deductions.--Section 68 is amended--

(i) by striking subsection (b) and inserting the following:

"(b) Applicable Amount.--

"(1) In general.-- For purposes of this section, the term 'applicable amount' means--

"(A) \$ 300,000 in the case of a joint return or a surviving spouse (as defined in section 2(a)),

"(B) \$ 275,000 in the case of a head of household (as defined in section 2(b)),

"(C) \$ 250,000 in the case of an individual who is not married and who is not a surviving spouse or head of household, and

"(D) 1/2 the amount applicable under subparagraph (A) (after adjustment, if any, under paragraph (2)) in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

"(2) Inflation adjustment.-- In the case of any taxable year beginning in calendar years after 2013, each of the dollar amounts under subparagraphs (A), (B), and (C) of paragraph (1) shall be shall be increased by an amount equal to--

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that section 1(f)(3)(B) shall be applied by substituting '2012' for '1992'.

If any amount after adjustment under the preceding sentence is not a multiple of \$ 50, such amount shall be rounded to the next lowest multiple of \$ 50.", and

(ii) by striking subsections (f) and (g).

(B) Phaseout of deductions for personal exemptions.--

(i) In general.--Paragraph (3) of section 151(d) is amended--

(I) by striking "the threshold amount" in subparagraphs (A) and (B) and inserting "the applicable amount in effect under section 68(b)",

(II) by striking subparagraph (C) and redesignating subparagraph (D) as subparagraph (C), and

(III) by striking subparagraphs (E) and (F).

(ii) Conforming amendments.--Paragraph (4) of section 151(d) is amended--

(I) by striking subparagraph (B),

(II) by redesignating clauses (i) and (ii) of subparagraph (A) as subparagraphs (A) and (B), respectively, and by indenting such subparagraphs (as so redesignated) accordingly, and

(III) by striking all that precedes "in a calendar year after 1989," and inserting the following:

"(4) Inflation adjustment.-- In the case of any taxable year beginning".

(3) <26 USC 1 note> Effective date.-- The amendments made by this subsection shall apply to taxable years beginning after December 31, 2012.

(c) Modifications of Estate Tax.--

[**2318] (1) Maximum estate tax rate equal to 40 percent.-- The table contained in subsection (c) of section 2001, as amended by section 302(a)(2) of the Tax Relief, Unemployment <26 USC 2001> Insurance Reauthorization, and Job Creation Act of 2010, is amended by striking "Over \$ 500,000" and all that follows and inserting the following:

"Over [dollar]500,000 but	\$ 155,800, plus 37 percent of the
not over [dollar]750,000.	excess of such amount over

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	\$ 500,000.
Over \$ 750,000 but not over \$ 1,000,000.	\$ 248,300, plus 39 percent of the excess of such amount over \$ 750,000.
Over [dollar]1,000,000	\$ 345,800, plus 40 percent of the excess of such amount over \$ 1,000,000."

(2) Technical correction.-- Clause (i) of section 2010(c)(4)(B) is amended by striking "basic exclusion amount" and inserting "applicable exclusion amount".

(3) <26 USC 2001 note> Effective dates.----

(A) In general.--Except as otherwise provided by in this paragraph, the amendments made by this subsection shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2012.

(B) Technical correction.--The amendment made by paragraph (2) shall take effect as if included in the amendments made by section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.

[*102] Sec. 102. PERMANENT EXTENSION AND MODIFICATION OF 2003 TAX RELIEF.

(a) <26 USC 1 note> Permanent Extension.--The Jobs and Growth Tax Relief Reconciliation Act of 2003 is amended by striking section 303.

(b) 20-Percent Capital Gains Rate for Certain High Income Individuals.--

(1) In general.-- Paragraph (1) of section 1(h) is amended by striking subparagraph (C), by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F) and by inserting after subparagraph (B) the following new subparagraphs:

"(C) 15 percent of the lesser of--

"(i) so much of the adjusted net capital gain (or, if less, taxable income) as exceeds the amount on which a tax is determined under subparagraph (B), or

"(ii) the excess of--

"(I) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 39.6 percent, over

"(II) the sum of the amounts on which a tax is determined under subparagraphs (A) and (B),

"(D) 20 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the sum of the amounts on which tax is determined under subparagraphs (B) and (C),".

[**2319] (2) <26 USC 55> Minimum tax.-- Paragraph (3) of section 55(b) is amended by striking subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (B) the following new subparagraphs:

"(C) 15 percent of the lesser of--

"(i) so much of the adjusted net capital gain (or, if less, taxable excess) as exceeds the amount on which tax is determined under subparagraph (B), or

"(ii) the excess described in section 1(h)(1)(C)(ii), plus

"(D) 20 percent of the adjusted net capital gain (or, if less, taxable excess) in excess of the sum of the amounts on which tax is determined under subparagraphs (B) and (C), plus".

(c) Conforming Amendments.--

(1) The following provisions are each amended by striking "15 percent" and inserting "20 percent":

(A) Section 531.

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(B) Section 541.

(C) Section 1445(e)(1).

(D) The second sentence of section 7518(g)(6)(A).

(E) Section 53511(f)(2) of title 46, United States Code.

(2) Sections 1(h)(1)(B) and 55(b)(3)(B) are each amended by striking "5 percent (0 percent in the case of taxable years beginning after 2007)" and inserting "0 percent".

(3) Section 1445(e)(6) is amended by striking "15 percent (20 percent in the case of taxable years beginning after December 31, 2010)" and inserting "20 percent".

(d) Effective Dates.--

(1) <26 USC 1 note> In general.-- Except as otherwise provided, the amendments made by subsections (b) and (c) shall apply to taxable years beginning after December 31, 2012.

(2) Withholding.-- The amendments made by paragraphs (1)(C) and (3) of subsection (c) shall apply to amounts paid on or after January 1, 2013.

[*103] Sec. 103. EXTENSION OF 2009 TAX RELIEF.

(a) 5-year Extension of American Opportunity Tax Credit.--

(1) In general.-- Section 25A(i) is amended by striking "in 2009, 2010, 2011, or 2012" and inserting "after 2008 and before 2018".

(2) Treatment of possessions.-- Section 1004(c)(1) of division B of the American Recovery and Reinvestment Tax Act of 2009 is amended by striking "in 2009, 2010, 2011, and 2012" <26 USC 25A note> each place it appears and inserting "after 2008 and before 2018".

(b) 5-year Extension of Child Tax Credit.--Section 24(d)(4) is amended--

(1) by striking "2009, 2010, 2011, and 2012" in the heading and inserting "for certain years", and

(2) by striking "in 2009, 2010, 2011, or 2012" and inserting "after 2008 and before 2018".

(c) 5-year Extension of Earned Income Tax Credit.--Section 32(b)(3) is amended--

(1) by striking "2009, 2010, 2011, and 2012" in the heading and inserting "for certain years", and

[**2320] (2) by striking "in 2009, 2010, 2011, or 2012" and inserting "after 2008 and before 2018".

(d) <26 USC 6409> Permanent Extension of Rule Disregarding Refunds in the Administration of Federal Programs and Federally Assisted Programs.--Section 6409 is amended to read as follows:

"Sec. 6409. REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.

"Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds."

(e) Effective Dates.--

(1) <26 USC 24 note> In general.-- Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2012.

(2) Rule regarding disregard of refunds.-- The amendment made by subsection (d) shall apply to amounts received after December 31, 2012.

[*104] Sec. 104. PERMANENT ALTERNATIVE MINIMUM TAX RELIEF.

(a) 2012 Exemption Amounts Made Permanent.--

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(1) In general.-- Paragraph (1) of section 55(d) is amended--

(A) by striking "\$ 45,000" and all that follows through "2011)" in subparagraph (A) and inserting "\$ 78,750",

and
(B) by striking "\$ 33,750" and all that follows through "2011)" in subparagraph (B) and inserting "\$ 50,600",

(C) by striking "paragraph (1)(A)" in subparagraph (C) and inserting "subparagraph (A)".

(b) Exemption Amounts Indexed for Inflation.--

(1) In general.-- Subsection (d) of section 55 is amended by adding at the end the following new paragraph:

"(4) Inflation adjustment.----

"(A) In general.--In the case of any taxable year beginning in a calendar year after 2012, the amounts described in subparagraph (B) shall each be increased by an amount equal to--

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2011' for 'calendar year 1992' in subparagraph (B) thereof.

"(B) Amounts described.--The amounts described in this subparagraph are--

"(i) each of the dollar amounts contained in subsection (b)(1)(A)(i),

"(ii) each of the dollar amounts contained in paragraph (1), and

"(iii) each of the dollar amounts in subparagraphs (A) and (B) of paragraph (3).

[**2321] "(C) Rounding.--Any increase determined under subparagraph (A) shall be rounded to the nearest multiple of \$ 100."

(2) Conforming amendments.----

(A) <26 USC 55> Clause (iii) of section 55(b)(1)(A) is amended by striking "by substituting" and all that follows through "appears." and inserting "by substituting 50 percent of the dollar amount otherwise applicable under subclause (I) and subclause (II) thereof."

(B) Paragraph (3) of section 55(d) is amended--

(i) by striking "or (2)" in subparagraph (A),

(ii) by striking "and" at the end of subparagraph (B), and

(iii) by striking subparagraph (C) and inserting the following new subparagraphs:

"(C) 50 percent of the dollar amount applicable under subparagraph (A) in the case of a taxpayer described in subparagraph (C) or (D) of paragraph (1), and

"(D) \$ 150,000 in the case of a taxpayer described in paragraph (2)."

(c) Alternative Minimum Tax Relief for Nonrefundable Credits.--

(1) In general.-- Subsection (a) of section 26 is amended to read as follows:

"(a) Limitation Based on Amount of Tax.--The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the sum of--

"(1) the taxpayer's regular tax liability for the taxable year reduced by the foreign tax credit allowable under section 27(a), and

"(2) the tax imposed by section 55(a) for the taxable year."

(2) Conforming amendments.----

(A) Adoption credit.--

(i) Section 23(b) is amended by striking paragraph (4).

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(ii) Section 23(c) is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) In general.-- If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 25D and 1400C), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year."

(iii) Section 23(c) is amended by redesignating paragraph (3) as paragraph (2).

(B) Child tax credit.--

(i) Section 24(b) is amended by striking paragraph (3).

(ii) Section 24(d)(1) is amended--

(I) by striking "section 26(a)(2) or subsection (b)(3), as the case may be," each place it appears in subparagraphs (A) and (B) and inserting "section 26(a)", and

(II) by striking "section 26(a)(2) or subsection (b)(3), as the case may be" in the second last sentence and inserting "section 26(a)".

[**2322] (C) Credit for interest on certain home mortgages.--Section 25(e)(1)(C) is amended to read as follows:

"(C) <26 USC 25> Applicable tax limit.--For purposes of this paragraph, the term 'applicable tax limit' means the limitation imposed by section 26(a) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 25D, and 1400C)."

(D) Hope and lifetime learning credits.--Section 25A(i) is amended--

(i) by striking paragraph (5) and by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively, and

(ii) by striking "section 26(a)(2) or paragraph (5), as the case may be" in paragraph (5), as redesignated by clause (i), and inserting "section 26(a)".

(E) Savers' credit.--Section 25B is amended by striking subsection (g).

(F) Residential energy efficient property.--Section 25D(c) is amended to read as follows:

"(c) Carryforward of Unused Credit.--If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year."

(G) Certain plug-in electric vehicles.--Section 30(c)(2) is amended to read as follows:

"(2) Personal credit.-- For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year."

(H) Alternative motor vehicle credit.--Section 30B(g)(2) is amended to read as follows:

"(2) Personal credit.-- For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year."

(I) New qualified plug-in electric vehicle credit.--Section 30D(c)(2) is amended to read as follows:

"(2) Personal credit.-- For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year."

(J) Cross references.--Section 55(c)(3) is amended by striking "26(a), 30C(d)(2)," and inserting "30C(d)(2)".

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(K) Foreign tax credit.--Section 904 is amended by striking subsection (i) and by redesignating subsections (j), (k), and (l) as subsections (i), (j), and (k), respectively.

(L) First-time home buyer credit for the District of Columbia.--Section 1400C(d) is amended to read as follows:

"(d) Carryforward of Unused Credit.--If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and section 25D), such excess shall be carried to the [**2323] succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year."

(d) <26 USC 23 note> Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

TITLE II--INDIVIDUAL TAX EXTENDERS

[*201] Sec. 201. EXTENSION OF DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

(a) <26 USC 62> In General.--Subparagraph (D) of section 62(a)(2) is amended by striking "or 2011" and inserting "2011, 2012, or 2013".

(b) <26 USC 62 note> Effective Date.--The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

[*202] Sec. 202. EXTENSION OF EXCLUSION FROM GROSS INCOME OF DISCHARGE OF QUALIFIED PRINCIPAL RESIDENCE INDEBTEDNESS.

(a) In General.--Subparagraph (E) of section 108(a)(1) is amended by striking "January 1, 2013" and inserting "January 1, 2014".

(b) <26 USC 108 note> Effective Date.--The amendment made by this section shall apply to indebtedness discharged after December 31, 2012.

[*203] Sec. 203. EXTENSION OF PARITY FOR EXCLUSION FROM INCOME FOR EMPLOYER-PROVIDED MASS TRANSIT AND PARKING BENEFITS.

(a) In General.--Paragraph (2) of section 132(f) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 132 note> Effective Date.--The amendment made by this section shall apply to months after December 31, 2011.

[*204] Sec. 204. EXTENSION OF MORTGAGE INSURANCE PREMIUMS TREATED AS QUALIFIED RESIDENCE INTEREST.

(a) In General.--Subclause (I) of section 163(h)(3)(E)(iv) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Technical Amendments.--Clause (i) of section 163(h)(4)(E) is amended--

(1) by striking "Veterans Administration" and inserting "Department of Veterans Affairs", and

(2) by striking "Rural Housing Administration" and inserting "Rural Housing Service".

(c) <26 USC 163 note> Effective Date.--The amendments made by this section shall apply to amounts paid or accrued after December 31, 2011.

[*205] Sec. 205. EXTENSION OF DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES.

(a) In General.--Subparagraph (I) of section 164(b)(5) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 164 note> Effective Date.--The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

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[*206] [**2324] Sec. 206. EXTENSION OF SPECIAL RULE FOR CONTRIBUTIONS OF CAPITAL GAIN REAL PROPERTY MADE FOR CONSERVATION PURPOSES.

(a) <26 USC 170> In General.--Clause (vi) of section 170(b)(1)(E) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Contributions by Certain Corporate Farmers and Ranchers.--Clause (iii) of section 170(b)(2)(B) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(c) <26 USC 170 note> Effective Date.--The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2011.

[*207] Sec. 207. EXTENSION OF ABOVE-THE-LINE DEDUCTION FOR QUALIFIED TUITION AND RELATED EXPENSES.

(a) In General.--Subsection (e) of section 222 is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 222 note> Effective Date.--The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

[*208] Sec. 208. EXTENSION OF TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR CHARITABLE PURPOSES.

(a) In General.--Subparagraph (F) of section 408(d)(8) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 408 note> Effective Date; Special Rule.--

(1) Effective date.-- The amendment made by this section shall apply to distributions made in taxable years beginning after December 31, 2011.

(2) Special rules.-- For purposes of subsections (a)(6), (b)(3), and (d)(8) of section 408 of the Internal Revenue Code of 1986, at the election of the taxpayer (at such time and in such manner as prescribed by the Secretary of the Treasury)--

(A) any qualified charitable distribution made after December 31, 2012, and before February 1, 2013, shall be deemed to have been made on December 31, 2012, and

(B) any portion of a distribution from an individual retirement account to the taxpayer after November 30, 2012, and before January 1, 2013, may be treated as a qualified charitable distribution to the extent that--

(i) such portion is transferred in cash after the distribution to an organization described in section 408(d)(8)(B)(i) before February 1, 2013, and

(ii) such portion is part of a distribution that would meet the requirements of section 408(d)(8) but for the fact that the distribution was not transferred directly to an organization described in section 408(d)(8)(B)(i).

[*209] Sec. 209. IMPROVE AND MAKE PERMANENT THE PROVISION AUTHORIZING THE INTERNAL REVENUE SERVICE TO DISCLOSE CERTAIN RETURN AND RETURN INFORMATION TO CERTAIN PRISON OFFICIALS.

(a) In General.--Paragraph (10) of section 6103(k) is amended to read as follows:

"(10) Disclosure of certain returns and return information to certain prison officials.----

[**2325] "(A) In general.--Under such procedures as the Secretary may prescribe, the Secretary may disclose to officers and employees of the Federal Bureau of Prisons and of any State agency charged with the responsibility for administration of prisons any returns or return information with respect to individuals incarcerated in Federal or State prison systems whom the Secretary has determined may have filed or facilitated the filing of a false or fraudulent return to the extent that the Secretary determines that such disclosure is necessary to permit effective Federal tax administration.

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"(B) Disclosure to contractor-run prisons.--Under such procedures as the Secretary may prescribe, the disclosures authorized by subparagraph (A) may be made to contractors responsible for the operation of a Federal or State prison on behalf of such Bureau or agency.

"(C) Restrictions on use of disclosed information.--Any return or return information received under this paragraph shall be used only for the purposes of and to the extent necessary in taking administrative action to prevent the filing of false and fraudulent returns, including administrative actions to address possible violations of administrative rules and regulations of the prison facility and in administrative and judicial proceedings arising from such administrative actions.

"(D) Restrictions on redisclosure and disclosure to legal representatives.--Notwithstanding subsection (h)--

"(i) Restrictions on redisclosure.--Except as provided in clause (ii), any officer, employee, or contractor of the Federal Bureau of Prisons or of any State agency charged with the responsibility for administration of prisons shall not disclose any information obtained under this paragraph to any person other than an officer or employee or contractor of such Bureau or agency personally and directly engaged in the administration of prison facilities on behalf of such Bureau or agency.

"(ii) Disclosure to legal representatives.--The returns and return information disclosed under this paragraph may be disclosed to the duly authorized legal representative of the Federal Bureau of Prisons, State agency, or contractor charged with the responsibility for administration of prisons, or of the incarcerated individual accused of filing the false or fraudulent return who is a party to an action or proceeding described in subparagraph (C), solely in preparation for, or for use in, such action or proceeding."

(b) Conforming Amendments.--

(1) Paragraph (3) of section 6103(a) is amended by inserting "subsection (k)(10)," after "subsection (e)(1)(D)(iii),".

(2) Paragraph (4) of section 6103(p) is amended--

(A) by inserting "subsection (k)(10)," before "subsection (l)(10)," in the matter preceding subparagraph (A),

(B) in subparagraph (F)(i)--

(i) by inserting "(k)(10)," before "or (l)(6),", and

[[*2326] (ii) by inserting "subsection (k)(10) or" before "subsection (l)(10),", and

(C) by inserting "subsection (k)(10) or" before "subsection (l)(10)," both places it appears in the matter following subparagraph (F)(iii).

(3) <26 USC 7213> Paragraph (2) of section 7213(a) is amended by inserting "(k)(10)," before "(l)(6),".

(c) <26 USC 6103 note> Effective Date.--The amendments made by this section shall take effect on the date of the enactment of this Act.

TITLE III--BUSINESS TAX EXTENDERS

[[*301] Sec. 301. EXTENSION AND MODIFICATION OF RESEARCH CREDIT.

(a) Extension.--

(1) In general.-- Subparagraph (B) of section 41(h)(1) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(2) Conforming amendment.-- Subparagraph (D) of section 45C(b)(1) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Inclusion of Qualified Research Expenses and Gross Receipts of an Acquired Person.--

(1) Partial inclusion of pre-acquisition qualified research expenses and gross receipts.-- Subparagraph (A) of section 41(f)(3) is amended to read as follows:

"(A) Acquisitions.--

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"(i) In general.--If a person acquires the major portion of either a trade or business or a separate unit of a trade or business (hereinafter in this paragraph referred to as the 'acquired business') of another person (hereinafter in this paragraph referred to as the 'predecessor'), then the amount of qualified research expenses paid or incurred by the acquiring person during the measurement period shall be increased by the amount determined under clause (ii), and the gross receipts of the acquiring person for such period shall be increased by the amount determined under clause (iii).

"(ii) Amount determined with respect to qualified research expenses.--The amount determined under this clause is--

"(I) for purposes of applying this section for the taxable year in which such acquisition is made, the acquisition year amount, and

"(II) for purposes of applying this section for any taxable year after the taxable year in which such acquisition is made, the qualified research expenses paid or incurred by the predecessor with respect to the acquired business during the measurement period.

"(iii) Amount determined with respect to gross receipts.--The amount determined under this clause is the amount which would be determined under clause (ii) if 'the gross receipts of' were substituted for 'the qualified research expenses paid or incurred by' each place it appears in clauses (ii) and (iv).

[**2327] "(iv) Acquisition year amount.--For purposes of clause (ii), the acquisition year amount is the amount equal to the product of--

"(I) the qualified research expenses paid or incurred by the predecessor with respect to the acquired business during the measurement period, and

"(II) the number of days in the period beginning on the date of the acquisition and ending on the last day of the taxable year in which the acquisition is made, divided by the number of days in the acquiring person's taxable year.

"(v) Special rules for coordinating taxable years.--In the case of an acquiring person and a predecessor whose taxable years do not begin on the same date--

"(I) each reference to a taxable year in clauses (ii) and (iv) shall refer to the appropriate taxable year of the acquiring person,

"(II) the qualified research expenses paid or incurred by the predecessor, and the gross receipts of the predecessor, during each taxable year of the predecessor any portion of which is part of the measurement period shall be allocated equally among the days of such taxable year,

"(III) the amount of such qualified research expenses taken into account under clauses (ii) and (iv) with respect to a taxable year of the acquiring person shall be equal to the total of the expenses attributable under subclause (II) to the days occurring during such taxable year, and

"(IV) the amount of such gross receipts taken into account under clause (iii) with respect to a taxable year of the acquiring person shall be equal to the total of the gross receipts attributable under subclause (II) to the days occurring during such taxable year.

"(vi) Measurement period.--For purposes of this subparagraph, the term 'measurement period' means, with respect to the taxable year of the acquiring person for which the credit is determined, any period of the acquiring person preceding such taxable year which is taken into account for purposes of determining the credit for such year."

(2) <26 USC 41> Expenses and gross receipts of a predecessor.-- Subparagraph (B) of section 41(f)(3) is amended to read as follows:

"(B) Dispositions.--If the predecessor furnished to the acquiring person such information as is necessary for the application of subparagraph (A), then, for purposes of applying this section for any taxable year ending after such disposition, the amount of qualified research expenses paid or incurred by, and the gross receipts of, the predecessor during the measurement period (as defined in [**2328] subparagraph (A)(vi), determined by substituting 'predecessor' for 'acquiring person' each place it appears) shall be reduced by--

"(i) in the case of the taxable year in which such disposition is made, an amount equal to the product of--

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"(I) the qualified research expenses paid or incurred by, or gross receipts of, the predecessor with respect to the acquired business during the measurement period (as so defined and so determined), and

"(II) the number of days in the period beginning on the date of acquisition (as determined for purposes of subparagraph (A)(iv)(II)) and ending on the last day of the taxable year of the predecessor in which the disposition is made, divided by the number of days in the taxable year of the predecessor, and

"(ii) in the case of any taxable year ending after the taxable year in which such disposition is made, the amount described in clause (i)(I)."

(c) <26 USC 41> Aggregation of Expenditures.--Paragraph (1) of section 41(f) is amended--

(1) by striking "shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit" in subparagraph (A)(ii) and inserting "shall be determined on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, taken into account by such controlled group for purposes of this section", and

(2) by striking "shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit" in subparagraph (B)(ii) and inserting "shall be determined on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, taken into account by all such persons under common control for purposes of this section".

(d) <26 USC 41 note> Effective Date.--

(1) Extension.-- The amendments made by subsection (a) shall apply to amounts paid or incurred after December 31, 2011.

(2) Modifications.-- The amendments made by subsections (b) and (c) shall apply to taxable years beginning after December 31, 2011.

[*302] Sec. 302. EXTENSION OF TEMPORARY MINIMUM LOW-INCOME TAX CREDIT RATE FOR NON-FEDERALLY SUBSIDIZED NEW BUILDINGS.

(a) In General.--Subparagraph (A) of section 42(b)(2) is amended by striking "and before December 31, 2013" and inserting "with respect to housing credit dollar amount allocations made before January 1, 2014".

[**2329] (b) <26 USC 42 note> Effective Date.--The amendment made by this section shall take effect on the date of the enactment of this Act.

[*303] Sec. 303. EXTENSION OF HOUSING ALLOWANCE EXCLUSION FOR DETERMINING AREA MEDIAN GROSS INCOME FOR QUALIFIED RESIDENTIAL RENTAL PROJECT EXEMPT FACILITY BONDS.

(a) In General.--Subsection (b) of section 3005 of the Housing Assistance Tax Act of 2008 is amended by striking "January 1, 2012" <26 USC 142 note> each place it appears and inserting "January 1, 2014".

(b) <26 USC 142 note> Effective Date.--The amendment made by this section shall take effect as if included in the enactment of section 3005 of the Housing Assistance Tax Act of 2008.

[*304] Sec. 304. EXTENSION OF INDIAN EMPLOYMENT TAX CREDIT.

(a) <26 USC 45A> In General.--Subsection (f) of section 45A is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 45A note> Effective Date.--The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

[*305] Sec. 305. EXTENSION OF NEW MARKETS TAX CREDIT.

(a) In General.--Subparagraph (G) of section 45D(f)(1) is amended by striking "2010 and 2011" and inserting "2010, 2011, 2012, and 2013".

(b) Carryover of Unused Limitation.--Paragraph (3) of section 45D(f) is amended by striking "2016" and inserting "2018".

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(c) <26 USC 45D note> Effective Date.--The amendments made by this section shall apply to calendar years beginning after December 31, 2011.

[*306] Sec. 306. EXTENSION OF RAILROAD TRACK MAINTENANCE CREDIT.

(a) In General.--Subsection (f) of section 45G is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 45G note> Effective Date.--The amendment made by this section shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2011.

[*307] Sec. 307. EXTENSION OF MINE RESCUE TEAM TRAINING CREDIT.

(a) In General.--Subsection (e) of section 45N is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 45N note> Effective Date.--The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

[*308] Sec. 308. EXTENSION OF EMPLOYER WAGE CREDIT FOR EMPLOYEES WHO ARE ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.

(a) In General.--Subsection (f) of section 45P is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 45P note> Effective Date.--The amendment made by this section shall apply to payments made after December 31, 2011.

[*309] Sec. 309. EXTENSION OF WORK OPPORTUNITY TAX CREDIT.

(a) In General.--Subparagraph (B) of section 51(c)(4) is amended by striking "after" and all that follows and inserting "after December 31, 2013".

(b) <26 USC 51 note> Effective Date.--The amendment made by this section shall apply to individuals who begin work for the employer after December 31, 2011.

[*310] [**2330] Sec. 310. EXTENSION OF QUALIFIED ZONE ACADEMY BONDS.

(a) <26 USC 54E> In General.--Paragraph (1) of section 54E(c) is amended by inserting ", 2012, and 2013" after "for 2011".

(b) <26 USC 54E note> Effective Date.--The amendments made by this section shall apply to obligations issued after December 31, 2011.

[*311] Sec. 311. EXTENSION OF 15-YEAR STRAIGHT-LINE COST RECOVERY FOR QUALIFIED LEASEHOLD IMPROVEMENTS, QUALIFIED RESTAURANT BUILDINGS AND IMPROVEMENTS, AND QUALIFIED RETAIL IMPROVEMENTS.

(a) In General.--Clauses (iv), (v), and (ix) of section 168(e)(3)(E) are each amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 168 note> Effective Date.--The amendments made by this section shall apply to property placed in service after December 31, 2011.

[*312] Sec. 312. EXTENSION OF 7-YEAR RECOVERY PERIOD FOR MOTORSPORTS ENTERTAINMENT COMPLEXES.

(a) In General.--Subparagraph (D) of section 168(i)(15) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 168 note> Effective Date.--The amendment made by this section shall apply to property placed in service after December 31, 2011.

[*313] Sec. 313. EXTENSION OF ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON AN INDIAN RESERVATION.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(a) In General.--Paragraph (8) of section 168(j) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 168 note> Effective Date.--The amendment made by this section shall apply to property placed in service after December 31, 2011.

[*314] Sec. 314. EXTENSION OF ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) In General.--Clause (iv) of section 170(e)(3)(C) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 170 note> Effective Date.--The amendment made by this section shall apply to contributions made after December 31, 2011.

[*315] Sec. 315. EXTENSION OF INCREASED EXPENSING LIMITATIONS AND TREATMENT OF CERTAIN REAL PROPERTY AS SECTION 179 PROPERTY.

(a) In General.--

(1) Dollar limitation.-- Section 179(b)(1) is amended--

(A) by striking "2010 or 2011," in subparagraph (B) and inserting "2010, 2011, 2012, or 2013, and",

(B) by striking subparagraph (C),

(C) by redesignating subparagraph (D) as subparagraph (C), and

(D) in subparagraph (C), as so redesignated, by striking "2012" and inserting "2013".

(2) Reduction in limitation.-- Section 179(b)(2) is amended--

(A) by striking "2010 or 2011," in subparagraph (B) and inserting "2010, 2011, 2012, or 2013, and",

(B) by striking subparagraph (C),

(C) by redesignating subparagraph (D) as subparagraph (C), and

[**2331] (D) in subparagraph (C), as so redesignated, by striking "2012" and inserting "2013".

(3) Conforming amendment.-- Subsection (b) of section 179 is amended by striking paragraph (6).

(b) <26 USC 179> Computer Software.--Section 179(d)(1)(A)(ii) is amended by striking "2013" and inserting "2014".

(c) Election.--Section 179(c)(2) is amended by striking "2013" and inserting "2014".

(d) Special Rules for Treatment of Qualified Real Property.--

(1) In general.-- Section 179(f)(1) is amended by striking "2010 or 2011" and inserting "2010, 2011, 2012, or 2013".

(2) Carryover limitation.----

(A) In general.--Section 179(f)(4) is amended by striking "2011" each place it appears and inserting "2013".

(B) Conforming amendment.--Subparagraph (C) of section 179(f)(4) is amended--

(i) in the heading, by striking "2010" and inserting "2010, 2011 and 2012", and

(ii) by adding at the end the following: "For the last taxable year beginning in 2013, the amount determined under subsection (b)(3)(A) for such taxable year shall be determined without regard to this paragraph."

(e) <26 USC 179 note> Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

[*316] Sec. 316. EXTENSION OF ELECTION TO EXPENSE MINE SAFETY EQUIPMENT.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(a) In General.--Subsection (g) of section 179E is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 179E note> Effective Date.--The amendment made by this section shall apply to property placed in service after December 31, 2011.

[*317] Sec. 317. EXTENSION OF SPECIAL EXPENSING RULES FOR CERTAIN FILM AND TELEVISION PRODUCTIONS.

(a) In General.--Subsection (f) of section 181 is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 181 note> Effective Date.--The amendment made by this section shall apply to productions commencing after December 31, 2011.

[*318] Sec. 318. EXTENSION OF DEDUCTION ALLOWABLE WITH RESPECT TO INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES IN PUERTO RICO.

(a) In General.--Subparagraph (C) of section 199(d)(8) is amended--

(1) by striking "first 6 taxable years" and inserting "first 8 taxable years", and

(2) by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 199 note> Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

[*319] Sec. 319. EXTENSION OF MODIFICATION OF TAX TREATMENT OF CERTAIN PAYMENTS TO CONTROLLING EXEMPT ORGANIZATIONS.

(a) In General.--Clause (iv) of section 512(b)(13)(E) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

[**2332] (b) <26 USC 512 note> Effective Date.--The amendment made by this section shall apply to payments received or accrued after December 31, 2011.

[*320] Sec. 320. EXTENSION OF TREATMENT OF CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.

(a) <26 USC 871> In General.--Paragraphs (1)(C)(v) and (2)(C)(v) of section 871(k) are each amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 871 note> Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

[*321] Sec. 321. EXTENSION OF RIC QUALIFIED INVESTMENT ENTITY TREATMENT UNDER FIRPTA.

(a) In General.--Clause (ii) of section 897(h)(4)(A) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 897 note> Effective Date.--

(1) In general.-- The amendment made by subsection (a) shall take effect on January 1, 2012. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act.

(2) Amounts withheld on or before date of enactment.-- In the case of a regulated investment company--

(A) which makes a distribution after December 31, 2011, and before the date of the enactment of this Act; and

(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

[*322] Sec. 322. EXTENSION OF SUBPART F EXCEPTION FOR ACTIVE FINANCING INCOME.

(a) Exempt Insurance Income.--Paragraph (10) of section 953(e) is amended--

(1) by striking "January 1, 2012" and inserting "January 1, 2014", and

(2) by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Special Rule for Income Derived in the Active Conduct of Banking, Financing, or Similar Businesses.--Paragraph (9) of section 954(h) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(c) <26 USC 953 note> Effective Date.--The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

[*323] [**2333] Sec. 323. EXTENSION OF LOOK-THRU TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER FOREIGN PERSONAL HOLDING COMPANY RULES.

(a) <26 USC 954> In General.--Subparagraph (C) of section 954(c)(6) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 954 note> Effective Date.--The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

[*324] Sec. 324. EXTENSION OF TEMPORARY EXCLUSION OF 100 PERCENT OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

(a) In General.--Paragraph (4) of section 1202(a) is amended--

(1) by striking "January 1, 2012" and inserting "January 1, 2014", and

(2) by striking "and 2011" and inserting ", 2011, 2012, and 2013" in the heading thereof.

(b) Technical Amendments.--

(1) Special rule for 2009 and certain period in 2010.-- Paragraph (3) of section 1202(a) is amended by adding at the end the following new flush sentence:

"In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223."

(2) 100 percent exclusion.-- Paragraph (4) of section 1202(a) is amended by adding at the end the following new flush sentence:

"In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223."

(c) <26 USC 1202 note> Effective Dates.--

(1) In general.-- The amendments made by subsection (a) shall apply to stock acquired after December 31, 2011.

(2) Subsection (b)(1).-- The amendment made by subsection (b)(1) shall take effect as if included in section 1241(a) of division B of the American Recovery and Reinvestment Act of 2009.

(3) Subsection (b)(2).-- The amendment made by subsection (b)(2) shall take effect as if included in section 2011(a) of the Creating Small Business Jobs Act of 2010.

[*325] Sec. 325. EXTENSION OF BASIS ADJUSTMENT TO STOCK OF S CORPORATIONS MAKING CHARITABLE CONTRIBUTIONS OF PROPERTY.

(a) In General.--Paragraph (2) of section 1367(a) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(b) <26 USC 1367 note> Effective Date.--The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2011.

[*326] [**2334] Sec. 326. EXTENSION OF REDUCTION IN S-CORPORATION RECOGNITION PERIOD FOR BUILT-IN GAINS TAX.

(a) <26 USC 1374> In General.--Paragraph (7) of section 1374(d) is amended--

(1) by redesignating subparagraph (C) as subparagraph (D), and

(2) by inserting after subparagraph (B) the following new subparagraph:

"(C) Special rule for 2012 and 2013.--For purposes of determining the net recognized built-in gain for taxable years beginning in 2012 or 2013, subparagraphs (A) and (D) shall be applied by substituting '5-year' for '10-year'.", and

(3) by adding at the end the following new subparagraph:

"(E) Installment sales.--If an S corporation sells an asset and reports the income from the sale using the installment method under section 453, the treatment of all payments received shall be governed by the provisions of this paragraph applicable to the taxable year in which such sale was made."

(b) Technical Amendment.--Subparagraph (B) of section 1374(d)(2) is amended by inserting "described in subparagraph (A)" after ", for any taxable year".

(c) <26 USC 1374 note> Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

[*327] Sec. 327. EXTENSION OF EMPOWERMENT ZONE TAX INCENTIVES.

(a) In General.--Clause (i) of section 1391(d)(1)(A) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Increased Exclusion of Gain on Stock of Empowerment Zone Businesses.--Subparagraph (C) of section 1202(a)(2) is amended--

(1) by striking "December 31, 2016" and inserting "December 31, 2018"; and

(2) by striking "2016" in the heading and inserting "2018".

(c) <26 USC 1391 note> Treatment of Certain Termination Dates Specified in Nominations.--In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary's designee) may provide.

(d) <26 USC 1202 note> Effective Date.--The amendments made by this section shall apply to periods after December 31, 2011.

[*328] Sec. 328. EXTENSION OF TAX-EXEMPT FINANCING FOR NEW YORK LIBERTY ZONE.

(a) In General.--Subparagraph (D) of section 1400L(d)(2) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 1400L note> Effective Date.--The amendment made by this section shall apply to bonds issued after December 31, 2011.

[*329] [**2335] Sec. 329. EXTENSION OF TEMPORARY INCREASE IN LIMIT ON COVER OVER OF RUM EXCISE TAXES TO PUERTO RICO AND THE VIRGIN ISLANDS.

(a) <26 USC 7652> In General.--Paragraph (1) of section 7652(f) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 7652 note> Effective Date.--The amendment made by this section shall apply to distilled spirits brought into the United States after December 31, 2011.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

[*330] Sec. 330. MODIFICATION AND EXTENSION OF AMERICAN SAMOA ECONOMIC DEVELOPMENT CREDIT.

(a) Modification.--

(1) In general.-- Subsection (a) of section 119 of division A of the Tax Relief and Health Care Act of 2006 is amended <26 USC 30A note> by striking "if such corporation" and all that follows and inserting "if--

"(1) in the case of a taxable year beginning before January 1, 2012, such corporation--

"(A) is an existing credit claimant with respect to American Samoa, and

"(B) elected the application of section 936 of the Internal Revenue Code of 1986 for its last taxable year beginning before January 1, 2006, and

"(2) in the case of a taxable year beginning after December 31, 2011, such corporation meets the requirements of subsection (e).".

(2) Requirements.-- Section 119 of division A of such Act is amended by adding at the end the following new subsection:

"(e) Qualified Production Activities Income Requirement.--A corporation meets the requirement of this subsection if such corporation has qualified production activities income, as defined in subsection (c) of section 199 of the Internal Revenue Code of 1986, determined by substituting 'American Samoa' for 'the United States' each place it appears in paragraphs (3), (4), and (6) of such subsection (c), for the taxable year."

(b) Extension.--Subsection (d) of section 119 of division A of the Tax Relief and Health Care Act of 2006 is amended by striking "shall apply" and all that follows and inserting "shall apply--

"(1) in the case of a corporation that meets the requirements of subparagraphs (A) and (B) of subsection (a)(1), to the first 8 taxable years of such corporation which begin after December 31, 2006, and before January 1, 2014, and

"(2) in the case of a corporation that does not meet the requirements of subparagraphs (A) and (B) of subsection (a)(1), to the first 2 taxable years of such corporation which begin after December 31, 2011, and before January 1, 2014."

(c) <26 USC 30A note> Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

[*331] Sec. 331. EXTENSION AND MODIFICATION OF BONUS DEPRECIATION.

(a) In General.--Paragraph (2) of section 168(k) is amended--

(1) by striking "January 1, 2014" in subparagraph (A)(iv) and inserting "January 1, 2015", and

(2) by striking "January 1, 2013" each place it appears and inserting "January 1, 2014".

[**2336] (b) <26 USC 460> Special Rule for Federal Long-Term Contracts.--Clause (ii) of section 460(c)(6)(B) is amended by inserting ", or after December 31, 2012, and before January 1, 2014 (January 1, 2015, in the case of property described in section 168(k)(2)(B))" before the period.

(c) Extension of Election To Accelerate the AMT Credit in Lieu of Bonus Depreciation.--

(1) In general.-- Subclause (II) of section 168(k)(4)(D)(iii) is amended by striking "2013" and inserting "2014".

(2) Round 3 extension property.-- Paragraph (4) of section 168(k) is amended by adding at the end the following new subparagraph:

"(J) Special rules for round 3 extension property.--

"(i) In general.--In the case of round 3 extension property, this paragraph shall be applied without regard to--

"(I) the limitation described in subparagraph (B)(i) thereof, and

"(II) the business credit increase amount under subparagraph (E)(iii) thereof.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

"(ii) Taxpayers previously electing acceleration.--In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, a taxpayer who made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008, or a taxpayer who made the election under subparagraph (I)(iii) for its first taxable year ending after December 31, 2010--

"(I) the taxpayer may elect not to have this paragraph apply to round 3 extension property, but

"(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer the bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is round 3 extension property. The amounts described in subclause (II) shall be computed separately from any amounts computed with respect to eligible qualified property which is not round 3 extension property.

"(iii) Taxpayers not previously electing acceleration.--In the case of a taxpayer who neither made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, nor made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008, nor made the election under subparagraph (I)(iii) for any taxable year ending after December 31, 2010--

"(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2012, and each subsequent taxable year, and

"(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to [**2337] eligible qualified property which is round 3 extension property.

"(iv) Round 3 extension property.--For purposes of this subparagraph, the term 'round 3 extension property' means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 331(a) of the American Taxpayer Relief Act of 2012 (and the application of such extension to this paragraph pursuant to the amendment made by section 331(c)(1) of such Act)."

(d) Normalization Rules Amendment.--Clause (ii) of section 168(i)(9)(A) is amended by inserting "(respecting all elections made <26 USC 168> by the taxpayer under this section)" after "such property".

(e) Conforming Amendments.--

(1) The heading for subsection (k) of section 168 is amended by striking " January 1, 2013" and inserting " January 1, 2014".

(2) The heading for clause (ii) of section 168(k)(2)(B) is amended by striking "pre-January 1, 2013" and inserting "pre-January 1, 2014".

(3) Subparagraph (C) of section 168(n)(2) is amended by striking "January 1, 2013" and inserting "January 1, 2014".

(4) Subparagraph (D) of section 1400L(b)(2) is amended by striking "January 1, 2013" and inserting "January 1, 2014".

(5) Subparagraph (B) of section 1400N(d)(3) is amended by striking "January 1, 2013" and inserting "January 1, 2014".

(f) <26 USC 168 note> Effective Date.--The amendments made by this section shall apply to property placed in service after December 31, 2012, in taxable years ending after such date.

TITLE IV--ENERGY TAX EXTENDERS

[*401] Sec. 401. EXTENSION OF CREDIT FOR ENERGY-EFFICIENT EXISTING HOMES.

(a) In General.--Paragraph (2) of section 25C(g) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 25C note> Effective Date.--The amendment made by this section shall apply to property placed in service after December 31, 2011.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

[*402] Sec. 402. EXTENSION OF CREDIT FOR ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.

(a) In General.--Paragraph (2) of section 30C(g) is amended by striking "December 31, 2011." and inserting "December 31, 2013".

(b) <26 USC 30C note> Effective Date.--The amendment made by this section shall apply to property placed in service after December 31, 2011.

[*403] Sec. 403. EXTENSION OF CREDIT FOR 2- OR 3-WHEELED PLUG-IN ELECTRIC VEHICLES.

(a) In General.--Section 30D is amended by adding at the end the following new subsection:

"(g) Credit Allowed for 2- and 3-wheeled Plug-in Electric Vehicles.--

"(1) In general.-- In the case of a qualified 2- or 3-wheeled plug-in electric vehicle--

"(A) there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the applicable amount with respect [**2338] to each such qualified 2- or 3-wheeled plug-in electric vehicle placed in service by the taxpayer during the taxable year, and

"(B) the amount of the credit allowed under subparagraph (A) shall be treated as a credit allowed under subsection (a).

"(2) Applicable amount.-- For purposes of paragraph (1), the applicable amount is an amount equal to the lesser of--

"(A) 10 percent of the cost of the qualified 2- or 3-wheeled plug-in electric vehicle, or

"(B) \$ 2,500.

"(3) Qualified 2- or 3-wheeled plug-in electric vehicle.-- The term 'qualified 2- or 3-wheeled plug-in electric vehicle' means any vehicle which--

"(A) has 2 or 3 wheels,

"(B) meets the requirements of subparagraphs (A), (B), (C), (E), and (F) of subsection (d)(1) (determined by substituting '2.5 kilowatt hours' for '4 kilowatt hours' in subparagraph (F)(i)),

"(C) is manufactured primarily for use on public streets, roads, and highways,

"(D) is capable of achieving a speed of 45 miles per hour or greater, and

"(E) is acquired after December 31, 2011, and before January 1, 2014."

(b) Conforming Amendments.--

(1) No double benefit.-- Paragraph (2) of section 30D(f) is amended--

(A) by striking "new qualified plug-in electric drive motor vehicle" and inserting "vehicle for which a credit is allowable under subsection (a)", and

(B) by striking "allowed under subsection (a)" and inserting "allowed under such subsection".

(2) <26 USC 30D> Air quality and safety standards.-- Section 30D(f)(7) is amended by striking "motor vehicle" and inserting "vehicle".

(c) <26 USC 30D note> Effective Date.--The amendments made by this section shall apply to vehicles acquired after December 31, 2011.

[*404] Sec. 404. EXTENSION AND MODIFICATION OF CELLULOSIC BIOFUEL PRODUCER CREDIT.

(a) Extension.--

(1) In general.-- Subparagraph (H) of section 40(b)(6) is amended to read as follows:

"(H) Application of paragraph.--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

"(i) In general.--This paragraph shall apply with respect to qualified cellulosic biofuel production after December 31, 2008, and before January 1, 2014.

"(ii) No carryover to certain years after expiration.--If this paragraph ceases to apply for any period by reason of clause (i), rules similar to the rules of subsection (e)(2) shall apply."

(2) Conforming amendment.-- Paragraph (2) of section 40(e) is amended by striking "or subsection (b)(6)(H)".

(3) <26 USC 40 note> Effective date.-- The amendments made by this subsection shall take effect as if included in section 15321(b) of the Heartland, Habitat, and Horticulture Act of 2008.

(b) Algae Treated as a Qualified Feedstock.--

[**2339] (1) <26 USC 40> In general.-- Subclause (I) of section 40(b)(6)(E)(i) is amended to read as follows:

"(I) is derived by, or from, qualified feedstocks, and".

(2) Qualified feedstock; special rules for algae.-- Paragraph (6) of section 40(b) is amended by redesignating subparagraphs (F), (G), and (H), as amended by this Act, as subparagraphs (H), (I), and (J), respectively, and by inserting after subparagraph (E) the following new subparagraphs:

"(F) Qualified feedstock.--For purposes of this paragraph, the term 'qualified feedstock' means--

"(i) any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and

"(ii) any cultivated algae, cyanobacteria, or lemna.

"(G) Special rules for algae.--In the case of fuel which is derived by, or from, feedstock described in subparagraph (F)(ii) and which is sold by the taxpayer to another person for refining by such other person into a fuel which meets the requirements of subparagraph (E)(i)(II) and the refined fuel is not excluded under subparagraph (E)(iii)--

"(i) such sale shall be treated as described in subparagraph (C)(i),

"(ii) such fuel shall be treated as meeting the requirements of subparagraph (E)(i)(II) and as not being excluded under subparagraph (E)(iii) in the hands of such taxpayer, and

"(iii) except as provided in this subparagraph, such fuel (and any fuel derived from such fuel) shall not be taken into account under subparagraph (C) with respect to the taxpayer or any other person."

(3) Conforming amendments.----

(A) Section 40, as amended by paragraph (2), is amended--

(i) by striking "cellulosic biofuel" each place it appears in the text thereof and inserting "second generation biofuel",

(ii) by striking "Cellulosic" in the headings of subsections (b)(6), (b)(6)(E), and (d)(3)(D) and inserting "Second generation", and

(iii) by striking "cellulosic" in the headings of subsections (b)(6)(C), (b)(6)(D), (b)(6)(H), (d)(6), and (e)(3) and inserting "second generation".

(B) Clause (ii) of section 40(b)(6)(E) is amended by striking "Such term shall not" and inserting "The term 'second generation biofuel' shall not".

(C) Paragraph (1) of section 4101(a) is amended by striking "cellulosic biofuel" and inserting "second generation biofuel".

(4) <26 USC 40 note> Effective date.-- The amendments made by this subsection shall apply to fuels sold or used after the date of the enactment of this Act.

[*405] [**2340] Sec. 405. EXTENSION OF INCENTIVES FOR BIODIESEL AND RENEWABLE DIESEL.

(a) Credits for Biodiesel and Renewable Diesel Used as Fuel.--Subsection (g) of section 40A <26 USC 40A> is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Excise Tax Credits and Outlay Payments for Biodiesel and Renewable Diesel Fuel Mixtures.--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(1) Paragraph (6) of section 6426(c) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(2) Subparagraph (B) of section 6427(e)(6) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(c) <26 USC 40A note> Effective Date.--The amendments made by this section shall apply to fuel sold or used after December 31, 2011.

[*406] Sec. 406. EXTENSION OF PRODUCTION CREDIT FOR INDIAN COAL FACILITIES PLACED IN SERVICE BEFORE 2009.

(a) In General.--Subparagraph (A) of section 45(e)(10) is amended by striking "7-year period" each place it appears and inserting "8-year period".

(b) <26 USC 45 note> Effective Date.--The amendment made by this section shall apply to coal produced after December 31, 2012.

[*407] Sec. 407. EXTENSION AND MODIFICATION OF CREDITS WITH RESPECT TO FACILITIES PRODUCING ENERGY FROM CERTAIN RENEWABLE RESOURCES.

(a) Production Tax Credit.--

(1) Extension for wind facilities.-- Paragraph (1) of section 45(d) is amended by striking "January 1, 2013" and inserting "January 1, 2014".

(2) Exclusion of paper which is commonly recycled from definition of municipal solid waste.-- Section 45(c)(6) is amended by inserting ", except that such term does not include paper which is commonly recycled and which has been segregated from other solid waste (as so defined)" after "(42 U.S.C. 6903)".

(3) Modification to definition of qualified facility.----

(A) In general.--The following provisions of section 45(d), as amended by paragraph (1), are each amended by striking "before January 1, 2014" and inserting "the construction of which begins before January 1, 2014":

(i) Paragraph (1).

(ii) Paragraph (2)(A)(i).

(iii) Paragraph (3)(A)(i)(I).

(iv) Paragraph (6).

(v) Paragraph (7).

(vi) Paragraph (9)(B).

(vii) Paragraph (11)(B).

(B) Certain closed-loop biomass facilities.--Subparagraph (A) of section 45(d)(2) is amended by adding at the end the following new flush sentence:

"For purposes of clause (ii), a facility shall be treated as modified before January 1, 2014, if the construction of such modification begins before such date."

[**2341] (C) Certain open-loop biomass facilities.--Clause (ii) of section 45(d)(3)(A) <26 USC 45> is amended by striking "is originally placed in service" and inserting "the construction of which begins".

(D) Geothermal facilities.--

(i) In general.--Paragraph (4) of section 45(d) is amended by striking "and before January 1, 2014" and all that follows and inserting "and which--

"(A) in the case of a facility using solar energy, is placed in service before January 1, 2006, or

"(B) in the case of a facility using geothermal energy, the construction of which begins before January 1, 2014.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48."

(E) Incremental hydropower production.--Paragraph (9) of section 45(d) is amended--

(i) by redesignating subparagraphs (A) and (B), as amended by subparagraph (A), as clauses (i) and (ii), respectively, and by moving such clauses (as so redesignated) 2 ems to the right,

(ii) by striking "In the case of a facility" and inserting the following:

"(A) In general.--In the case of a facility",

(iii) by redesignating subparagraph (C) as subparagraph (B), and

(iv) by adding at the end the following new subparagraph:

"(C) Special rule.--For purposes of subparagraph (A)(i), an efficiency improvement or addition to capacity shall be treated as placed in service before January 1, 2014, if the construction of such improvement or addition begins before such date."

(b) Extension of Election to Treat Qualified Facilities as Energy Property.--Subparagraph (C) of section 48(a)(5) is amended to read as follows:

"(C) Qualified investment credit facility.--For purposes of this paragraph, the term 'qualified investment credit facility' means any facility--

"(i) which is a qualified facility (within the meaning of section 45) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d),

"(ii) which is placed in service after 2008 and the construction of which begins before January 1, 2014, and

"(iii) with respect to which--

"(I) no credit has been allowed under section 45, and

"(II) the taxpayer makes an irrevocable election to have this paragraph apply."

(c) Technical Corrections.--

(1) Subparagraph (D) of section 48(a)(5) is amended--

(A) by striking "and" at the end of clause (i)(II),

(B) by striking the period at the end of clause (ii) and inserting a comma, and

(C) by adding at the end the following new clauses:

["*2342] "(iii) which is constructed, reconstructed, erected, or acquired by the taxpayer, and

"(iv) the original use of which commences with the taxpayer."

(2) Paragraphs (1) and (2) of subsection (a) of section 1603 of division B of the American Recovery and Reinvestment Act of 2009 <26 USC 48 note> are each amended by striking "placed in service" and inserting "originally placed in service by such person".

(d) <26 USC 45 note> Effective Dates.--

(1) In general.-- Except as provided in paragraphs (2) and (3), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) Modification to definition of municipal solid waste.-- The amendments made by subsection (a)(2) shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

(3) Technical corrections.-- The amendments made by subsection (c) shall apply as if included in the enactment of the provisions of the American Recovery and Reinvestment Act of 2009 to which they relate.

["*408] Sec. 408. EXTENSION OF CREDIT FOR ENERGY-EFFICIENT NEW HOMES.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(a) <26 USC 45L> In General.--Subsection (g) of section 45L is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Energy Savings Requirements.--Clause (i) of section 45L(c)(1)(A) is amended by striking "2003 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of this section" and inserting "2006 International Energy Conservation Code, as such Code (including supplements) is in effect on January 1, 2006".

(c) <26 USC 45L note> Effective Date.--The amendments made by this section shall apply to homes acquired after December 31, 2011.

[*409] Sec. 409. EXTENSION OF CREDIT FOR ENERGY-EFFICIENT APPLIANCES.

(a) In General.--Section 45M(b) is amended by striking "2011" each place it appears other than in the provisions specified in subsection (b) and inserting "2011, 2012, or 2013".

(b) Provisions Specified.--The provisions of section 45M(b) specified in this subsection are subparagraph (C) of paragraph (1) and subparagraph (E) of paragraph (2).

(c) <26 USC 45M note> Effective Date.--The amendments made by this section shall apply to appliances produced after December 31, 2011.

[*410] Sec. 410. EXTENSION AND MODIFICATION OF SPECIAL ALLOWANCE FOR CELLULOSIC BIOFUEL PLANT PROPERTY.

(a) Extension.--

(1) In general.-- Subparagraph (D) of section 168(l)(2) is amended by striking "January 1, 2013" and inserting "January 1, 2014".

(2) <26 USC 168 note> Effective date.-- The amendment made by this subsection shall apply to property placed in service after December 31, 2012.

(b) Algae Treated as a Qualified Feedstock for Purposes of Bonus Depreciation for Biofuel Plant Property.--

(1) In general.-- Subparagraph (A) of section 168(l)(2) is amended by striking "solely to produce cellulosic biofuel" and [**2343] inserting "solely to produce second generation biofuel (as defined in section 40(b)(6)(E))".

(2) <26 USC 168> Conforming amendments.-- Subsection (l) of section 168, as amended by subsection (a), is amended--

(A) by striking "cellulosic biofuel" each place it appears in the text thereof and inserting "second generation biofuel",

(B) by striking paragraph (3) and redesignating paragraphs (4) through (8) as paragraphs (3) through (7), respectively,

(C) by striking " Cellulosic" in the heading of such subsection and inserting " Second Generation", and

(D) by striking "cellulosic" in the heading of paragraph (2) and inserting "second generation".

(3) <26 USC 168 note> Effective date.-- The amendments made by this subsection shall apply to property placed in service after the date of the enactment of this Act.

[*411] Sec. 411. EXTENSION OF SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FERC OR STATE ELECTRIC RESTRUCTURING POLICY FOR QUALIFIED ELECTRIC UTILITIES.

(a) In General.--Paragraph (3) of section 451(i) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 451 note> Effective Date.--The amendment made by this section shall apply to dispositions after December 31, 2011.

[*412] Sec. 412. EXTENSION OF ALTERNATIVE FUELS EXCISE TAX CREDITS.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(a) In General.--Sections 6426(d)(5) and 6426(e)(3) are each amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Outlay Payments for Alternative Fuels.--Paragraph (6) of section 6427(e) is amended--

(1) in subparagraph (C)--

(A) by striking "or alternative fuel mixture (as defined in subsection (d)(2) or (e)(3) of section 6426)" and inserting "(as defined in section 6426(d)(2))", and

(B) by striking "December 31, 2011, and" and inserting "December 31, 2013,"

(2) in subparagraph (D)--

(A) by striking "or alternative fuel mixture", and

(B) by striking the period at the end and inserting ", and", and

(3) by adding at the end the following new subparagraph:

"(E) any alternative fuel mixture (as defined in section 6426(e)(2)) sold or used after December 31, 2011."

(c) <26 USC 6426 note> Effective Date.--The amendments made by this section shall apply to fuel sold or used after December 31, 2011.

TITLE V--UNEMPLOYMENT

[*501] Sec. 501. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.

(a) Extension.--Section 4007(a)(2) of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note) is amended by striking "January 2, 2013" and inserting "January 1, 2014".

[**2344] (b) Funding.--Section 4004(e)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note) is amended--

(1) in subparagraph (H), by striking "and" at the end; and

(2) by inserting after subparagraph (I) the following:

"(J) the amendments made by section 501(a) of the American Taxpayer Relief Act of 2012;"

(c) <26 USC 3304 note> Effective Date.--The amendments made by this section shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 (Public Law 112-96)

[*502] Sec. 502. TEMPORARY EXTENSION OF EXTENDED BENEFIT PROVISIONS.

(a) In General.--Section 2005 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111-5 (26 U.S.C. 3304 note), is amended--

(1) by striking "December 31, 2012" each place it appears and inserting "December 31, 2013"; and

(2) in subsection (c), by striking "June 30, 2013" and inserting "June 30, 2014".

(b) Extension of Matching for States With No Waiting Week.--Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110-449; 26 U.S.C. 3304 note) is amended by striking "June 30, 2013" and inserting "June 30, 2014".

(c) Extension of Modification of Indicators Under the Extended Benefit Program.--Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) is amended--

(1) in subsection (d), by striking "December 31, 2012" and inserting "December 31, 2013"; and

(2) in subsection (f)(2), by striking "December 31, 2012" and inserting "December 31, 2013".

(d) <26 USC 3304 note> Effective Date.--The amendments made by this section shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 (Public Law 112-96).

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

[*503] Sec. 503. EXTENSION OF FUNDING FOR REEMPLOYMENT SERVICES AND REEMPLOYMENT AND ELIGIBILITY ASSESSMENT ACTIVITIES.

(a) In General.--Section 4004(c)(2)(A) of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note) is amended by striking "through fiscal year 2013" and inserting "through fiscal year 2014".

(b) <26 USC 3304 note> Effective Date.--The amendments made by this section shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 (Public Law 112-96).

[*504] Sec. 504. ADDITIONAL EXTENDED UNEMPLOYMENT BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT.

(a) Extension.--Section 2(c)(2)(D)(iii) of the Railroad Unemployment Insurance Act, as added by section 2006 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and as amended by section 9 of the Worker, Homeownership, and Business Assistance Act of 2009 (Public Law 111-92), section 505 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Public Law 111-312), section 202 of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112-78), and section 2124 of the Unemployment Benefits Extension Act of 2012 (Public Law 112-96), is amended-- <45 USC 352>

(1) by striking "June 30, 2012" and inserting "June 30, 2013"; and

(2) by striking "December 31, 2012" and inserting "December 31, 2013".

(b) <45 USC 352 note> Clarification on Authority to Use Funds.--Funds appropriated under either the first or second sentence of clause (iv) of section 2(c)(2)(D) of the Railroad Unemployment Insurance Act shall be available to cover the cost of additional extended unemployment benefits provided under such section 2(c)(2)(D) by reason of the amendments made by subsection (a) as well as to cover the cost of such benefits provided under such section 2(c)(2)(D), as in effect on the day before the date of enactment of this Act.

(c) Funding for Administration.--Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Railroad Retirement Board \$ 250,000 for administrative expenses associated with the payment of additional extended unemployment benefits provided under section 2(c)(2)(D) of the Railroad Unemployment Insurance Act by reason of the amendments made by subsection (a), to remain available until expended.

TITLE VI--MEDICARE AND OTHER HEALTH EXTENSIONS

Subtitle A--Medicare Extensions

[*601] Sec. 601. MEDICARE PHYSICIAN PAYMENT UPDATE.

(a) In General.--Section 1848(d) of the Social Security Act (42 U.S.C. 1395w-4(d)) is amended by adding at the end the following new paragraph:

"(14) Update for 2013.----

"(A) In general.--Subject to paragraphs (7)(B), (8)(B), (9)(B), (10)(B), (11)(B), (12)(B), and (13)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2013, the update to the single conversion factor for such year shall be zero percent.

"(B) No effect on computation of conversion factor for 2014 and subsequent years.--The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2014 and subsequent years as if subparagraph (A) had never applied."

(b) Advancement of Clinical Data Registries To Improve the Quality of Health Care.--

(1) In general.-- Section 1848(m)(3) of the Social Security Act (42 U.S.C. 1395w-4(m)(3)) is amended--

(A) by redesignating subparagraph (D) as subparagraph (F); and

(B) by inserting after subparagraph (C) the following new subparagraphs:

"(D) Satisfactory reporting measures through participation in a qualified clinical data registry.--For 2014 and subsequent years, the Secretary shall treat [**2346] an eligible professional as satisfactorily submitting data on quality measures under subparagraph (A) if, in lieu of reporting measures under subsection (k)(2)(C), the eligible professional

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is satisfactorily participating, as determined by the Secretary, in a qualified clinical data registry (as described in subparagraph (E)) for the year.

"(E) Qualified clinical data registry.--

"(i) In general.--The Secretary shall establish requirements for an entity to be considered a qualified clinical data registry. Such requirements shall include a requirement that the entity provide the Secretary with such information, at such times, and in such manner, as the Secretary determines necessary to carry out this subsection.

"(ii) Considerations.--In establishing the requirements under clause (i), the Secretary shall consider whether an entity--

"(I) has in place mechanisms for the transparency of data elements and specifications, risk models, and measures;

"(II) requires the submission of data from participants with respect to multiple payers;

"(III) provides timely performance reports to participants at the individual participant level; and

"(IV) supports quality improvement initiatives for participants.

"(iii) Measures.--With respect to measures used by a qualified clinical data registry--

"(I) sections 1890(b)(7) and 1890A(a) shall not apply; and

"(II) measures endorsed by the entity with a contract with the Secretary under section 1890(a) may be used.

"(iv) Consultation.--In carrying out this subparagraph, the Secretary shall consult with interested parties.

"(v) Determination.--The Secretary shall establish a process to determine whether or not an entity meets the requirements established under clause (i). Such process may involve one or both of the following:

"(I) A determination by the Secretary.

"(II) A designation by the Secretary of one or more independent organizations to make such determination."

(2) GAO study and report on incorporating registry data into the Medicare program in order to improve quality and efficiency.----

(A) Study.--The Comptroller General of the United States shall conduct a study on the potential of clinical data registries to improve the quality and efficiency of care in the Medicare program, including through payment system incentives. Such study shall include an analysis of the role of health information technology in facilitating clinical data registries and the use of data from such registries among private health insurers as well as other entities the Comptroller General determines appropriate.

[**2347] (B) Report.--Not later than November 15, 2013, the Comptroller General of the United States shall submit to Congress a report on the study conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

[*602] Sec. 602. WORK GEOGRAPHIC ADJUSTMENT.

Section 1848(e)(1)(E) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)(E)) is amended by striking "before January 1, 2013" and inserting "before January 1, 2014".

[*603] Sec. 603. PAYMENT FOR OUTPATIENT THERAPY SERVICES.

(a) Extension.--Section 1833(g) of the Social Security Act (42 U.S.C. 1395l(g)) is amended--

(1) in paragraph (5)(A), in the first sentence, by striking "December 31, 2012" and inserting "December 31, 2013"; and

(2) in paragraph (6)--

(A) by striking "December 31, 2012" and inserting "December 31, 2013"; and

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(B) by inserting "or 2013" after "during 2012".

(b) Application of Therapy Cap to Therapy Furnished as Part of Outpatient Critical Access Hospital Services.--Section 1833(g)(6) of the Social Security Act (42 U.S.C. 1395l(g)(6)), as amended by subsection (a), is amended--

(1) by striking "In applying" and inserting " (A) In applying"; and

(2) by adding at the end the following new subparagraph:

"(B) (i) With respect to outpatient therapy services furnished beginning on or after January 1, 2013, and before January 1, 2014, for which payment is made under section 1834(g), the Secretary shall count toward the uniform dollar limitations described in paragraphs (1) and (3) and the threshold described in paragraph (5)(C) the amount that would be payable under this part if such services were paid under section 1834(k)(1)(B) instead of being paid under section 1834(g).

"(ii) Nothing in clause (i) shall be construed as changing the method of payment for outpatient therapy services under section 1834(g)."

(c) Beneficiary Protections.--Section 1833(g)(5) of the Social Security Act (42 U.S.C. 1395l(g)(5)) is amended by adding at the end the following new subparagraph:

"(D) With respect to services furnished on or after January 1, 2013, where payment may not be made as a result of application of paragraphs (1) and (3), section 1879 shall apply in the same manner as such section applies to a denial that is made by reason of section 1862(a)(1)."

(d) <42 USC 1395l note> Implementation.--Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the provisions of, and the amendments made by, this section by program instruction or otherwise.

[*604] Sec. 604. AMBULANCE ADD-ON PAYMENTS.

(a) Ground Ambulance.--Section 1834(l)(13)(A) of the Social Security Act (42 U.S.C. 1395m(l)(13)(A)) is amended--

(1) in the matter preceding clause (i), by striking "January 1, 2013" and inserting "January 1, 2014"; and

[**2348] (2) in each of clauses (i) and (ii), by striking "January 1, 2013" and inserting "January 1, 2014" each place it appears.

(b) Air Ambulance.--Section 146(b)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), as amended by sections 3105(b) and 10311(b) of the Patient Protection and Affordable Care Act (Public Law 111-148), section 106(b) of the Medicare and Medicaid Extenders Act of 2010 (Public Law 111-309), section 306(b) of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112-78), and section 3007(b) of the Middle Class Tax Relief and Job Creation Act of <42 USC 1395m note> 2012 (Public Law 112-96), is amended by striking "December 31, 2012" and inserting "June 30, 2013".

(c) Super Rural Ambulance.--Section 1834(l)(12)(A) of the Social Security Act (42 U.S.C. 1395m(l)(12)(A)) is amended in the first sentence by striking "January 1, 2013" and inserting "January 1, 2014".

(d) Studies of Ambulance Costs.--

(1) In general.-- The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall conduct a study of each of the following:

(A) A study that analyzes data on existing cost reports for ambulance services furnished by hospitals and critical access hospitals, including variation by characteristics of such providers of services.

(B) A study of the feasibility of obtaining cost data on a periodic basis from all ambulance providers of services and suppliers for potential use in examining the appropriateness of the Medicare add-on payments for ground ambulance services furnished under the fee schedule under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)) and in preparing for future reform of such payment system.

(2) Components of one of the studies.-- In conducting the study under paragraph (1)(B), the Secretary shall--

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- (A) consult with industry on the design of such cost collection efforts;
- (B) explore use of cost surveys and cost reports to collect appropriate cost data and the periodicity of such cost data collection;
- (C) examine the feasibility of development of a standard cost reporting tool for providers of services and suppliers of ground ambulance services; and
- (D) examine the ability to furnish such cost data by various types of ambulance providers of services and suppliers, especially by rural and super-rural providers of services and suppliers.

(3) Reports.----

(A) Existing cost reports.--Not later than October 1, 2013, the Secretary shall submit a report to Congress on the study conducted under paragraph (1)(A), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(B) Obtaining cost data.--Not later than July 1, 2014, the Secretary shall submit a report to Congress on the study conducted under paragraph (1)(B), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

[*605] [**2349] Sec. 605. EXTENSION OF MEDICARE INPATIENT HOSPITAL PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS.

Section 1886(d)(12) of the Social Security Act (42 U.S.C. 1395ww(d)(12)) is amended--

- (1) in subparagraph (B), in the matter preceding clause (i), by striking "2013" and inserting "2014";
- (2) in subparagraph (C)(i), by striking "and 2012" each place it appears and inserting ", 2012, and 2013"; and
- (3) in subparagraph (D), by striking "and 2012" and inserting ", 2012, and 2013".

[*606] Sec. 606. EXTENSION OF THE MEDICARE-DEPENDENT HOSPITAL (MDH) PROGRAM.

(a) Extension of Payment Methodology.--Section 1886(d)(5)(G) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(G)) is amended--

- (1) in clause (i), by striking "October 1, 2012" and inserting "October 1, 2013"; and
- (2) in clause (ii)(II), by striking "October 1, 2012" and inserting "October 1, 2013".

(b) Conforming Amendments.--

(1) Extension of target amount.-- Section 1886(b)(3)(D) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(D)) is amended--

- (A) in the matter preceding clause (i), by striking "October 1, 2012" and inserting "October 1, 2013"; and
- (B) in clause (iv), by striking "through fiscal year 2012" and inserting "through fiscal year 2013".

(2) Permitting hospitals to decline reclassification.-- Section 13501(e)(2) of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 1395ww note) is amended by striking "through fiscal year 2012" and inserting "through fiscal year 2013".

[*607] Sec. 607. EXTENSION FOR SPECIALIZED MEDICARE ADVANTAGE PLANS FOR SPECIAL NEEDS INDIVIDUALS.

Section 1859(f)(1) of the Social Security Act (42 U.S.C. 1395w-28(f)(1)) is amended by striking "2014" and inserting "2015".

[*608] Sec. 608. EXTENSION OF MEDICARE REASONABLE COST CONTRACTS.

Section 1876(h)(5)(C)(ii) of the Social Security Act (42 U.S.C. 1395mm(h)(5)(C)(ii)) is amended, in the matter preceding subclause (I), by striking "January 1, 2013" and inserting "January 1, 2014".

[*609] Sec. 609. PERFORMANCE IMPROVEMENT.

(a) Extension of Funding for Contract With Consensus-based Entity Regarding Performance Measurement.--

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(1) In general.-- Section 1890(d) of the Social Security Act (42 U.S.C. 1395aaa(d)) is amended by striking "fiscal years 2009 through 2012" and inserting "fiscal years 2009 through 2013".

(2) Revision to duties.-- Section 1890(b) of the Social Security Act (42 U.S.C. 1395aaa(b)) is amended by striking paragraph (4).

(b) Providing Data for Performance Improvement in a Timely Manner.--

(1) In general.-- The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall [**2350] develop a strategy to provide data for performance improvement in a timely manner to applicable providers under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), including with respect to the provision of the following:

(A) Utilization data, including such data for items and services under parts A, B, and D of the Medicare program.

(B) Feedback on quality data submitted by the applicable provider under the Medicare program.

(2) Considerations.-- In developing the strategy under paragraph (1), the Secretary shall consider--

(A) the type of applicable provider receiving the data;

(B) the frequency of providing the data so that it can be the most relevant in improving provider performance;

(C) risk adjustment methods;

(D) presentation of the data in a meaningful manner and easily understandable format;

(E) with respect to utilization data, the provision of data that the Secretary determines would be useful to improve the performance of the type of applicable provider involved; and

(F) administrative costs involved with providing data.

(3) Submission and availability of initial strategy.-- Not later than 1 year after the date of the enactment of this Act, the Secretary shall--

(A) submit to the relevant committees of Congress the strategy described in paragraph (1); and

(B) post such strategy on the website of the Centers for Medicare & Medicaid Services.

(4) Strategy update.----

(A) Feedback from stakeholders.--The Secretary shall seek feedback from stakeholders on the initial strategy submitted under paragraph (3).

(B) Strategy update.--The Secretary shall--

(i) update the strategy described in paragraph (1) based on the feedback submitted under subparagraph (A); and

(ii) not later than 18 months after the date of the enactment of this Act--

(I) submit such updated strategy to the relevant committees of Congress; and

(II) post such updated strategy on the website of the Centers for Medicare & Medicaid Services.

(5) GAO study and report on private sector information sharing activities.----

(A) Study.--The Comptroller General of the United States (in this paragraph referred to as the "Comptroller General") shall conduct a study on information sharing activities. Such study shall include an analysis of--

(i) how private sector entities share timely data with hospitals, physicians, and other providers and what lessons can be learned from those activities;

(ii) how the Medicare program currently shares data with providers, including what data is provided and to which providers, and what divisions within the Centers for Medicare & Medicaid Services oversee those efforts;

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[**2351] (iii) what, if any, differences there are between the private sector and the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) in terms of sharing data; and

(iv) what, if any, barriers there are for the Centers for Medicare & Medicaid Services to sharing timely data with applicable providers and recommendations to eliminate or reduce such barriers.

(B) Report.--Not later than 8 months after the date of the enactment of this Act, the Comptroller General shall submit to the relevant committees of Congress a report containing the results of the study conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(6) Definitions.-- In this subsection:

(A) Applicable provider.--The term "applicable provider" means the following:

(i) A critical access hospital (as defined in section 1861(mm)(1) of the Social Security Act (42 U.S.C. 1395xx(mm)(1))).

(ii) A hospital (as defined in section 1861(e) of such Act (42 U.S.C. 1395x(e))).

(iii) A physician (as defined in section 1861(r) of such Act (42 U.S.C. 1395x(r))).

(iv) Any other provider the Secretary determines should receive the information described in subsection (a).

(B) Performance improvement.--The term "performance improvement" means improvements in quality, reducing per capita costs, and other criteria the Secretary determines appropriate.

[*610] Sec. 610. EXTENSION OF FUNDING OUTREACH AND ASSISTANCE FOR LOW-INCOME PROGRAMS.

(a) Additional Funding for State Health Insurance Programs.--Subsection (a)(1)(B) of section 119 of the Medicare Improvements for Patients and Providers Act of 2008 (42 U.S.C. 1395b-3 note), as amended by section 3306 of the Patient Protection and Affordable Care Act Public Law 111-148), is amended--

(1) in clause (i), by striking "and" at the end;

(2) in clause (ii), by striking the period at the end and inserting "; and"; and

(3) by inserting after clause (ii) the following new clause:

"(iii) for fiscal year 2013, of \$ 7,500,000."

(b) Additional Funding for Area Agencies on Aging.--Subsection (b)(1)(B) of such section 119, as so amended, is amended--

(1) in clause (i), by striking "and" at the end;

(2) in clause (ii), by striking the period at the end and inserting "; and"; and

(3) by inserting after clause (ii) the following new clause:

"(iii) for fiscal year 2013, of \$ 7,500,000."

(c) Additional Funding for Aging and Disability Resource Centers.--Subsection (c)(1)(B) of such section 119, as so amended, is amended--

(1) in clause (i), by striking "and" at the end;

[**2352] (2) in clause (ii), by striking the period at the end and inserting "; and"; and

(3) by inserting after clause (ii) the following new clause:

"(iii) for fiscal year 2013, of \$ 5,000,000."

(d) Additional Funding for Contract With the National Center for Benefits and Outreach Enrollment.--Subsection (d)(2) of such section 119, as so amended, is amended--

(1) in clause (i), by striking "and" at the end;

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(2) in clause (ii), by striking the period at the end and inserting "; and"; and

(3) by inserting after clause (ii) the following new clause:

"(iii) for fiscal year 2013, of \$ 5,000,000."

Subtitle B--Other Health Extensions

[*621] Sec. 621. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI) PROGRAM.

(a) Extension.--Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended by striking "2012" and inserting "2013".

(b) Extending Total Amount Available for Allocation.--Section 1933(g) of such Act (42 U.S.C. 1396u-3(g)) is amended--

(1) in paragraph (2)--

(A) in subparagraph (Q), by striking "and" after the semicolon;

(B) in subparagraph (R), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

"(S) for the period that begins on January 1, 2013, and ends on September 30, 2013, the total allocation amount is \$ 485,000,000; and

"(T) for the period that begins on October 1, 2013, and ends on December 31, 2013, the total allocation amount is \$ 300,000,000."; and

(2) in paragraph (3), in the matter preceding subparagraph (A), by striking "or (R)" and inserting "(R), or (T)".

[*622] Sec. 622. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA).

Sections 1902(e)(1)(B) and 1925(f) of the Social Security Act (42 U.S.C. 1396a(e)(1)(B), 1396r-6(f)) are each amended by striking "2012" and inserting "2013".

[*623] Sec. 623. EXTENSION OF MEDICAID AND CHIP EXPRESS LANE OPTION.

Section 1902(e)(13)(I) of the Social Security Act (42 U.S.C. 1396a(e)(13)(I)) is amended by striking "2013" and inserting "2014".

[*624] Sec. 624. EXTENSION OF FAMILY-TO-FAMILY HEALTH INFORMATION CENTERS.

Section 501(c)(1)(A)(iii) of the Social Security Act (42 U.S.C. 701(c)(1)(A)(iii)) is amended by striking "2012" and inserting "2013".

[*625] Sec. 625. EXTENSION OF SPECIAL DIABETES PROGRAM FOR TYPE I DIABETES AND FOR INDIANS.

(a) Special Diabetes Programs for Type I Diabetes.--Section 330B(b)(2)(C) of the Public Health Service Act (42 U.S.C. 254c-2(b)(2)(C)) is amended by striking "2013" and inserting "2014".

[**2353] (b) Special Diabetes Programs for Indians.--Section 330C(c)(2)(C) of the Public Health Service Act (42 U.S.C. 254c-3(c)(2)(C)) is amended by striking "2013" and inserting "2014".

Subtitle C--Other Health Provisions

[*631] Sec. 631. IPPS DOCUMENTATION AND CODING ADJUSTMENT FOR IMPLEMENTATION OF MS-DRGS.

(a) Rule of Construction and Clarification.--

(1) Rule of construction.-- Nothing in the amendments made by subsection (b) shall be construed as changing the existing authority under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) to make prospective documentation and coding adjustments to the standardized amounts under such section 1886(d) to correct for changes in the coding or classification of discharges that do not reflect real changes in case mix.

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(2) Clarification.-- Effective on the date of the enactment of this section, except as provided in section 7(b)(1)(B)(ii) of the TMA, Abstinence Education, and QI Programs Extension Act of 2007, as added by subsection (b)(2)(A)(ii)(IV) of this section, the Secretary of Health and Human Services shall not have authority to fully recoup past overpayments related to documentation and coding changes from fiscal years 2008 and 2009.

(b) Adjustment.--Section 7 of the TMA, Abstinence Education, and QI Programs Extension Act of 2007 (Public Law 110-90; 121 Stat. 986) is amended--

(1) in the heading, by striking "limitation" and all that follows through "adjustment" and inserting "documentation and coding adjustments"; and

(2) in subsection (b)--

(A) in paragraph (1)--

(i) in the matter before subparagraph (A)--

(I) by striking "or 2009" and inserting ", 2009, or 2010"; and

(II) by inserting "or otherwise applied for such year" after "applied under subsection (a)"; and

(ii) in subparagraph (B)--

(I) by inserting "(i)" after "(B)";

(II) by striking "or decrease";

(III) by striking the period at the end and inserting "; and"; and

(IV) by adding at the end the following:

"(ii) make an additional adjustment to the standardized amounts under such section 1886(d) based upon the Secretary's estimates for discharges occurring only during fiscal years 2014, 2015, 2016, and 2017 to fully offset \$ 11,000,000,000 (which represents the amount of the increase in aggregate payments from fiscal years 2008 through 2013 for which an adjustment was not previously applied)."; and

(B) in paragraph (3)--

(i) in subparagraph (A), by inserting before the semicolon the following: "or affecting the Secretary's authority under such paragraph to apply a prospective [**2354] adjustment to offset aggregate additional payments related to documentation and coding improvements made with respect to discharges during fiscal year 2010"; and

(ii) in subparagraph (B), by striking "and 2012" and inserting "2012, 2014, 2015, 2016, and 2017".

[*632] Sec. 632. REVISIONS TO THE MEDICARE ESRD BUNDLED PAYMENT SYSTEM TO REFLECT FINDINGS IN THE GAO REPORT.

(a) Adjustment to ESRD Bundled Payment Rate To Account for Changes in the Utilization of Certain Drugs and Biologicals.--Section 1881(b)(14) of the Social Security Act (42 U.S.C. 1395rr(b)(14)) is amended by adding at the end the following new subparagraph:

"(I) For services furnished on or after January 1, 2014, the Secretary shall, by comparing per patient utilization data from 2007 with such data from 2012, make reductions to the single payment that would otherwise apply under this paragraph for renal dialysis services to reflect the Secretary's estimate of the change in the utilization of drugs and biologicals described in clauses (ii), (iii), and (iv) of subparagraph (B) (other than oral-only ESRD-related drugs, as such term is used in the final rule promulgated by the Secretary in the Federal Register on August 12, 2010 (75 Fed. Reg. 49030)). In making reductions under the preceding sentence, the Secretary shall take into account the most recently available data on average sales prices and changes in prices for drugs and biological reflected in the ESRD market basket percentage increase factor under subparagraph (F)."

(b) <42 USC 1395rr note> Two-year Delay of Implementation of Oral-Only ESRD-Related Drugs in the ESRD Prospective Payment System; Monitoring.--

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(1) Delay.-- The Secretary of Health and Human Services may not implement the policy under section 413.174(f)(6) of title 42, Code of Federal Regulations (relating to oral-only ESRD-related drugs in the ESRD prospective payment system), prior to January 1, 2016.

(2) Monitoring.-- With respect to the implementation of oral-only ESRD-related drugs in the ESRD prospective payment system under subsection (b)(14) of section 1881 of the Social Security Act (42 U.S.C. 1395rr(b)(14)), the Secretary of Health and Human Services shall monitor the bone and mineral metabolism of individuals with end stage renal disease.

(c) <42 USC 1395rr note> Analysis of Case Mix Payment Adjustments.--By not later than January 1, 2016, the Secretary of Health and Human Services shall--

(1) conduct an analysis of the case mix payment adjustments being used under section 1881(b)(14)(D)(i) of the Social Security Act (42 U.S.C. 1395rr(b)(14)(D)(i)); and

(2) make appropriate revisions to such case mix payment adjustments.

(d) Updated GAO Report.--Not later than December 31, 2015, the Comptroller General of the United States shall submit to Congress a report that updates the report submitted to Congress under section 10336 of the Patient Protection and Affordable Care Act (Public Law 111-148; 124 Stat. 974). The updated report shall include an analysis of how the Secretary of Health and Human Services has addressed points raised in the report submitted under [**2355] such section 10336 with respect to the Secretary's preparations to implement payment for oral-only ESRD-related drugs in the bundled prospective payment system under section 1881(b)(14) of the Social Security Act (42 U.S.C. 1395rr(b)(14)).

[*633] Sec. 633. TREATMENT OF MULTIPLE SERVICE PAYMENT POLICIES FOR THERAPY SERVICES.

(a) Services Furnished by Physicians and Certain Other Providers.--Section 1848(b)(7) of the Social Security Act (42 U.S.C. 1395w-4(b)(7)) is amended--

(1) by striking "2011," and inserting "2011, and before April 1, 2013,"; and

(2) by adding at the end the following new sentence: "In the case of such services furnished on or after April 1, 2013, and for which payment is made under such fee schedules, instead of the 25 percent multiple procedure payment reduction specified in such final rule, the reduction percentage shall be 50 percent."

(b) Services Furnished by Other Providers.--Section 1834(k) of the Social Security Act (42 U.S.C. 1395m(k)) is amended by adding at the end the following new paragraph:

"(7) Adjustment in discount for certain multiple therapy services.-- In the case of therapy services furnished on or after April 1, 2013, and for which payment is made under this subsection pursuant to the applicable fee schedule amount (as defined in paragraph (3)), instead of the 25 percent multiple procedure payment reduction specified in the final rule published by the Secretary in the Federal Register on November 29, 2010, the reduction percentage shall be 50 percent."

[*634] Sec. 634. PAYMENT FOR CERTAIN RADIOLOGY SERVICES FURNISHED UNDER THE MEDICARE HOSPITAL OUTPATIENT DEPARTMENT PROSPECTIVE PAYMENT SYSTEM.

Section 1833(t)(16) of the Social Security Act (42 U.S.C. 1395l(t)(16)) is amended by adding at the end the following new subparagraph:

"(D) Special payment rule.--

"(i) In general.--In the case of covered OPD services furnished on or after April 1, 2013, in a hospital described in clause (ii), if--

"(I) the payment rate that would otherwise apply under this subsection for stereotactic radiosurgery, complete course of treatment of cranial lesion(s) consisting of 1 session that is multi-source Cobalt 60 based (identified as of January 1, 2013, by HCPCS code 77371 (and any succeeding code) and reimbursed as of such date under APC 0127 (and any succeeding classification group)); exceeds

"(II) the payment rate that would otherwise apply under this subsection for linear accelerator based stereotactic radiosurgery, complete course of therapy in one session (identified as of January 1, 2013, by HCPCS code G0173

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(and any succeeding code) and reimbursed as of such date under APC 0067 (and any succeeding classification group)), [**2356] the payment rate for the service described in subclause (I) shall be reduced to an amount equal to the payment rate for the service described in subclause (II).

"(ii) Hospital described.--A hospital described in this clause is a hospital that is not--

"(I) located in a rural area (as defined in section 1886(d)(2)(D));

"(II) classified as a rural referral center under section 1886(d)(5)(C); or

"(III) a sole community hospital (as defined in section 1886(d)(5)(D)(iii)).

"(iii) Not budget neutral.--In making any budget neutrality adjustments under this subsection for 2013 (with respect to covered OPD services furnished on or after April 1, 2013, and before January 1, 2014) or a subsequent year, the Secretary shall not take into account the reduced expenditures that result from the application of this subparagraph."

[*635] Sec. 635. ADJUSTMENT OF EQUIPMENT UTILIZATION RATE FOR ADVANCED IMAGING SERVICES.

Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended--

(1) in subsection (b)(4)(C)--

(A) by striking "and subsequent years" and inserting ", 2012, and 2013"; and

(B) by adding at the end the following new sentence: "With respect to fee schedules established for 2014 and subsequent years, in such methodology, the Secretary shall use a 90 percent utilization rate."; and

(2) in subsection (c)(2)(B)(v)(III), by striking "change in the utilization rate applicable to 2011, as described in" and inserting "changes in the utilization rate applicable to 2011 and 2014, as described in the first and second sentence, respectively, of".

[*636] Sec. 636. MEDICARE PAYMENT OF COMPETITIVE PRICES FOR DIABETIC SUPPLIES AND ELIMINATION OF OVERPAYMENT FOR DIABETIC SUPPLIES.

(a) Application of Competitive Bidding Prices for Diabetic Supplies.--Section 1834(a)(1) of the Social Security Act (42 U.S.C. 1395m(a)(1)) is amended--

(1) in subparagraph (F), in the matter preceding clause (i), by striking "subparagraph (G)" and inserting "subparagraphs (G) and (H)"; and

(2) by adding at the end the following new subparagraph:

"(H) Diabetic supplies.--

"(i) In general.--On or after the date described in clause (ii), the payment amount under this part for diabetic supplies, including testing strips, that are non-mail order items (as defined by the Secretary) shall be equal to the single payment amounts established under the national mail order competition for diabetic supplies under section 1847.

"(ii) Date described.--The date described in this clause is the date of the implementation of the single payment amounts under the national mail order competition for diabetic supplies under section 1847."

[**2357] (b) Overpayment Elimination for Diabetic Supplies.--Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

"(22) Special payment rule for diabetic supplies.-- Notwithstanding the preceding provisions of this subsection, for purposes of determining the payment amount under this subsection for diabetic supplies furnished on or after the first day of the calendar quarter during 2013 that is at least 30 days after the date of the enactment of this paragraph and before the date described in paragraph (1)(H)(ii), the Secretary shall recalculate and apply the covered item update under paragraph (14) as if subparagraph (J)(i) of such paragraph was amended by striking 'but only if furnished through mail order'."

[*637] Sec. 637. MEDICARE PAYMENT ADJUSTMENT FOR NON-EMERGENCY AMBULANCE TRANSPORTS FOR ESRD BENEFICIARIES.

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Section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)) is amended by adding at the end the following new paragraph:

"(15) Payment adjustment for non-emergency ambulance transports for ESRD beneficiaries.-- The fee schedule amount otherwise applicable under the preceding provisions of this subsection shall be reduced by 10 percent for ambulance services furnished on or after October 1, 2013, consisting of non-emergency basic life support services involving transport of an individual with end-stage renal disease for renal dialysis services (as described in section 1881(b)(14)(B)) furnished other than on an emergency basis by a provider of services or a renal dialysis facility."

[*638] Sec. 638. REMOVING OBSTACLES TO COLLECTION OF OVERPAYMENTS.

(a) In General.--The last sentence of subsections (b) and (c) of section 1870 of the Social Security Act (42 U.S.C. 1395gg) are each amended--

(1) by striking "third year" and inserting "fifth year"; and

(2) by striking "three-year" and inserting "five-year".

(b) <42 USC 1395gg note> Effective Date.--The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

[*639] Sec. 639. MEDICARE ADVANTAGE CODING INTENSITY ADJUSTMENT.

Section 1853(a)(1)(C)(ii)(III) of the Social Security Act (42 U.S.C. 1395w-23(a)(1)(C)(ii)(III)) is amended--

(1) by striking "1.3 percentage points" and inserting "1.5 percentage points"; and

(2) by striking "5.7 percent" and inserting "5.9 percent".

[*640] Sec. 640. ELIMINATION OF ALL FUNDING FOR THE MEDICARE IMPROVEMENT FUND.

Section 1898(b)(1) of the Social Security Act (42 U.S.C. 1395iii(b)(1)) is amended by striking subparagraphs (A), (B), and (C) and inserting the following new subparagraphs:

"(A) fiscal year 2014, \$ 0; and

"(B) fiscal year 2015, \$ 0."

[*641] Sec. 641. REBASING OF STATE DSH ALLOTMENTS.

Section 1923(f)(8) of the Social Security Act (42 U.S.C. 1396r-4(f)(8)) is amended to read as follows:

[**2358] "(8) Special rules for calculating DSH allotments for certain fiscal years.----

"(A) Fiscal year 2021.--Only with respect to fiscal year 2021, the DSH allotment for a State, in lieu of the amount determined under paragraph (3) for the State for that year, shall be equal to the DSH allotment for the State as reduced under paragraph (7) for fiscal year 2020, increased, subject to subparagraphs (B) and (C) of paragraph (3), and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for fiscal year 2020.

"(B) Fiscal year 2022.--Only with respect to fiscal year 2022, the DSH allotment for a State, in lieu of the amount determined under paragraph (3) for the State for that year, shall be equal to the DSH allotment for the State for fiscal year 2021, as determined under subparagraph (A), increased, subject to subparagraphs (B) and (C) of paragraph (3), and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for fiscal year 2021.

"(C) Subsequent fiscal years.--The DSH allotment for a State for fiscal years after fiscal year 2022 shall be calculated under paragraph (3) without regard to this paragraph and paragraph (7)."

[*642] Sec. 642. REPEAL OF CLASS PROGRAM.

(a) <42 USC 30011300119> Repeal.--Title XXXII of the Public Health Service Act (42 U.S.C. 30011 et seq.; relating to the CLASS program) is repealed.

(b) Conforming Changes.--

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(1) Title VIII of the Patient Protection and Affordable Care <42 USC 201 note, 300ll notes> Act (Public Law 111-148; 124 Stat. 119, 846-847) is repealed.

(2) Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended--

(A) by striking paragraphs (81) and (82);

(B) in paragraph (80), by inserting "and" at the end; and

(C) by redesignating paragraph (83) as paragraph (81).

(3) Paragraphs (2) and (3) of section 6021(d) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396p note) are amended to read as such paragraphs were in effect on the day before the date of the enactment of section 8002(d) of the Patient Protection and Affordable Care Act (Public Law 111-148). Of the funds appropriated by paragraph (3) of such section 6021(d), as amended by the Patient Protection and Affordable Care Act, the unobligated balance is rescinded.

[*643] Sec. 643. COMMISSION ON LONG-TERM CARE.

(a) Establishment.--There is established a commission to be known as the Commission on Long-Term Care (referred to in this section as the "Commission").

(b) Duties.--

(1) In general.-- The Commission shall develop a plan for the establishment, implementation, and financing of a comprehensive, coordinated, and high-quality system that ensures the availability of long-term services and supports for individuals in need of such services and supports, including elderly individuals, individuals with substantial cognitive or functional limitations, other individuals who require assistance to perform [**2359] activities of daily living, and individuals desiring to plan for future long-term care needs.

(2) Existing health care programs.-- For purposes of developing the plan described in paragraph (1), the Commission shall provide recommendations for--

(A) addressing the interaction of a long-term services and support system with existing programs for long-term services and supports, including the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), and private long-term care insurance;

(B) improvements to such health care programs that are necessary for ensuring the availability of long-term services and supports; and

(C) issues related to workers who provide long-term services and supports, including--

(i) whether the number of such workers is adequate to provide long-term services and supports to individuals with long-term care needs;

(ii) workforce development necessary to deliver high-quality services to such individuals;

(iii) development of entities that have the capacity to serve as employers and fiscal agents for workers who provide long-term services and supports in the homes of such individuals; and

(iv) addressing gaps in Federal and State infrastructure that prevent delivery of high-quality long term services and supports to such individuals.

(3) Additional considerations.-- For purposes of developing the plan described in paragraph (1), the Commission shall take into account projected demographic changes and trends in the population of the United States, as well as the potential for development of new technologies, delivery systems, or other mechanisms to improve the availability and quality of long-term services and supports.

(4) Consultation.-- For purposes of developing the plan described in paragraph (1), the Commission shall consult with the Medicare Payment Advisory Commission, the Medicaid and CHIP Payment and Access Commission, the National Council on Disability, and relevant consumer groups.

(c) Membership.--

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(1) In general.-- The Commission shall be composed of 15 members, to be appointed not later than 30 days after the date of enactment of this Act, as follows:

- (A) The President of the United States shall appoint 3 members.
- (B) The majority leader of the Senate shall appoint 3 members.
- (C) The minority leader of the Senate shall appoint 3 members.
- (D) The Speaker of the House of Representatives shall appoint 3 members.
- (E) The minority leader of the House of Representatives shall appoint 3 members.

(2) Representation.-- The membership of the Commission shall include individuals who--

- [**2360] (A) represent the interests of--
- (i) consumers of long-term services and supports and related insurance products, as well as their representatives;
 - (ii) older adults;
 - (iii) individuals with cognitive or functional limitations;
 - (iv) family caregivers for individuals described in clause (i), (ii), or (iii);
 - (v) the health care workforce who directly provide long-term services and supports;
 - (vi) private long-term care insurance providers;
 - (vii) employers;
 - (viii) State insurance departments; and
 - (ix) State Medicaid agencies;
- (B) have demonstrated experience in dealing with issues related to long-term services and supports, health care policy, and public and private insurance; and
- (C) represent the health care interests and needs of a variety of geographic areas and demographic groups.

(3) Chairman and vice-chairman.-- The Commission shall elect a chairman and vice chairman from among its members.

(4) Vacancies.-- Any vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made and shall not affect the power of the remaining members to execute the duties of the Commission.

(5) Quorum.-- A quorum shall consist of 8 members of the Commission, except that 4 members may conduct a hearing under subsection (e)(1).

(6) Meetings.-- The Commission shall meet at the call of its chairman or a majority of its members.

(7) Compensation and reimbursement of expenses.---

(A) In general.--To enable the Commission to exercise its powers, functions, and duties, there are authorized to be disbursed by the Senate the actual and necessary expenses of the Commission approved by the chairman and vice chairman, subject to subparagraph (B) and the rules and regulations of the Senate.

(B) Members.--Members of the Commission are not entitled to receive compensation for service on the Commission. Members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Commission.

(d) Staff and Ethical Standards.--

(1) Staff.-- The chairman and vice chairman of the Commission may jointly appoint and fix the compensation of staff as they deem necessary, within the guidelines for employees of the Senate and following all applicable rules and employment requirements of the Senate.

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(2) Ethical standards.-- Members of the Commission who serve in the House of Representatives shall be governed by the ethics rules and requirements of the House. Members of the Senate who serve on the Commission and staff of the Commission shall comply with the ethics rules of the Senate.

(e) Powers.--

(1) Hearings and other activities.-- For the purpose of carrying out its duties, the Commission may hold such hearings [**2361] and undertake such other activities as the Commission determines to be necessary to carry out its duties.

(2) Studies by general accounting office.-- Upon the request of the Commission, the Comptroller General of the United States shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties.

(3) Cost estimates by congressional budget office.-- Upon the request of the Commission, the Director of the Congressional Budget Office shall provide to the Commission such cost estimates as the Commission determines to be necessary to carry out its duties.

(4) Detail of federal employees.-- Upon the request of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(5) Technical assistance.-- Upon the request of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

(6) Use of mails.-- The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

(7) Obtaining information.-- The Commission may secure directly from any Federal agency information necessary to enable it to carry out its duties, if the information may be disclosed under section 552 of title 5, United States Code. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

(8) Administrative support services.-- Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(f) Commission Consideration.--

(1) Approval of report and legislative language.----

(A) In general.--Not later than 6 months after appointment of the members of the Commission (as described in subsection (c)(1)), the Commission shall vote on a comprehensive and detailed report based on the long-term care plan described in subsection (b)(1) that contains any recommendations or proposals for legislative or administrative action as the Commission deems appropriate, including proposed legislative language to carry out the recommendations or proposals (referred to in this section as the "Commission bill").

(B) Approval by majority of members.--The Commission bill shall require the approval of a majority of the members of the Commission.

(2) Transmission of commission bill.----

(A) In general.--If the Commission bill is approved by the Commission pursuant to paragraph (1), then not later than 10 days after such approval, the Commission [**2362] shall submit the Commission bill to the President, the Vice President, the Speaker of the House of Representatives, and the majority and minority Leaders of each House on Congress.

(B) Commission bill to be made public.--Upon the approval or disapproval of the Commission bill pursuant to paragraph (1), the Commission shall promptly make such proposal, and a record of the vote, available to the public.

(g) Termination.--The Commission shall terminate 30 days after the vote described in subsection (f)(1).

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(h) Consideration of Commission Recommendations.--If approved by the majority required by subsection (f)(1), the Commission bill that has been submitted pursuant to subsection (f)(2)(A) shall be introduced in the Senate (by request) on the next day on which the Senate is in session by the majority leader of the Senate or by a Member of the Senate designated by the majority leader of the Senate and shall be introduced in the House of Representatives (by request) on the next legislative day by the majority leader of the House or by a member of the House designated by the majority leader of the House.

[*644] Sec. 644. CONSUMER OPERATED AND ORIENTED PLAN PROGRAM CONTINGENCY FUND.

(a) <42 USC 18042 note> Establishment.--The Secretary of Health and Human Services shall establish a fund to be used to provide assistance and oversight to qualified nonprofit health insurance issuers that have been awarded loans or grants under section 1322 of the Patient Protection and Affordable Care Act (42 U.S.C. 18042) prior to the date of enactment of this Act.

(b) Transfer and Rescission.--

(1) Transfer.-- From the unobligated balance of funds appropriated under section 1322(g) of the Patient Protection and Affordable Care Act (42 U.S.C. 18042(g)), 10 percent of such sums are hereby transferred to the fund established under subsection (a) to remain available until expended.

(2) Rescission.-- Except as provided for in paragraph (1), amounts appropriated under section 1322(g) of the Patient Protection and Affordable Care Act (42 U.S.C. 18042(g)) that are unobligated as of the date of enactment of this Act are rescinded.

TITLE VII--EXTENSION OF AGRICULTURAL PROGRAMS

[*701] Sec. 701. <7 USC 8701 note> 1-YEAR EXTENSION OF AGRICULTURAL PROGRAMS.

(a) Extension.--Except as otherwise provided in this section and amendments made by this section and notwithstanding any other provision of law, the authorities provided by each provision of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 1651) and each amendment made by that Act (and for mandatory programs at such funding levels), as in effect on September 30, 2012, shall continue, and the Secretary of Agriculture shall carry out the authorities, until the later of--

(1) September 30, 2013; or

[**2363] (2) the date specified in the provision of that Act or amendment made by that Act.

(b) Commodity Programs.--

(1) In general.-- The terms and conditions applicable to a covered commodity or loan commodity (as those terms are defined in section 1001 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8702)) or to peanuts, sugarcane, or sugar beets for the 2012 crop year pursuant to title I of that Act (7 U.S.C. 8702 et seq.) and each amendment made by that title shall be applicable to the 2013 crop year for that covered commodity, loan commodity, peanuts, sugarcane, or sugar beets.

(2) Milk.----

(A) In general.--Notwithstanding subsection (a), the Secretary of Agriculture shall carry out the dairy product price support program under section 1501 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8771) through December 31, 2013.

(B) Milk income loss contract program.--Section 1506 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8773) is amended by striking "2012" each place <7 USC 8773 note> it appears in subsections (c)(3), (d)(1), (d)(2), (e)(2)(A), (g), and (h)(1) and inserting "2013".

(3) Suspension of permanent price support authorities.-- The provisions of law specified in subsections (a) through (c) of section 1602 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8782) shall be suspended--

(A) for the 2013 crop or production year of a covered commodity (as that term is defined in section 1001 of that Act (7 U.S.C. 8702)), peanuts, sugarcane, and sugar, as appropriate; and

(B) in the case of milk, through December 31, 2013.

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(c) Conservation Programs.--

(1) Conservation reserve.-- Section 1231(d) of the Food Security Act of 1985 (16 U.S.C. 3831(d)) is amended in the second sentence by striking "and 2012" and inserting "2012, and 2013".

(2) Voluntary public access.-- Section 1240R of the Food Security Act of 1985 (16 U.S.C. 3839bb-5) is amended by striking subsection (f) and inserting the following:

"(f) Funding.--

"(1) Fiscal years 2009 through 2012.-- Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section, to the maximum extent practicable, \$ 50,000,000 for the period of fiscal years 2009 through 2012.

"(2) Authorization of appropriations.-- There is authorized to be appropriated to carry out this section \$ 10,000,000 for fiscal year 2013."

(d) Supplemental Nutrition Assistance Program.--

(1) Employment and training program.-- Section 16(h)(1)(A) of the Food and Nutrition Act of 2008 (7 U.S.C. 2025(h)(1)(A)) is amended by inserting ", except that for fiscal year 2013, the amount shall be \$ 79,000,000" before the period at the end.

(2) Nutrition education.-- Section 28(d)(1) of the Food and Nutrition Act of 2008 (7 U.S.C. 2036a(d)(1)) is amended--

(A) in subparagraph (A), by striking "and" after the semicolon at the end; and

[**2364] (B) by striking subparagraph (B) and inserting the following:

"(B) for fiscal year 2012, \$ 388,000,000;

"(C) for fiscal year 2013, \$ 285,000,000;

"(D) for fiscal year 2014, \$ 401,000,000;

"(E) for fiscal year 2015, \$ 407,000,000; and

"(F) for fiscal year 2016 and each subsequent fiscal year, the applicable amount during the preceding fiscal year, as adjusted to reflect any increases for the 12-month period ending the preceding June 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor."

(e) Research Programs.--

(1) Organic agriculture research and extension initiative.-- Section 1672B(f) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5925b(f)) is amended--

(A) in the heading of paragraph (1), by striking "In general" and inserting "Mandatory funding for fiscal years 2009 through 2012";

(B) in the heading of paragraph (2), by striking "Additional funding" and inserting "Discretionary funding for fiscal years 2009 through 2012"; and

(C) by adding at the end the following:

"(3) Fiscal year 2013.-- There is authorized to be appropriated to carry out this section \$ 25,000,000 for fiscal year 2013."

(2) Specialty crop research initiative.-- Section 412(h) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7632(h)) is amended--

(A) in the heading of paragraph (1), by striking "In general" and inserting "Mandatory funding for fiscal years 2008 through 2012";

(B) in the heading of paragraph (2), by inserting "for fiscal years 2008 through 2012" after "Appropriations";

(C) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

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(D) by inserting after paragraph (2) the following:

"(3) Fiscal year 2013.-- There is authorized to be appropriated to carry out this section \$ 100,000,000 for fiscal year 2013."

(3) Beginning farmer and rancher development program.-- Section 7405(h) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3319f(h)) is amended--

(A) in the heading of paragraph (1), by striking "In general" and inserting "Mandatory funding for fiscal years 2009 through 2012";

(B) in the heading of paragraph (2), by inserting "for fiscal years 2008 through 2012" after "Appropriations"; and

(C) by adding at the end the following:

"(3) Fiscal year 2013.-- There is authorized to be appropriated to carry out this section \$ 30,000,000 for fiscal year 2013."

(f) Energy Programs.--

(1) Biobased markets program.-- Section 9002(h) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8102(h)) [**2365] is amended in paragraph (2) by striking "2012" and inserting "2013".

(2) Biorefinery assistance.-- Section 9003(h)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8103(h)(2)) is amended by striking "2012" and inserting "2013".

(3) Repowering assistance.-- Section 9004(d)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8104(d)(2)) is amended by striking "2012" and inserting "2013".

(4) Bioenergy program for advanced biofuels.-- Section 9005(g)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8105(g)(2)) is amended by striking "2012" and inserting "2013".

(5) Biodiesel fuel education program.-- Section 9006 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106) is amended by striking subsection (d) and inserting the following:

"(d) Funding.--

"(1) Fiscal years 2009 through 2012.-- Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section \$ 1,000,000 for each of fiscal years 2008 through 2012.

"(2) Authorization of appropriations.-- There is authorized to be appropriated to carry out this section \$ 1,000,000 for fiscal year 2013."

(6) Rural energy for America program.-- Section 9007(g)(3) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8107(g)(3)) is amended by striking "2012" and inserting "2013".

(7) Biomass research and development.-- Section 9008(h)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8108(h)(2)) is amended by striking "2012" and inserting "2013".

(8) Rural energy self-sufficiency initiative.-- Section 9009(d) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8109(d)) is amended by striking "2012" and inserting "2013".

(9) Feedstock flexibility program for bioenergy producers.-- Section 9010(b) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8110(b)) is amended in paragraphs (1)(A) and (2)(A) by striking "2012" each place it appears and inserting "2013".

(10) Biomass crop assistance program.-- Section 9011(f) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8111(f)) is amended--

(A) by striking " (f) Funding.--Of the funds" and inserting " (f) Funding.--

"(1) Fiscal years 2008 through 2012.-- Of the funds"; and

(B) adding at the end the following:

"(2) Fiscal year 2013.----

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"(A) In general.--There is authorized to be appropriated to carry out this section \$ 20,000,000 for fiscal year 2013.

"(B) Multiyear contracts.--For each multiyear contract entered into by the Secretary during a fiscal year under this paragraph, the Secretary shall ensure that sufficient funds are obligated from the amounts appropriated [**2366] for that fiscal year to fully cover all payments required by the contract for all years of the contract."

(11) Forest biomass for energy.-- Section 9012(d) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8112(d)) is amended by striking "2012" and inserting "2013".

(12) Community wood energy program.-- Section 9013(e) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8113(e)) is amended by striking "2012" and inserting "2013".

(g) Horticulture and Organic Agriculture Programs.--

(1) Farmers market promotion program.-- Section 6(e) of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3005(e)) is amended--

(A) in the heading of paragraph (1), by striking "In general" and inserting "Fiscal years 2008 through 2012";

(B) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(C) by inserting after paragraph (1) the following:

"(2) Fiscal year 2013.-- There is authorized to be appropriated to carry out this section \$ 10,000,000 for fiscal year 2013.";

(D) in paragraph (3) (as so redesignated), by striking "paragraph (1)" and inserting "paragraph (1) or (2)"; and

(E) in paragraph (5) (as so redesignated), by striking "paragraph (2)" and inserting "paragraph (3)".

(2) National clean plant network.-- Section 10202(e) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7761(e)) is amended--

(A) by striking "Of the funds" and inserting the following:

"(1) Fiscal years 2009 through 2012.-- Of the funds"; and

(B) by adding at the end the following:

"(2) Fiscal year 2013.-- There is authorized to be appropriated to carry out the Program \$ 5,000,000 for fiscal year 2013.".

(3) National organic certification cost-share program.-- Section 10606 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 6523) is amended--

(A) in subsection (a), by striking "Of funds of the Commodity Credit Corporation, the Secretary of Agriculture (acting through the Agricultural Marketing Service) shall use \$ 22,000,000 for fiscal year 2008, to remain available until expended, to" and inserting "The Secretary of Agriculture (acting through the Agricultural Marketing Service) shall"; and

(B) by adding at the end the following:

"(d) Funding.--

"(1) Mandatory funding for fiscal years 2008 through 2012.-- Of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this section \$ 22,000,000 for the period of fiscal years 2008 through 2012.

"(2) Fiscal year 2013.-- There is authorized to be appropriated to carry out this section \$ 22,000,000 for fiscal year 2013, to remain available until expended.".

(4) Organic production and market data initiatives.-- Section 7407(d) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 5925c(d)) is amended--

[**2367] (A) in the heading of paragraph (1), by striking "In general" and inserting "Mandatory funding through fiscal year 2012";

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(B) in the heading of paragraph (2), by striking "Additional funding" and inserting "Discretionary funding for fiscal years 2008 through 2012"; and

(C) by adding at the end the following:

"(3) Fiscal year 2013.-- There is authorized to be appropriated to carry out this section \$ 5,000,000, to remain available until expended."

(h) Outreach and Technical Assistance for Socially Disadvantaged Farmers or Ranchers.--Section 2501(a)(4) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)(4)) is amended--

(1) in the heading of subparagraph (A), by striking "In general" and inserting "Fiscal years 2009 through 2012";

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(3) by inserting after subparagraph (A) the following:

"(B) Fiscal year 2013.--There is authorized to be appropriated to carry out this section \$ 20,000,000 for fiscal year 2013.";

(4) in subparagraph (C) (as so redesignated), by striking "subparagraph (A)" and inserting "subparagraph (A) or (B)"; and

(5) in subparagraph (D) (as so redesignated), by striking "subparagraph (A)" and inserting "subparagraph (A) or (B)".

(i) Exceptions.--

(1) In general.-- Subsection (a) does not apply with respect to mandatory funding provided by programs authorized by provisions of law amended by subsections (d) through (h).

(2) Conservation.-- Subsection (a) does not apply with respect to the programs specified in paragraphs (3)(B), (4), (6), and (7) of section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)), relating to the conservation stewardship program, farmland protection program, environmental quality incentives program, and wildlife habitat incentives program, for which program authority was extended through fiscal year 2014 by section 716 of Public Law 112-55 (125 Stat. 582).

(3) Trade.-- Subsection (a) does not apply with respect to the following provisions of law:

(A) Section 3206 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1726c) relating to the use of Commodity Credit Corporation funds to support local and regional food aid procurement projects.

(B) Section 3107(l)(1) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o-1(l)(1)) relating to the use of Commodity Credit Corporation funds to carry out the McGovern-Dole International Food for Education and Child Nutrition Program.

(4) Survey of foods purchased by school food authorities.-- Subsection (a) does not apply with respect to section 4307 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 1893) relating to the use of Commodity Credit Corporation funds for a survey and report regarding foods purchased by school food authorities.

[**2368] (5) Rural development.-- Subsection (a) does not apply with respect to the following provisions of law:

(A) Section 379E(d)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008s(d)(1)), relating to funding of the rural microentrepreneur assistance program.

(B) Section 6029 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 1955) relating to funding of pending rural development loan and grant applications.

(C) Section 231(b)(7)(A) of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1632a(b)(7)(A)), relating to funding of value-added agricultural market development program grants.

(D) Section 375(e)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j(e)(6)(B)) relating to the use of Commodity Credit Corporation funds for the National Sheep Industry Improvement Center.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(6) Market loss assistance for asparagus producers.-- Subsection (a) does not apply with respect to section 10404(d) of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 2112).

(7) Supplemental agricultural disaster assistance.-- Subsection (a) does not apply with respect to section 531 of the Federal Crop Insurance Act (7 U.S.C. 1531) and title IX of the Trade Act of 1974 (19 U.S.C. 2497 et seq.) relating to the provision of supplemental agricultural disaster assistance.

(8) Pigford claims.-- Subsection (a) does not apply with respect to section 14012 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 2209) relating to determination on the merits of Pigford claims.

(9) Heartland, habitat, harvest, and horticulture act of 2008.-- Subsection (a) does not apply with respect to title XV of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 2246), and amendments made by that title, relating to the provision of supplemental agricultural disaster assistance under title IX of the Trade Act of 1974 (19 U.S.C. 2497 et seq.), certain revenue and tax provisions, and certain trade benefits and other matters.

(j) Effective Date.--Except as otherwise provided in this section, this section and the amendments made by this section take effect on the earlier of--

- (1) the date of the enactment of this Act; or
- (2) September 30, 2012.

[*702] Sec. 702. SUPPLEMENTAL AGRICULTURAL DISASTER ASSISTANCE.

(a) In General.--Section 531 of the Federal Crop Insurance Act (7 U.S.C. 1531) is amended--

(1) in subsection (a)(5)--

(A) in the matter preceding clause (i), by striking the first "under"; and

(B) by redesignating clauses (i) through (iii) as subparagraphs (A), (B), and (C), respectively, and indenting appropriately;

(2) in subsection (c)--

(A) in paragraph (1), by striking "use such sums as are necessary from the Trust Fund to"; and

[**2369] (B) by adding at the end the following:

"(3) Authorization of appropriations.-- There is authorized to be appropriated to carry out this subsection \$ 80,000,000 for each of fiscal years 2012 and 2013.";

(3) in subsection (d)--

(A) in paragraph (2), by striking "use such sums as are necessary from the Trust Fund to"; and

(B) by adding at the end the following:

"(7) Authorization of appropriations.-- There is authorized to be appropriated to carry out this subsection \$ 400,000,000 for each of fiscal years 2012 and 2013.";

(4) in subsection (e)--

(A) in paragraph (1), by striking "use up to \$ 50,000,000 per year from the Trust Fund to"; and

(B) by adding at the end the following:

"(4) Authorization of appropriations.-- There is authorized to be appropriated to carry out this subsection \$ 50,000,000 for each of fiscal years 2012 and 2013.";

(5) in subsection (f)--

(A) in paragraph (2)(A), by striking "use such sums as are necessary from the Trust Fund to"; and

(B) by adding at the end the following:

"(5) Authorization of appropriations.-- There is authorized to be appropriated to carry out this subsection \$ 20,000,000 for each of fiscal years 2012 and 2013."; and

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(6) in subsection (i), by inserting "or, in the case of subsections (c) through (f), September 30, 2013" after "2011,".

(b) <7 USC 1531 note> Effective Date.--The amendments made by subsection (a) shall take effect on October 1, 2012.

TITLE VIII--MISCELLANEOUS PROVISIONS

[*801] Sec. 801. STRATEGIC DELIVERY SYSTEMS.

(a) In General.--Paragraph 3 of section 495(c) of title 10, United States Code,, as added by section 1035 of the National Defense Authorization Act for Fiscal Year 2013, is amended--

(1) by striking "that" before "the Russian Federation" and inserting "whether"; and

(2) by inserting "strategic" before "arms control obligations".

(b) <10 USC 495 note> Effective Date.--The amendments made by subsection (a) shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2013.

[*802] Sec. 802. NO COST OF LIVING ADJUSTMENT IN PAY OF MEMBERS OF CONGRESS.

Notwithstanding any other provision of law, no adjustment <2 USC 31 note> shall be made under section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31) (relating to cost of living adjustments for Members of Congress) during fiscal year 2013.

[**2370] TITLE IX--BUDGET PROVISIONS

Subtitle A--Modifications of Sequestration

[*901] Sec. 901. TREATMENT OF SEQUESTER.

(a) <2 USC 901a> Adjustment.--Section 251A(3) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended--

(1) in subparagraph (C), by striking "and" after the semicolon;

(2) in subparagraph (D), by striking the period and inserting " ; and"; and

(3) by inserting at the end the following:

"(E) for fiscal year 2013, reducing the amount calculated under subparagraphs (A) through (D) by \$ 24,000,000,000."

(b) After Session Sequester.--Notwithstanding any other provision of law, the fiscal year 2013 spending reductions required by section 251(a)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be evaluated and implemented on March 27, 2013.

(c) Postponement of Budget Control Act Sequester for Fiscal Year 2013.--Section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended--

(1) in paragraph (4), by striking "January 2, 2013" and inserting "March 1, 2013"; and

(2) in paragraph (7)(A), by striking "January 2, 2013" and inserting "March 1, 2013".

(d) Additional Adjustments.--

(1) Section 251.-- Paragraphs (2) and (3) of section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 <2 USC 901> are amended to read as follows:

"(2) for fiscal year 2013--

"(A) for the security category, as defined in section 250(c)(4)(B), \$ 684,000,000,000 in budget authority; and

"(B) for the nonsecurity category, as defined in section 250(c)(4)(A), \$ 359,000,000,000 in budget authority;

"(3) for fiscal year 2014--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

"(A) for the security category, \$ 552,000,000,000 in budget authority; and

"(B) for the nonsecurity category, \$ 506,000,000,000 in budget authority;"

(e) <2 USC 901a note> 2013 Sequester.--On March 1, 2013, the President shall order a sequestration for fiscal year 2013 pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by this section, pursuant to which, only for the purposes of the calculation in sections 251A(5)(A), 251A(6)(A), and 251A(7)(A), section 251(c)(2) shall be applied as if it read as follows:

"(2) For fiscal year 2013--

"(A) for the security category, \$ 544,000,000,000 in budget authority; and

"(B) for the nonsecurity category, \$ 499,000,000,000 in budget authority;"

[*902] [**2371] Sec. 902. AMOUNTS IN APPLICABLE RETIREMENT PLANS MAY BE TRANSFERRED TO DESIGNATED ROTH ACCOUNTS WITHOUT DISTRIBUTION.

(a) <26 USC 402A> In General.--Section 402A(c)(4) is amended by adding at the end the following:

"(E) Special rule for certain transfers.--In the case of an applicable retirement plan which includes a qualified Roth contribution program--

"(i) the plan may allow an individual to elect to have the plan transfer any amount not otherwise distributable under the plan to a designated Roth account maintained for the benefit of the individual,

"(ii) such transfer shall be treated as a distribution to which this paragraph applies which was contributed in a qualified rollover contribution (within the meaning of section 408A(e)) to such account, and

"(iii) the plan shall not be treated as violating the provisions of section 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), or 457(d)(1)(A), or of section 8433 of title 5, United States Code, solely by reason of such transfer."

(b) <26 USC 402A note> Effective Date.--The amendment made by this section shall apply to transfers after December 31, 2012, in taxable years ending after such date.

Subtitle B--Budgetary Effects

[*911] Sec. 911. BUDGETARY EFFECTS.

(a) PAYGO Scorecard.--The budgetary effects of this Act shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) Senate PAYGO Scorecard.--The budgetary effects of this Act shall not be entered on any PAYGO scorecard maintained for purposes of section 201 of S. Con. Res. 21 (110th Congress).

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

DESCRIPTORS: AGRICULTURAL POLICIES; AGRICULTURAL SUBSIDIES; BUDGET DEFICITS; CHILDREN; COMMODITIES; CONGRESS; CORPORATE TAX; COST OF LIVING; DAIRY INDUSTRY AND PRODUCTS; DEPARTMENT OF AGRICULTURE; DIESEL FUEL; DISASTER RELIEF; EMPLOYMENT; ENERGY CONSERVATION; ENERGY RESOURCES; FARMS AND FARMERS; FEDERAL AID TO RURAL AREAS; FOOD ASSISTANCE; GIFTS AND DONATIONS; INCOME TAXES; MEDICAID; MEDICAL ECONOMICS; MEDICAL REGULATION; MEDICARE; MINES AND MINING; MORTGAGES; MOTION PICTURES; NATIVE AMERICANS; NEW YORK CITY; PHYSICIANS; PUERTO RICO; RAILROADS; RESEARCH; SALES TAX; SECURITIES; SYNTHETIC FUELS; TAX INCENTIVES AND SHELTERS; TELEVISION; TUITION AND FEES; UNEMPLOYMENT COMPENSATION; 112 PL 240



DEC 20 2012

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Implications of Ongoing Fiscal Cliff Negotiations

We are providing you this information regarding the potential impact of sequestration here at DoD. As you are all likely aware, the Administration and Congress are continuing to work to resolve a series of economic or fiscal events, collectively referred to as the "fiscal cliff," that are scheduled to occur around the end of the year. One of the key issues involves potential across-the-board reductions in Federal spending—also known as "sequestration"—which were put in place by the Budget Control Act of 2011. Under current law, these reductions are scheduled to take effect on January 2, 2013. Many of you have raised questions regarding the impact of a potential sequestration for the Department of Defense, and I would like to take a moment to clarify a few things.

I want to start by noting that this past summer, the President indicated his intent to exercise his legal authority to exempt military personnel funding from sequestration. This means that military endstrength will not be affected by sequestration in FY2013.

Our civilian employees should keep in mind that the Administration remains focused on working with Congress to reach agreement on a balanced deficit reduction plan that avoids such cuts. Sequestration was never intended to be implemented, and there is no reason why both sides should not be able to come together and prevent this scenario.

Nevertheless, with only a couple of weeks left before sequestration could occur should a deal not be reached, it is important to clarify the potential implications. Let me start by explaining what sequestration is and what it is not. Sequestration is an across-the-board reduction in budgetary resources for all accounts within the Department of Defense that have not been exempted by Congress. If it occurs, sequestration will reduce our budgetary resources for the remainder of the fiscal year (which runs through September 30). These cuts, while significant and harmful to our collective mission as an agency, would not necessarily require immediate reductions in spending. Under sequestration, we would still have funds available after January 2, 2013, but our overall funding for the remainder of the year would be reduced. Accordingly, this situation is different from other scenarios we have encountered in recent years, such as threats of government shutdown due to a lapse in appropriations.

For these reasons, I do not expect our day-to-day operations to change dramatically on or immediately after January 2, 2013, should sequestration occur. This means that we will not be executing any immediate civilian personnel actions, such as furloughs, on that date. Should we have to operate under reduced funding levels for an extended period of time, we may have to consider furloughs or other actions in the future. But let me assure you that we will carefully examine other options to reduce costs within the agency before taking such action, taking into



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consideration our obligation to execute our core mission. Moreover, if such action proves to be necessary, we would provide affected employees the requisite advance notice before a furlough or other personnel action would occur. We would also immediately cancel any scheduled personnel actions should a deficit reduction agreement be reached that restores our agency funding.

I want to assure you that we will do our very best to provide clear information about the status of events as they unfold.

Finally, let me express my gratitude during this holiday season for your continued hard work and dedication to the vital mission of the Department of Defense. Your contributions touch people's lives in many significant ways, and I want you to know how deeply appreciative the President and myself are for all that you do.

A handwritten signature in black ink, appearing to be "J. Gates", with a long horizontal line extending to the right.

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GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
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DCMA Administrative Record for FY 2013 Furlough Appeals



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

SEP 25 2012

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Guidance on Fiscal Year 2013 Joint Committee Sequestration

The Budget Control Act of 2011 (BCA) established the Joint Select Committee on Deficit Reduction (Joint Committee) and charged it with developing a proposal that would achieve at least \$1.2 trillion in deficit reduction. Last November, the Joint Committee announced that it could not reach agreement on a deficit reduction plan. This failure triggered an enforcement mechanism of automatic funding cuts in Fiscal Year (FY) 2013, known as sequestration, above and beyond the reductions already reflected in the FY 2013 budget the Department submitted in February. The law requires the President to issue a sequestration order on January 2, 2013, to implement the required cuts unless Congress acts to avoid it.

The additional funding cuts required under the BCA are very large. A recent report by the Office of Management and Budget (OMB) estimates that the cuts in the Department of Defense (DoD) budget would exceed \$50 billion in FY 2013 alone. The law further requires that the FY 2013 cuts be implemented in an indiscriminate, across-the-board manner that will greatly exacerbate their adverse effects. These large cuts would lead to devastating effects on the Department and virtually every other Federal agency. For this reason, the Administration strongly believes that Congress needs to act to avoid sequestration by passing a balanced deficit reduction package that the President can sign.

If Congress fails to enact balanced deficit reduction and avoid sequestration, DoD and other affected agencies must be prepared, under the BCA, to implement sequestration on January 2, 2013. On July 31, 2012, OMB issued the attached guidance informing agencies that OMB will be consulting with them on matters related to the issuance of the sequestration order. Over the longer term, in the absence of congressional action on a balanced deficit reduction plan in advance of January 2, 2013, OMB will undertake additional activities related to the implementation of the sequestration. Within DoD, the Under Secretary of Defense (Comptroller) will take the lead in these efforts and, working with OMB as necessary, will ensure that the Department is ready to implement sequestration in January if it occurs.

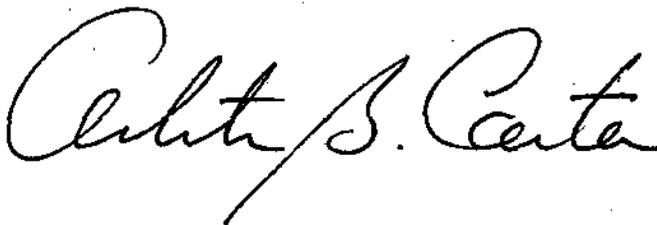


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DCMA Administrative Record for FY 2013 Furlough Appeals

In the meantime, consistent with OMB guidance, DoD needs to continue normal spending and operations. We do not want our programs, personnel, and activities to begin to suffer the harmful effects of sequestration while there is still a chance it can be avoided. I am therefore directing that all commanders and managers in the Department of Defense continue the defense mission under current laws and policies, without taking any steps that assume sequestration will occur. Commanders should not, for example, curtail planned training, maintenance, healthcare or family programs. Commanders and managers should not alarm our employees and their families by announcing personnel actions related to sequestration or by suggesting that these actions are likely. Nor should commanders and managers hold back on the obligation of funds – either for investments or for operating programs – if those funds would have been obligated in the absence of the sequester threat.

If you have questions about this guidance, please consult your chain of command. Addressees on this memo who have questions should direct them to the Under Secretary of Defense (Comptroller).

A handwritten signature in black ink, reading "Curtis B. Carter". The signature is written in a cursive style with a large, sweeping initial "C".

Attachment:
As stated

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 31, 2012

M-12-17

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Jeffrey D. Zients
Acting Director

SUBJECT: Issues Raised by Potential Sequestration Pursuant To Section 251A of the
Balanced Budget and Emergency Deficit Control Act of 1985

Passed by bipartisan majorities in both houses of the Congress, the Budget Control Act of 2011 (BCA; Public Law 112-25) amended the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) to put into place an automatic process of across-the-board reductions in budgetary resources, known as a sequestration, specified in an order to be issued on January 2, 2013, if the Joint Select Committee on Deficit Reduction failed to propose, and the Congress failed to enact, a bill containing at least \$1.2 trillion in deficit reduction.

The President has made clear that the Congress should act to avoid such a sequestration. If allowed to occur, the sequestration would be highly destructive to national security and domestic priorities, as well as to core government functions. To avoid this, the President submitted a budget for 2013 that includes a comprehensive and balanced set of proposals that contain greater deficit reduction than the Congress was charged with achieving. The Administration believes the Congress should redouble its efforts to reduce the deficit in a bipartisan, balanced, and fiscally responsible manner and avoid the sequestration.

If Congress were to enact the requisite deficit reduction measures and avoid the sequestration, there would be no need to take steps to issue the sequestration order, and then to develop plans for agency operations for the remainder of FY 2013 within the constraints of that order. These sequestration planning and implementation activities, once undertaken, will necessarily divert scarce resources from other important agency activities and priorities. The President remains confident that Congress will act, but because it has not yet made progress towards enacting sufficient deficit reduction, the Office of Management and Budget (OMB) will work with agencies, as necessary, on issues raised by a sequestration of this magnitude.

To that end, OMB will be holding discussions on these issues with you and your staff over the coming months. In the near term, OMB will consult with you on such topics as the application to your agency's accounts and programs of the exemptions from sequestration contained in section 255 of BBEDCA and the applicable sequestration rules specified in section 256 of BBEDCA. These discussions should be informed by your General Counsel's analysis of how the requirements of BBEDCA, as amended by the BCA, and other statutory authorities



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DCMA Administrative Record for FY 2013 Furlough Appeals

apply to a particular issue involving your agency. OMB will also engage with agencies on anticipated reporting requirements established by Congress that are related to, but separate from, planning for or implementing a sequestration order under the BCA.

Over the longer term, in the absence of Congressional action on a balanced deficit reduction plan in advance of January 2, 2013, OMB will undertake additional activities related to the implementation of the BCA. OMB will work with agencies, as necessary, on issues surrounding the sequestration order and its implementation. For example, sequestrable amounts can only be calculated once FY 2013 funding levels are known; therefore, shortly before any sequestration order is issued, OMB will collect information from agencies on sequestrable amounts and, where applicable, unobligated balances, and calculate the percentage reductions necessary to implement the sequestration. In the meantime, agencies should continue normal spending and operations since more than 5 months remain for Congress to act.

The steps described above are necessary to prepare for the contingency of having to issue a sequestration order, but they do not change the fact that sequestration is bad policy, was never meant to be implemented, and should be avoided through the enactment of bipartisan, balanced deficit legislation. The Administration urges the Congress to take this course.

DCMA Administrative Record for FY 2013 Furlough Appeals
DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010



MEMORANDUM FOR: SEE DISTRIBUTION

JUN 03 2012

SUBJECT: Guidance for Limitation on Aggregate Annual Amount Available for Contracted Services

This memorandum provides guidance (Attachment 1) regarding compliance with section 808 of the National Defense Authorization Act for Fiscal Year 2012, P.L. 112-81. Section 808 limits the amount of funds the Department may obligate for contract services in FY 2012 and FY 2013. Consistent with this statutory language, the Department's obligations for all contracted services shall not exceed, in FY 2012 and FY 2013, the total amount requested for the Department for all contracted services in the President's FY 2010 budget submission, excluding contracted services relating to overseas contingency operations, military construction, and research and development. Each Component must take action to ensure compliance with the limitation on the aggregate amount for contracted services reflected in your FY 2012-enacted budget and FY 2013 President's Budget request.

Given the nature of how appropriated funds are allocated to fulfill requirements for contracted services and the fact we are well into the year of execution for FY 2012, compliance with section 808 will require close coordination among all stakeholders. Execution will be measured using obligations from base funds, reported semi-annually in the Department's accounting systems as described in Attachment 2, to ensure that there is no migration or growth of contracted services that were excluded from the FY 2010 baseline and as tracked against Component services portfolios and contractor inventories.

Questions regarding this guidance should be directed to the following points of contact: Office of the Under Secretary of Defense (OUSD) (Comptroller): Mr. Keith Anderson (keith.anderson@osd.mil); OUSD (Personnel and Readiness): Ms. Amy Parker (amy.parker@osd.mil) and Mr. Thomas Hessel (thomas.hessel@osd.mil); and OUSD (Acquisition, Technology and Logistics): Mr. John Tenaglia (john.tenaglia@osd.mil) and Mr. Jeffrey Grover (jeffrey.grover@osd.mil).

Attachments:
As stated

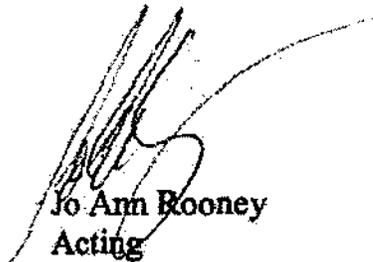


OSD006113-12



The Department is currently precluded, under a moratorium, from conducting public-private competitions. This prohibits the conversion of any work currently performed (or designated for performance) by civilian personnel to contract performance. This prohibition applies to functions and work assigned to civilians, regardless of whether or not the position is encumbered. When new requirements arise, such as those that may occur as military end-strength levels are reduced, special consideration must first be provided, consistent with section 2463 of title 10, U.S.C., and applicable Department policies, to using Department of Defense civilian employees. This includes billets and work that may have been unencumbered for an extended period of time.

Please ensure maximum distribution of this memorandum across your organization, particularly to your manpower, personnel, and acquisition communities. Questions regarding implementation/enforcement of this memo should be addressed to my points of contact: Mr. Thomas Hessel (thomas.hessel@osd.mil or 703-697-3402) and Ms. Amy Parker (amy.parker@osd.mil or 703-697-1735).



Jo Ann Rooney
Acting

DCMA Administrative Record for FY 2013 Furlough Appeals
UNDER SECRETARY OF DEFENSE
 4000 DEFENSE PENTAGON
 WASHINGTON, D.C. 20301-4000



PERSONNEL AND
 READINESS

MAR 2 2012

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
 CHAIRMAN OF THE JOINT CHIEFS OF STAFF
 UNDER SECRETARIES OF DEFENSE
 DEPUTY CHIEF MANAGEMENT OFFICER
 COMMANDERS OF THE COMBATANT COMMANDS
 ASSISTANT SECRETARIES OF DEFENSE
 GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
 DIRECTOR, OPERATIONAL TEST AND EVALUATION
 DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
 INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
 ASSISTANTS TO THE SECRETARY OF DEFENSE
 DIRECTOR, ADMINISTRATION AND MANAGEMENT
 DIRECTOR, NET ASSESSMENT
 DIRECTORS OF THE DEFENSE AGENCIES
 DIRECTORS OF THE DoD FIELD ACTIVITIES**

SUBJECT: Guidance Related to the Utilization of Military Manpower to Perform Certain Functions

This memorandum addresses the use of “repurposed”, or “borrowed”, military manpower (both active and reserve) to perform new, expanding, or existing missions, and most specifically work that is most appropriately aligned to non-military resources, including work recently performed by government civilians or through contracted services.

The Department’s “sourcing” of necessary functions and work between military, civilian, and contracted services must be consistent with applicable laws and policies; as well as workload requirements, funding availability, readiness and management needs. Declining operating tempos may result in a perception that military personnel will be available to fill staffing shortfalls for non-military essential functions or workload. This is particularly true as the Department faces declining budgets and continues to implement efficiency initiatives. While there may be instances where military personnel can be used to appropriately satisfy a near-term demand, the Department must be vigilant in ensuring military personnel are not inappropriately utilized, particularly in a manner that may degrade readiness. To ensure efficient and effective Total Force Management, Components shall balance these needs and consider the following in shaping their workforce and assigned military personnel.

Consistent with DoD Instruction 1100.22, “*Policy and Procedures for Determining Workforce Mtx*” (April 2010), tasks that are not military essential in nature must be designated for government civilian personnel, or contract performance where appropriate. Exceptions will be based upon a demonstrated and documented military need e.g., to provide a reasonable overseas rotation or career progression base. Components shall refer to DoD Instruction 1100.22 for the criteria to determine appropriateness of military personnel utilization.

DISTRIBUTION:

**SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDERS OF THE COMBATANT COMMANDS
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
DIRECTOR, OPERATIONAL TEST AND EVALUATION
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES
PRESIDENT, DEFENSE ACQUISITION UNIVERSITY
PRESIDENT, NATIONAL DEFENSE UNIVERSITY**

**Guidance to Implement Section 808 of the National Defense Authorization Act for
Fiscal Year 2012, P.L. 112-81**

1. The primary means by which the Department is to meet or be below the aggregate annual limitation for contracted services is for the individual Military Departments and Defense Components to limit obligations for contracted services to the FY 2012 enacted budget amount and FY 2013 President's Budget request. The following adjustments apply:
 - a. Excluding amounts allocated for overseas contingency operations, military construction, and research, development, test and evaluation;
 - b. Including all object classification code 25 categories, except 25.3 (Other goods and services from Federal sources) and 25.6 (Medical Care) as defined in DoD Financial Management Regulation 7000.14-R Volume 1: General Financial Management Information, Systems and Requirements, Appendix A;
 - c. Excluding statutory exceptions for offsetting cost increases associated with the number of civilian billets approved above the number of billets in the FY 2010 civilian personnel baseline as part of the Department's efficiencies initiatives; and
 - d. Excluding amounts adjusted for net transfer from funding for overseas contingency operations.

Except where approved increases to the current limitations on civilian personnel occur, each Military Department and Defense Agency will not exceed the FY 2012 President's Budget enacted amount for contract services and FY 2013 President's Budget request for the Department to meet the aggregate limitation, as reflected in this attachment.

2. For all contracts or task orders with an estimated value of more than \$10,000,000 awarded for contracted services in FY 2012 or FY 2013, contracting officers shall establish negotiation objectives for direct labor and overhead rates that are less than or equal to direct labor and overhead rates paid to that contractor for the same or similar contracted services in FY 2010. Contracting officers shall coordinate with the Defense Contract Management Agency and the Defense Contract Audit Agency to determine the applicable rates. In the event such contracts or task orders are to be awarded that provide for continuing services at an annual cost that exceeds the annual cost paid by the Military Department or Defense Agency/Field Activity for the same or similar services paid in FY 2010, the Secretary of the Military Department or the Head of the Defense Agency/Field Activity must provide written approval prior to contract award or order issuance.
3. The Secretaries of the Military Departments and the Heads of the Defense Agencies/Field Activities (to include the Offices of the Secretary of Defense, the Joint Staff, the Combatant Commands, and all other organizations of the Department of Defense) shall identify and eliminate any instance where such organization is utilizing contracted services to perform inherently governmental functions. In instances where inherently governmental functions are found to be performed under contract, the department or

agency shall take immediate actions to either in-source the work to government civilian performance or immediately divest the function and associated workload, reducing the scope of the contract. The term "inherently governmental functions" is defined in the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions, available online at (http://www.whitehouse.gov/omb/procurement_index_work_performance/).

4. The Secretaries of the Military Departments and the Heads of the Defense Components (to include the Offices of the Secretary of Defense, the Joint Staff, the Combatant Commands, and all other organizations of the Department of Defense) shall reduce by 10 percent per fiscal year in FY 2012 and FY 2013 obligations for staff augmentation contracts and contracts for the performance of functions closely associated with inherently governmental functions (as defined in section 2383(b)(3) of title 10, U.S.C., and described in OFPP Policy Letter 11-01).
 - a. Section 808 defines staff augmentation contracts as contracts for personnel who are subject to the direction of a government official other than the contracting officer for the contract, including but not limited to contractor personnel who perform personal service contracts. The reductions for staff augmentation contracts have already been factored into the budget documentation for FY 2012 and FY 2013. However, the aforementioned senior officials are responsible for ensuring those reductions are sustained.
 - b. For the purpose of fulfilling the requirement to reduce by 10 percent the amount of contracted services spent acquiring functions that are closely associated with inherently governmental functions, Components should use the classification in the FY 2010 Inventory of Contract Services as the baseline amount. If this data is unknown in the FY 2010 inventory, Components should use the classification in the FY 2011 Inventory of Contract Services.
5. The Secretaries of the Military Departments and the Heads of the Defense Agencies shall assign responsibility for overseeing and implementing this guidance to the officials designated pursuant to section 2330 of title 10, U.S.C., and section 812(b) of the National Defense Authorization Act for Fiscal Year 2006, P.L. 109-163, and ensure that the contractor inventory and program and budget proponents provide appropriate support.
6. As required by section 235 of title 10, U.S.C., this information must be consistent with a component's contractor inventory compiled pursuant to section 2330a.

DCMA Administrative Record for FY 2013 Furlough Appeals

(\$\$ in Thousands)

Contract Services
(Includes all appropriations except MILCON and RDT&E)
Object Class 25.xxx (excluding .3 and .8)

	FY 2012 PB Enacted (PRCP Base only)	FY 2013 PB Request (CIS (00-FEB-2012 Final))
Army		
Aircraft Procurement, Army	252,176	213,510
Army General Gift Fund (Trust)		5,448
Environmental Restoration, Army	346,031	
Family Housing Construction, Army		
Family Housing Operation and Maintenance, Army	128,417	127,423
Joint Improvised Explosive Device Defeat Fund	185,328	172,328
Military Personnel, Army	11,143	10,171
Missile Procurement, Army	53,182	48,212
National Science Center, Army	25	25
Operation and Maintenance, Army	7,162,514	10,107,133
Operation and Maintenance, Army National Guard	1,246,324	1,280,219
Operation and Maintenance, Army Reserve	628,184	502,257
Other Procurement, Army	128,062	112,253
Procurement of Ammunition, Army	173,597	151,504
Procurement of Weapons and Tracked Combat Vehicles, Army	23,500	20,394
Restoration of the Rocky Mountain Arsenal		8,000
TOTAL	10,337,483	12,758,877

Air Force		
Aircraft Procurement, Air Force	77,598	75,868
Family Housing Operation and Maintenance, Air Force	131,836	216,713
Military Personnel, Air Force	109,931	114,901
Missile Procurement, Air Force	174,439	168,922
Operation and Maintenance, Air Force	13,376,274	13,485,354
Operation and Maintenance, Air Force Reserve	399,743	378,144
Operation and Maintenance, Air Force, Recovery Act		
Operation and Maintenance, Air National Guard	1,405,440	1,309,815
Other Procurement, Air Force	179,978	164,412
Procurement of Ammunition, Air Force	2,694	2,536
TOTAL	15,857,933	15,914,653

Navy		
Aircraft Procurement, Navy	388,734	323,708
Family Housing Operation and Maintenance, Navy and Marine Corps	124,701	118,519
Military Personnel, Marine Corps	11,343	10,021
Military Personnel, Navy	6,008	5,700
National Defense Sealift Fund	19,280	9,896
Operation and Maintenance, Marine Corps	1,382,289	1,377,606
Operation and Maintenance, Marine Corps Reserve	75,740	84,184
Operation and Maintenance, Marine Corps Reserve, Recovery Act		
Operation and Maintenance, Marine Corps, Recovery Act		
Operation and Maintenance, Navy	9,231,443	10,879,377
Operation and Maintenance, Navy Reserve	393,188	337,913
Operation and Maintenance, Navy Reserve, Recovery Act		
Operation and Maintenance, Navy, Recovery Act		
Other Procurement, Navy	306,890	271,510
Procurement of Ammunition, Navy and Marine Corps	4,437	2,871
Procurement, Marine Corps	42,275	33,755
Shipbuilding and Conversion, Navy	333,268	331,183
Weapons Procurement, Navy	49,878	42,823
TOTAL	12,349,484	13,629,076

DCMA Administrative Record for FY 2013 Furlough Appeals

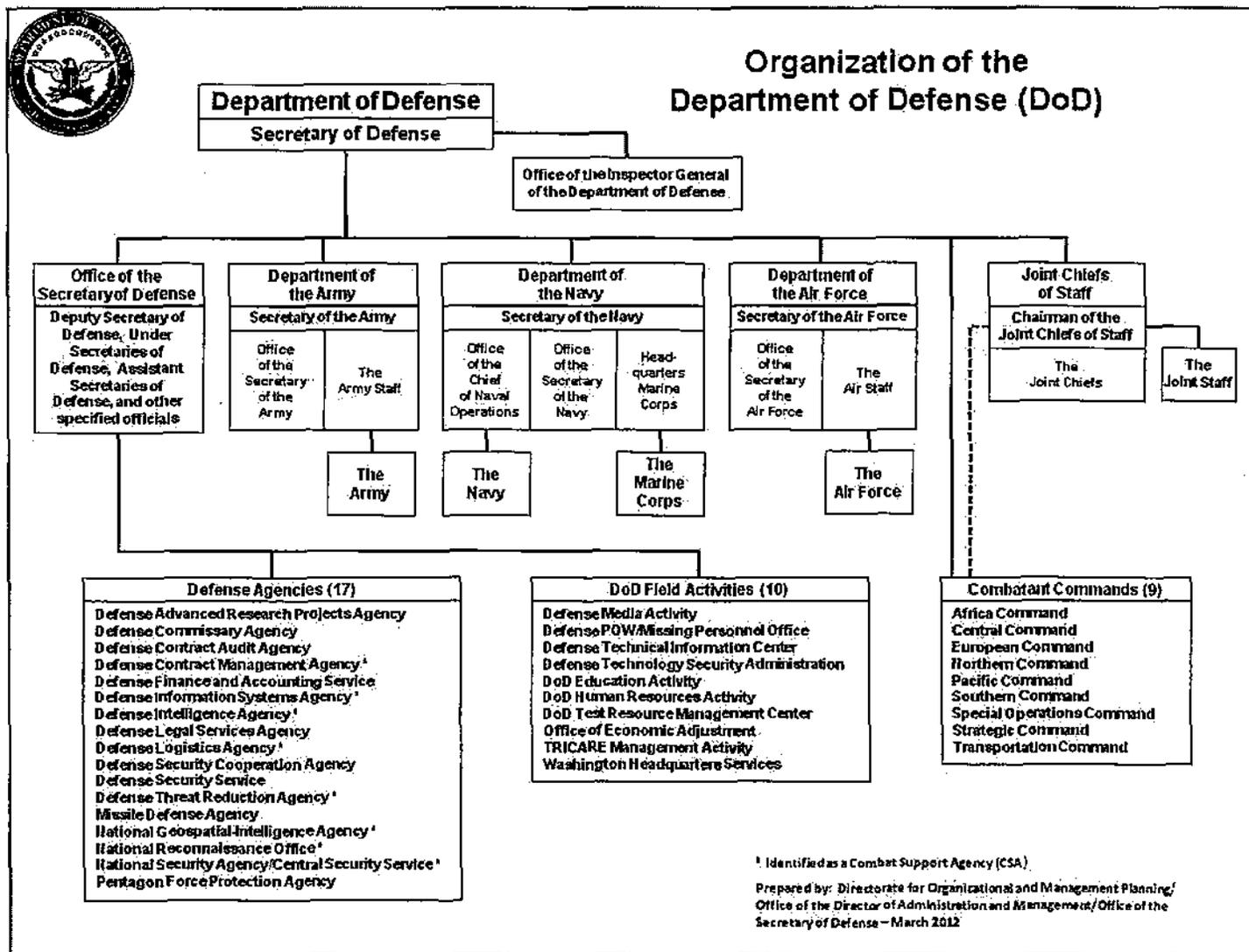
(\$\$ in Thousands)	Contract Services (Includes all appropriations except MILCON and RDT&E) Object Class 25.xxx (excluding .3 and .6)	
	FY 2012 PB Enacted (PRCP Base only)	FY 2013 PB Request (CIS (00-FEB-2012 Final))
Defense		
Chemical Agents and Munitions Destruction, Army	1,162,846	989,579
Cooperative Threat Reduction Account	455,175	421,379
Defense Coalition Support, Defense		
Defense Production Act Purchases	213,558	94,316
Department of Defense Acquisition Workforce Development Fund	181,074	456,287
Department of Defense Family Housing Improvement Fund	2,184	1,788
Disposal of Department of Defense Real Property	91,202	7,855
DoD Overseas Military Facility Investment Recovery	7,295	229
Drug Interdiction and Counter-drug Activities, Defense	347,796	299,842
Family Housing Operation and Maintenance, Defense-Wide	3,103	2,006
Lease of Department of Defense Real Property	91,816	12,029
Office of the Inspector General, Recovery Act		
Office of the Inspector General	47,072	19,032
Operation and Maintenance, Defense-Wide		
DAU	19,544	19,259
DCAA	15,226	17,287
DCMA	41,113	44,238
DFAS	11,975	17,513
DHRA	424,308	459,284
DIA	1,156,881	1,039,683
DISA	841,094	849,558
DLA	124,457	71,014
DLSA	2,608	1,788
DMACT	81,554	70,562
DQDEA	280,111	297,403
DPMO	622	693
DSCA	58,936	80,482
OSS	68,894	84,871
DTRA	200,578	210,139
DTSA	6,408	6,727
MDA	202,342	255,729
NDU	6,780	7,316
NGA	1,384,321	1,499,319
NSA	2,941,862	2,558,101
OEA	36,172	141,193
OSD	886,144	849,882
SOCOM	1,095,167	1,859,037
TJS	249,664	199,037
WHS	156,036	136,136
Overseas Humanitarian, Disaster and Civic Aid	108,078	57,847
Procurement, Defense-Wide	107,433	80,299
United States Court of Appeals for the Armed Forces	390	490
Defense Health Program	3,017,197	3,073,269
TOTAL	16,197,016	16,062,204

Department TOTAL	53,741,916	58,554,820
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Section 808 Exceptions

FY 2010 PB Request Baseline	50,876,880	50,876,880
Adjustment for Civilian Pay Increase from FY:2010 PB	3,030,446	3,809,489
OCO to Base Transfer	2,561,644	4,352,887
FY 2010 PB Request Adjusted IAW Sec 808	56,468,970	59,039,256
Below Section 808 Annual Aggregate Limitation	-1,726,854	-471,246

Excludes Civil Functions, MILCON and RDT&E appropriations
 Excludes Overseas Contingency Operations (Afghanistan Security Funds and Iraq Security Forces Fund)
 Includes Major Category 25 - Contract Services
 Excludes Minor Category: 310 - GDS/Service from other Agencies; 320 - Pay Foreign Nationals; and 330 - Buy from Revolving Funds
 Excludes Minor Category: 610 - Medical Care



Related Links:

- DoD Organizational Charts
- Information about DoDD 5100.01 Functions of the Department of Defense and Its Major Components



UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

DEC 1 2011

**PERSONNEL AND
READINESS**

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DoD FIELD ACTIVITIES**

SUBJECT: Prohibition on Converting Certain Functions to Contract Performance

This memorandum provides clarification regarding statutory language as related to the conversion of certain functions to contract performance. While the Department is holding civilian funding at fiscal year (FY) 2010 levels through FY 2013, with some exceptions, the Congress and the Secretary also remain concerned that the Department not be overly reliant on contracted services.

As the Department adapts to declining budgets and operating in a constrained fiscal environment, we must ensure that we make analytically-based spending choices based on sound strategy and policies. In particular, as we implement the results of organizational assessments; continue to assess missions and functions in terms of priority; and revisit both our civilian and military force structures, we must be particularly vigilant to prevent the inappropriate conversion of work to contract performance.

Under section 2461 of title 10, United States Code (U.S.C.) the Department is prohibited from converting work currently performed (or designated for performance) by civilian personnel to private sector (contract) performance without first conducting a public-private competition. The National Defense Authorization Act for fiscal year 2010 (Public Law 111-84) included a significant modification to this statute, extending the requirement for a public-private competition prior to the conversion of work by any number of civilian employees. Prior to this change, functions performed by fewer than 10 civilian employees could be converted to contract performance absent a public-private competition, known as a "direct conversion".

Table 1. Categories of Approved Near-Term Actions

- Freeze civilian hiring (with exceptions for mission-critical activities*).
- Provide authority to terminate employment of temporary hires and to notify term employees that their contracts will not be renewed (with exceptions for mission-critical activities and when appropriate in terms of personnel timing*).
- Reduce base operating funding.
- Curtail travel, training, and conferences (all with exceptions for mission-critical activities* including those required to maintain professional licensure or equivalent certifications).
- Curtail facilities maintenance or Facilities Sustainment, Restoration, and Modernization (FSRM) (with exceptions for mission-critical activities*).
 - If necessary, services/agencies are authorized to fund FSRM at levels below current guidance.
- Curtail administrative expenses such as supply purchases, business IT, ceremonies, etc. (with exceptions for mission-critical activities*).
- Review contracts and studies for possible cost-savings.
- Cancel 3rd and 4th quarter ship maintenance availabilities and aviation and ground depot-level maintenance activities. Take this action no earlier than February 15, 2013.
- Clear all R&D and production contracts and contract modifications that obligate more than \$500 million with the USD(AT&L) prior to award.
- For Science and Technology accounts, provide the USD(AT&L) and the Assistant Secretary of Defense (Research & Engineering) with an assessment of the impact that budgetary uncertainty may have on meeting Departmental research priorities.

*Approvals will be granted by Component heads or by senior officials designated by the Component head.

Components with personnel serving Combatant Commanders (COCOMs) must consult with the COCOMs before implementing actions that affect them. Disputes will be brought to the attention of the Chairman of the Joint Chiefs of Staff for further resolution.

Components receiving reimbursements should coordinate with customer before taking actions that would affect the customer's mission.

Table 2. Information to Be Included in Draft Implementation Plans

The following information should be provided at the Component level. Information by commands and bases/installations is not required.

- For operating accounts, identify major actions to include, at a minimum:
 - Extent of civilian hiring freezes; expected number of temps/terms released; expected number, duration, and nature of furloughs.
 - Reductions in flying hours, steaming days, vehicle miles, and other operations/training/support activities that affect force readiness.
 - Areas of budgets experiencing disproportionate cuts.
- For investment accounts:
 - Plans for large programs (ACAT 1D and 1C, and MAIS programs).
 - Include major changes in unit buys, delays, etc.
 - Significant changes in all joint programs.
- Identify and prioritize any essential reprogramming actions with offsets.

- To the extent feasible, protect funding most directly associated with readiness; focus the necessary cuts on later deploying units.
- For the investment portions of the DoD budget (procurement, RDT&E, construction):
 - Protect investments funded in Overseas Contingency Operations if associated with urgent operational needs.
 - To the extent feasible, protect programs mostly closely associated with the new defense strategy.
 - Take prudent steps to minimize disruption and added costs (e.g., avoid penalties associated with potential contract cancellations where feasible; prudently manage construction projects funded with prior-year monies).

While we are hopeful of avoiding budgetary problems, draft Component plans should reflect the possibility that we may have to operate under a year-long CR and that sequestration takes place. Table 2 shows the types of information that should be included in the plans. Components should submit these draft plans to the Under Secretary of Defense (Comptroller) by February 1, 2013. The Under Secretary of Defense (Comptroller) will work with the Components to adjust this schedule if changes are required due to the deadlines for the preparation of the FY 2014 President's Budget submission.

I appreciate your patience as we work through these difficult budgetary times. The Department will continue to do its best to resolve these budgetary uncertainties in a manner that permits us to support our current defense strategy and maintain a strong defense.

If addressees have questions about this memorandum, they should direct them to the Under Secretary of Defense (Comptroller).

A handwritten signature in black ink that reads "Ashton Carter". The signature is written in a cursive, flowing style.

Attachments:
As stated



UNITED STATES PUBLIC LAWS

112th Congress -- 1st Session

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PUBLIC LAW 112-25 [S. 365]

AUG. 02, 2011

BUDGET CONTROL ACT OF 2011

112 P.L. 25; 125 Stat. 240; 2011 Enacted S. 365; 112 Enacted S. 365

BILL TRACKING REPORT: 112 Bill Tracking S. 365
FULL TEXT VERSION(S) OF BILL: 112 S. 365
CIS LEGIS. HISTORY DOCUMENT: 112 CIS Legis. Hist. P.L. 25

An Act

To provide for budget control.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[*1] SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) <2 USC 900 note> Short Title.--This Act may be cited as the "Budget Control Act of 2011".

(b) Table of Contents.--The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Severability.

TITLE I--TEN-YEAR DISCRETIONARY CAPS WITH SEQUESTER

Sec. 101. Enforcing discretionary spending limits.

Sec. 102. Definitions.

Sec. 103. Reports and orders.

Sec. 104. Expiration.

Sec. 105. Amendments to the Congressional Budget and Impoundment Control Act of 1974.

Sec. 106. Senate budget enforcement.

TITLE II--VOTE ON THE BALANCED BUDGET AMENDMENT

Sec. 201. Vote on the balanced budget amendment.

Sec. 202. Consideration by the other House.

TITLE III--DEBT CEILING DISAPPROVAL PROCESS

Sec. 301. Debt ceiling disapproval process.

Sec. 302. Enforcement of budget goal.

TITLE IV--JOINT SELECT COMMITTEE ON DEFICIT REDUCTION

Sec. 401. Establishment of Joint Select Committee.

Sec. 402. Expedited consideration of joint committee recommendations.

Sec. 403. Funding.

Sec. 404. Rulemaking.

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

TITLE V--PELL GRANT AND STUDENT LOAN PROGRAM CHANGES

Sec. 501. Federal Pell grants.

Sec. 502. Termination of authority to make interest subsidized loans to graduate and professional students.

Sec. 503. Termination of direct loan repayment incentives.

Sec. 504. Inapplicability of title IV negotiated rulemaking and master calendar exception.

[*2] Sec. 2. <2 USC 900 note> SEVERABILITY.

If any provision of this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the application of this Act to any other person or circumstance shall not be affected.

TITLE I--TEN-YEAR DISCRETIONARY CAPS WITH SEQUESTER

[*101] Sec. 101. ENFORCING DISCRETIONARY SPENDING LIMITS.

Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended to read as follows: <2 USC 901>

"Sec. 251. ENFORCING DISCRETIONARY SPENDING LIMITS.

"(a) Enforcement.--

"(1) Sequestration.-- Within 15 calendar days after Congress adjourns to end a session there shall be a sequestration to eliminate a budget-year breach, if any, within any category.

"(2) Eliminating a breach.-- Each non-exempt account within a category shall be reduced by a dollar amount calculated by multiplying the enacted level of sequestrable budgetary resources in that account at that time by the uniform percentage necessary to eliminate a breach within that category.

"(3) Military personnel.-- If the President uses the authority to exempt any personnel account from sequestration under section 255(f), each account within subfunctional category 051 (other than those military personnel accounts for which the authority provided under section 255(f) has been exercised) shall be further reduced by a dollar amount calculated by multiplying the enacted level of non-exempt budgetary resources in that account at that time by the uniform percentage necessary to offset the total dollar amount by which outlays are not reduced in military personnel accounts by reason of the use of such authority.

"(4) Part-year appropriations.-- If, on the date specified in paragraph (1), there is in effect an Act making or continuing appropriations for part of a fiscal year for any budget account, then the dollar sequestration calculated for that account under paragraphs (2) and (3) shall be subtracted from--

"(A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

"(B) when a full-year appropriation for that account is enacted, from the amount otherwise provided by the full-year appropriation for that account.

"(5) Look-back.-- If, after June 30, an appropriation for the fiscal year in progress is enacted that causes a breach within a category for that year (after taking into account any sequestration of amounts within that category), the discretionary spending limits for that category for the next fiscal year shall be reduced by the amount or amounts of that breach.

"(6) Within-session sequestration.-- If an appropriation for a fiscal year in progress is enacted (after Congress adjourns to end the session for that budget year and before July 1 of that fiscal year) that causes a breach within a category for that year (after taking into account any prior sequestration of amounts within that category), 15 days later there shall be a sequestration to eliminate that breach within that category following the procedures set forth in paragraphs (2) through (4).

"(7) Estimates.----

"(A) CBO estimates.--As soon as practicable after Congress completes action on any discretionary appropriation, CBO, after consultation with the Committees on the Budget of the House of Representatives and the Senate, shall

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

provide OMB with an estimate of the amount of discretionary new budget authority and outlays for the current year, if any, and the budget year provided by that legislation.

"(B) OMB estimates and explanation of differences.--Not later than 7 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of enactment of any discretionary appropriation, OMB shall transmit a report to the House of Representatives and to the Senate containing the CBO estimate of that legislation, an OMB estimate of the amount of discretionary new budget authority and outlays for the current year, if any, and the budget year provided by that legislation, and an explanation of any difference between the 2 estimates. If during the preparation of the report OMB determines that there is a significant difference between OMB and CBO, OMB shall consult with the Committees on the Budget of the House of Representatives and the Senate regarding that difference and that consultation shall include, to the extent practicable, written communication to those committees that affords such committees the opportunity to comment before the issuance of the report.

"(C) Assumptions and guidelines.--OMB estimates under this paragraph shall be made using current economic and technical assumptions. OMB shall use the OMB estimates transmitted to the Congress under this paragraph. OMB and CBO shall prepare estimates under this paragraph in conformance with scorekeeping guidelines determined after consultation among the Committees on the Budget of the House of Representatives and the Senate, CBO, and OMB.

"(D) Annual appropriations.--For purposes of this paragraph, amounts provided by annual appropriations shall include any discretionary appropriations for the current year, if any, and the budget year in accounts for which funding is provided in that legislation that result from previously enacted legislation.

"(b) Adjustments to Discretionary Spending Limits.--

"(1) Concepts and definitions.-- When the President submits the budget under section 1105 of title 31, United States Code, OMB shall calculate and the budget shall include adjustments to discretionary spending limits (and those limits as cumulatively adjusted) for the budget year and each outyear to reflect changes in concepts and definitions. Such changes shall equal the baseline levels of new budget authority and outlays using up-to-date concepts and definitions, minus those levels using the concepts and definitions in effect before such changes. Such changes may only be made after consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate, and that consultation shall include written communication to such committees that affords such committees the opportunity to comment before official action is taken with respect to such changes.

"(2) Sequestration reports.-- When OMB submits a sequestration report under section 254(e), (f), or (g) for a fiscal year, OMB shall calculate, and the sequestration report and subsequent budgets submitted by the President under section 1105(a) of title 31, United States Code, shall include adjustments to discretionary spending limits (and those limits as adjusted) for the fiscal year and each succeeding year, as follows:

"(A) Emergency appropriations; overseas contingency operations/global war on terrorism.--If, for any fiscal year, appropriations for discretionary accounts are enacted that--

"(i) the Congress designates as emergency requirements in statute on an account by account basis and the President subsequently so designates, or

"(ii) the Congress designates for Overseas Contingency Operations/Global War on Terrorism in statute on an account by account basis and the President subsequently so designates,

the adjustment shall be the total of such appropriations in discretionary accounts designated as emergency requirements or for Overseas Contingency Operations/Global War on Terrorism, as applicable.

"(B) Continuing disability reviews and redeterminations.--(i) If a bill or joint resolution making appropriations for a fiscal year is enacted that specifies an amount for continuing disability reviews under titles II and XVI of the Social Security Act and for the cost associated with conducting redeterminations of eligibility under title XVI of the Social Security Act, then the adjustments for that fiscal year shall be the additional new budget authority provided in that Act for such expenses for that fiscal year, but shall not exceed--

"(I) for fiscal year 2012, \$ 623,000,000 in additional new budget authority;

"(II) for fiscal year 2013, \$ 751,000,000 in additional new budget authority;

"(III) for fiscal year 2014, \$ 924,000,000 in additional new budget authority;

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

"(IV) for fiscal year 2015, \$ 1,123,000,000 in additional new budget authority;
"(V) for fiscal year 2016, \$ 1,166,000,000 in additional new budget authority;
"(VI) for fiscal year 2017, \$ 1,309,000,000 in additional new budget authority;
"(VII) for fiscal year 2018, \$ 1,309,000,000 in additional new budget authority;
"(VIII) for fiscal year 2019, \$ 1,309,000,000 in additional new budget authority;
"(IX) for fiscal year 2020, \$ 1,309,000,000 in additional new budget authority; and
"(X) for fiscal year 2021, \$ 1,309,000,000 in additional new budget authority.

"(ii) As used in this subparagraph--

"(I) the term 'continuing disability reviews' means continuing disability reviews under sections 221(i) and 1614(a)(4) of the Social Security Act;

"(II) the term 'redetermination' means redetermination of eligibility under sections 1611(c)(1) and 1614(a)(3)(H) of the Social Security Act; and

"(III) the term 'additional new budget authority' means the amount provided for a fiscal year, in excess of \$ 273,000,000, in an appropriation Act and specified to pay for the costs of continuing disability reviews and redeterminations under the heading 'Limitation on Administrative Expenses' for the Social Security Administration.

"(C) Health care fraud and abuse control.--(i) If a bill or joint resolution making appropriations for a fiscal year is enacted that specifies an amount for the health care fraud abuse control program at the Department of Health and Human Services (75-8393-0-7-571), then the adjustments for that fiscal year shall be the amount of additional new budget authority provided in that Act for such program for that fiscal year, but shall not exceed--

"(I) for fiscal year 2012, \$ 270,000,000 in additional new budget authority;
"(II) for fiscal year 2013, \$ 299,000,000 in additional new budget authority;
"(III) for fiscal year 2014, \$ 329,000,000 in additional new budget authority;
"(IV) for fiscal year 2015, \$ 361,000,000 in additional new budget authority;
"(V) for fiscal year 2016, \$ 395,000,000 in additional new budget authority;
"(VI) for fiscal year 2017, \$ 414,000,000 in additional new budget authority;
"(VII) for fiscal year 2018, \$ 434,000,000 in additional new budget authority;
"(VIII) for fiscal year 2019, \$ 454,000,000 in additional new budget authority;
"(IX) for fiscal year 2020, \$ 475,000,000 in additional new budget authority; and
"(X) for fiscal year 2021, \$ 496,000,000 in additional new budget authority.

"(ii) As used in this subparagraph, the term 'additional new budget authority' means the amount provided for a fiscal year, in excess of \$ 311,000,000, in an appropriation Act and specified to pay for the costs of the health care fraud and abuse control program.

"(D) Disaster funding.--

"(i) If, for fiscal years 2012 through 2021, appropriations for discretionary accounts are enacted that Congress designates as being for disaster relief in statute, the adjustment for a fiscal year shall be the total of such appropriations for the fiscal year in discretionary accounts designated as being for disaster relief, but not to exceed the total of--

"(I) the average funding provided for disaster relief over the previous 10 years, excluding the highest and lowest years; and

"(II) the amount, for years when the enacted new discretionary budget authority designated as being for disaster relief for the preceding fiscal year was less than the average as calculated in subclause (I) for that fiscal year, that is the difference between the enacted amount and the allowable adjustment as calculated in such subclause for that fiscal year.

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"(ii) OMB shall report to the Committees on Appropriations and Budget in each House the average calculated pursuant to clause (i)(II), not later than 30 days after the date of the enactment of the Budget Control Act of 2011.

"(iii) For the purposes of this subparagraph, the term 'disaster relief' means activities carried out pursuant to a determination under section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

"(iv) Appropriations considered disaster relief under this subparagraph in a fiscal year shall not be eligible for adjustments under subparagraph (A) for the fiscal year.

"(c) Discretionary Spending Limit.--As used in this part, the term 'discretionary spending limit' means--

"(1) with respect to fiscal year 2012--

"(A) for the security category, \$ 684,000,000,000 in new budget authority; and

"(B) for the nonsecurity category, \$ 359,000,000,000 in new budget authority;

"(2) with respect to fiscal year 2013--

"(A) for the security category, \$ 686,000,000,000 in new budget authority; and

"(B) for the nonsecurity category, \$ 361,000,000,000 in new budget authority;

"(3) with respect to fiscal year 2014, for the discretionary category, \$ 1,066,000,000,000 in new budget authority;

"(4) with respect to fiscal year 2015, for the discretionary category, \$ 1,086,000,000,000 in new budget authority;

"(5) with respect to fiscal year 2016, for the discretionary category, \$ 1,107,000,000,000 in new budget authority;

"(6) with respect to fiscal year 2017, for the discretionary category, \$ 1,131,000,000,000 in new budget authority;

"(7) with respect to fiscal year 2018, for the discretionary category, \$ 1,156,000,000,000 in new budget authority;

"(8) with respect to fiscal year 2019, for the discretionary category, \$ 1,182,000,000,000 in new budget authority;

"(9) with respect to fiscal year 2020, for the discretionary category, \$ 1,208,000,000,000 in new budget authority; and

"(10) with respect to fiscal year 2021, for the discretionary category, \$ 1,234,000,000,000 in new budget authority;

as adjusted in strict conformance with subsection (b)."

[*102] Sec. 102. DEFINITIONS.

Section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended as follows: <2 USC 900>

(1) Strike paragraph (4) and insert the following new paragraph:

"(4)(A) The term 'nonsecurity category' means all discretionary appropriations not included in the security category defined in subparagraph (B).

"(B) The term 'security category' includes discretionary appropriations associated with agency budgets for the Department of Defense, the Department of Homeland Security, the Department of Veterans Affairs, the National Nuclear Security Administration, the intelligence community management account (95-0401-0-1-054), and all budget accounts in budget function 150 (international affairs).

"(C) The term 'discretionary category' includes all discretionary appropriations."

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(2) In paragraph (8)(C), strike "the food stamp program" and insert "the Supplemental Nutrition Assistance Program".

(3) Strike paragraph (14) and insert the following new paragraph:

"(14) The term 'outyear' means a fiscal year one or more years after the budget year."

(4) At the end, add the following new paragraphs:

"(20) The term 'emergency' means a situation that--

"(A) requires new budget authority and outlays (or new budget authority and the outlays flowing therefrom) for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security; and

"(B) is unanticipated.

"(21) The term 'unanticipated' means that the underlying situation is--

"(A) sudden, which means quickly coming into being or not building up over time;

"(B) urgent, which means a pressing and compelling need requiring immediate action;

"(C) unforeseen, which means not predicted or anticipated as an emerging need; and

"(D) temporary, which means not of a permanent duration."

[*103] Sec. 103. REPORTS AND ORDERS.

Section 254 of the Balanced Budget and Emergency Deficit <2 USC 904> Control Act of 1985 is amended as follows:

(1) In subsection (c)(2), strike "2002" and insert "2021".

(2) At the end of subsection (e), insert "This report shall also contain a preview estimate of the adjustment for disaster funding for the upcoming fiscal year."

(3) In subsection (f)(2)(A), strike "2002" and insert "2021"; before the concluding period insert ", including a final estimate of the adjustment for disaster funding".

[*104] Sec. 104. EXPIRATION.

(a) Repealer.--Section 275 of the Balanced Budget and Emergency <2 USC 900 note> Deficit Control Act of 1985 is repealed.

(b) <2 USC 902 note> Conforming Change.--Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not apply to the Congressional Budget Office.

[*105] Sec. 105. AMENDMENTS TO THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974.

(a) Adjustments.--Section 314 of the Congressional Budget <2 USC 645> Act of 1974 is amended as follows:

(1) Strike subsection (a) and insert the following:

"(a) Adjustments.--After the reporting of a bill or joint resolution or the offering of an amendment thereto or the submission of a conference report thereon, the chairman of the Committee on the Budget of the House of Representatives or the Senate may make appropriate budgetary adjustments of new budget authority and the outlays flowing therefrom in the same amount as required by section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985."

(2) Strike subsections (b) and (e) and redesignate subsections (c) and (d) as subsections (b) and (c), respectively.

(3) At the end, add the following new subsections:

"(d) Emergencies in the House of Representatives.-- (1) In the House of Representatives, if a reported bill or joint resolution, or amendment thereto or conference report thereon, contains a provision providing new budget authority and outlays or reducing revenue, and a designation of such provision as an emergency requirement pursuant to 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, the chair of the Committee on the Budget of the

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House of Representatives shall not count the budgetary effects of such provision for purposes of title III and title IV of the Congressional Budget Act of 1974 and the Rules of the House of Representatives.

"(2)(A) In the House of Representatives, if a reported bill or joint resolution, or amendment thereto or conference report thereon, contains a provision providing new budget authority and outlays or reducing revenue, and a designation of such provision as an emergency pursuant to paragraph (1), the chair of the Committee on the Budget shall not count the budgetary effects of such provision for purposes of this title and title IV and the Rules of the House of Representatives.

"(B) In the House of Representatives, a proposal to strike a designation under subparagraph (A) shall be excluded from an evaluation of budgetary effects for purposes of this title and title IV and the Rules of the House of Representatives.

"(C) An amendment offered under subparagraph (B) that also proposes to reduce each amount appropriated or otherwise made available by the pending measure that is not required to be appropriated or otherwise made available shall be in order at any point in the reading of the pending measure.

"(e) Enforcement of Discretionary Spending Caps.--It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause the discretionary spending limits as set forth in section 251 of the Balanced Budget and Emergency Deficit Control Act to be exceeded."

(b) Definitions.--Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the <2 USC 622> end the following new paragraph:

"(11) The terms 'emergency' and 'unanticipated' have the meanings given to such terms in section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985."

(c) Appeals for Discretionary Caps.--Section 904(c)(2) of the Congressional Budget Act of 1974 is amended by striking "and <2 USC 621 note> 312(c)" and inserting "312(c), and 314(e)".

[*106] Sec. 106. SENATE BUDGET ENFORCEMENT. <2 USC 631 note>

(a) In General.--

(1) For the purpose of enforcing the Congressional Budget Act of 1974 through April 15, 2012, including section 300 of that Act, and enforcing budgetary points of order in prior concurrent resolutions on the budget, the allocations, aggregates, and levels set in subsection (b)(1) shall apply in the Senate in the same manner as for a concurrent resolution on the budget for fiscal year 2012 with appropriate budgetary levels for fiscal years 2011 and 2013 through 2021.

(2) For the purpose of enforcing the Congressional Budget Act of 1974 after April 15, 2012, including section 300 of that Act, and enforcing budgetary points of order in prior concurrent resolutions on the budget, the allocations, aggregates, and levels set in subsection (b)(2) shall apply in the Senate in the same manner as for a concurrent resolution on the budget for fiscal year 2013 with appropriate budgetary levels for fiscal years 2012 and 2014 through 2022.

(b) Committee Allocations, Aggregates, and Levels.--

(1) As soon as practicable after the date of enactment of this section, the Chairman of the Committee on the Budget shall file--

(A) for the Committee on Appropriations, committee allocations for fiscal years 2011 and 2012 consistent with the discretionary spending limits set forth in this Act for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(B) for all committees other than the Committee on Appropriations, committee allocations for fiscal years 2011, 2012, 2012 through 2016, and 2012 through 2021 consistent with the Congressional Budget Office's March 2011 baseline adjusted to account for the budgetary effects of this Act and legislation enacted prior to this Act but not included in the Congressional Budget Office's March 2011 baseline, for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(C) aggregate spending levels for fiscal years 2011 and 2012 and aggregate revenue levels for fiscal years 2011, 2012, 2012 through 2016, 2012 through 2021 consistent with the Congressional Budget Office's March 2011 baseline adjusted to account for the budgetary effects of this Act and legislation enacted prior to this Act but not in-

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cluded in the Congressional Budget Office's March 2011 baseline, and the discretionary spending limits set forth in this Act for the purpose of enforcing section 311 of the Congressional Budget Act of 1974; and

(D) levels of Social Security revenues and outlays for fiscal years 2011, 2012, 2012 through 2016, and 2012 through 2021 consistent with the Congressional Budget Office's March 2011 baseline adjusted to account for the budgetary effects of this Act and legislation enacted prior to this Act but not included in the Congressional Budget Office's March 2011 baseline, for the purpose of enforcing sections 302 and 311 of the Congressional Budget Act of 1974.

(2) Not later than April 15, 2012, the Chairman of the Committee on the Budget shall file--

(A) for the Committee on Appropriations, committee allocations for fiscal years 2012 and 2013 consistent with the discretionary spending limits set forth in this Act for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(B) for all committees other than the Committee on Appropriations, committee allocations for fiscal years 2012, 2013, 2013 through 2017, and 2013 through 2022 consistent with the Congressional Budget Office's March 2012 baseline for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(C) aggregate spending levels for fiscal years 2012 and 2013 and aggregate revenue levels for fiscal years 2012, 2013, 2013-2017, and 2013-2022 consistent with the Congressional Budget Office's March 2012 baseline and the discretionary spending limits set forth in this Act for the purpose of enforcing section 311 of the Congressional Budget Act of 1974; and

(D) levels of Social Security revenues and outlays for fiscal years 2012 and 2013, 2013-2017, and 2013-2022 consistent with the Congressional Budget Office's March 2012 baseline budget for the purpose of enforcing sections 302 and 311 of the Congressional Budget Act of 1974.

(c) Senate Pay-as-you-go Scorecard.--

(1) Effective on the date of enactment of this section, for the purpose of enforcing section 201 of S. Con. Res. 21 (110th Congress), the Chairman of the Senate Committee on the Budget shall reduce any balances of direct spending and revenues for any fiscal year to 0 (zero).

(2) Not later than April 15, 2012, for the purpose of enforcing section 201 of S. Con. Res. 21 (110th Congress), the Chairman of the Senate Committee on the Budget shall reduce any balances of direct spending and revenues for any fiscal year to 0 (zero).

(3) Upon resetting the Senate paygo scorecard pursuant to paragraph (2), the Chairman shall publish a notification of such action in the Congressional Record.

(d) Further Adjustments.--

(1) The Chairman of the Committee on the Budget of the Senate may revise any allocations, aggregates, or levels set pursuant to this section to account for any subsequent adjustments to discretionary spending limits made pursuant to this Act.

(2) With respect to any allocations, aggregates, or levels set or adjustments made pursuant to this section, sections 412 through 414 of S. Con. Res. 13 (111th Congress) shall remain in effect.

(e) Expiration.--

(1) Subsections (a)(1), (b)(1), and (c)(1) shall expire if a concurrent resolution on the budget for fiscal year 2012 is agreed to by the Senate and House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974.

(2) Subsections (a)(2), (b)(2), and (c)(2) shall expire if a concurrent resolution on the budget for fiscal year 2013 is agreed to by the Senate and House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974.

TITLE II--VOTE ON THE BALANCED BUDGET AMENDMENT

[*201] Sec. 201. VOTE ON THE BALANCED BUDGET AMENDMENT.

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

After September 30, 2011, and not later than December 31, 2011, the House of Representatives and Senate, respectively, shall vote on passage of a joint resolution, the title of which is as follows: "Joint resolution proposing a balanced budget amendment to the Constitution of the United States."

[*202] Sec. 202. CONSIDERATION BY THE OTHER HOUSE.

(a) House Consideration.--

(1) Referral.-- If the House receives a joint resolution described in section 201 from the Senate, such joint resolution shall be referred to the Committee on the Judiciary. If the committee fails to report the joint resolution within five legislative days, it shall be in order to move that the House discharge the committee from further consideration of the joint resolution. Such a motion shall not be in order after the House has disposed of a motion to discharge the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion except twenty minutes of debate equally divided and controlled by the proponent and an opponent. If such a motion is adopted, the House shall proceed immediately to consider the joint resolution in accordance with paragraph (3). A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(2) Proceeding to consideration.-- After the joint resolution has been referred to the appropriate calendar or the committee has been discharged (other than by motion) from its consideration, it shall be in order to move to proceed to consider the joint resolution in the House. Such a motion shall not be in order after the House has disposed of a motion to proceed with respect to the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(3) Consideration.-- The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent and one motion to limit debate on the joint resolution. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

(b) Senate Consideration.--(1) If the Senate receives a joint resolution described in section 201 from the House of Representatives, such joint resolution shall be referred to the appropriate committee of the Senate. If such committee has not reported the joint resolution at the close of the fifth session day after its receipt by the Senate, such committee shall be automatically discharged from further consideration of the joint resolution and it shall be placed on the appropriate calendar.

(2) Consideration of the joint resolution and on all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order. Any debatable motion or appeal is debatable for not to exceed 1 hour, to be divided equally between those favoring and those opposing the motion or appeal. All time used for consideration of the joint resolution, including time used for quorum calls and voting, shall be counted against the total 20 hours of consideration.

(3) If the Senate has voted to proceed to a joint resolution, the vote on passage of the joint resolution shall be taken on or before the close of the seventh session day after such joint resolution has been reported or discharged or immediately following the conclusion of consideration of the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

TITLE III--DEBT CEILING DISAPPROVAL PROCESS

[*301] Sec. 301. DEBT CEILING DISAPPROVAL PROCESS.

(a) In General.--Subchapter I of chapter 31 of subtitle III of title 31, United States Code, is amended--

(1) in section 3101(b), by striking "or otherwise" and inserting "or as provided by section 3101A or otherwise";
and

(2) by inserting after section 3101 the following:

"§ 3101A. Presidential modification of the debt ceiling

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

"(a) In General.--

"(1) \$ 900 billion.----

"(A) Certification.--If, not later than December 31, 2011, the President submits a written certification to Congress that the President has determined that the debt subject to limit is within \$ 100,000,000,000 of the limit in section 3101(b) and that further borrowing is required to meet existing commitments, the Secretary of the Treasury may exercise authority to borrow an additional \$ 900,000,000,000, subject to the enactment of a joint resolution of disapproval enacted pursuant to this section. Upon submission of such certification, the limit on debt provided in section 3101(b) (referred to in this section as the 'debt limit') is increased by \$ 400,000,000,000.

"(B) Resolution of disapproval.--Congress may consider a joint resolution of disapproval of the authority under subparagraph (A) as provided in subsections (b) through (f). The joint resolution of disapproval considered under this section shall contain only the language provided in subsection (b)(2). If the time for disapproval has lapsed without enactment of a joint resolution of disapproval under this section, the debt limit is increased by an additional \$ 500,000,000,000.

"(2) Additional amount.----

"(A) Certification.--If, after the debt limit is increased by \$ 900,000,000,000 under paragraph (1), the President submits a written certification to Congress that the President has determined that the debt subject to limit is within \$ 100,000,000,000 of the limit in section 3101(b) and that further borrowing is required to meet existing commitments, the Secretary of the Treasury may, subject to the enactment of a joint resolution of disapproval enacted pursuant to this section, exercise authority to borrow an additional amount equal to--

"(i) \$ 1,200,000,000,000, unless clause (ii) or (iii) applies;

"(ii) \$ 1,500,000,000,000 if the Archivist of the United States has submitted to the States for their ratification a proposed amendment to the Constitution of the United States pursuant to a joint resolution entitled 'Joint resolution proposing a balanced budget amendment to the Constitution of the United States'; or

"(iii) if a joint committee bill to achieve an amount greater than \$ 1,200,000,000,000 in deficit reduction as provided in section 401(b)(3)(B)(i)(II) of the Budget Control Act of 2011 is enacted, an amount equal to the amount of that deficit reduction, but not greater than \$ 1,500,000,000,000, unless clause (ii) applies.

"(B) Resolution of disapproval.--Congress may consider a joint resolution of disapproval of the authority under subparagraph (A) as provided in subsections (b) through (f). The joint resolution of disapproval considered under this section shall contain only the language provided in subsection (b)(2). If the time for disapproval has lapsed without enactment of a joint resolution of disapproval under this section, the debt limit is increased by the amount authorized under subparagraph (A).

"(b) Joint Resolution of Disapproval.--

"(1) In general.-- Except for the \$ 400,000,000,000 increase in the debt limit provided by subsection (a)(1)(A), the debt limit may not be raised under this section if, within 50 calendar days after the date on which Congress receives a certification described in subsection (a)(1) or within 15 calendar days after Congress receives the certification described in subsection (a)(2) (regardless of whether Congress is in session), there is enacted into law a joint resolution disapproving the President's exercise of authority with respect to such additional amount.

"(2) Contents of joint resolution.-- For the purpose of this section, the term 'joint resolution' means only a joint resolution--"(A)

(i) for the certification described in subsection (a)(1), that is introduced on September 6, 7, 8, or 9, 2011 (or, if the Senate was not in session, the next calendar day on which the Senate is in session); and

"(ii) for the certification described in subsection (a)(2), that is introduced between the date the certification is received and 3 calendar days after that date;

"(B) which does not have a preamble;

"(C) the title of which is only as follows: 'Joint resolution relating to the disapproval of the President's exercise of authority to increase the debt limit, as submitted under section 3101A of title 31, United States Code, on G7XXXXXX' (with the blank containing the date of such submission); and

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"(D) the matter after the resolving clause of which is only as follows: 'That Congress disapproves of the President's exercise of authority to increase the debt limit, as exercised pursuant to the certification under section 3101A(a) of title 31, United States Code.'

"(c) Expedited Consideration in House of Representatives.--

"(1) Reconvening.-- Upon receipt of a certification described in subsection (a)(2), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this section, the House shall convene not later than the second calendar day after receipt of such certification.

"(2) Reporting and discharge.-- Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House without amendment not later than 5 calendar days after the date of introduction of a joint resolution described in subsection (a). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

"(3) Proceeding to consideration.-- After each committee authorized to consider a joint resolution reports it to the House or has been discharged from its consideration, it shall be in order, not later than the sixth day after introduction of a joint resolution under subsection (a), to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on a joint resolution addressing a particular submission. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

"(4) Consideration.-- The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

"(d) Expedited Procedure in Senate.--

"(1) Reconvening.-- Upon receipt of a certification under subsection (a)(2), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

"(2) Placement on calendar.-- Upon introduction in the Senate, the joint resolution shall be immediately placed on the calendar.

"(3) Floor consideration.----

"(A) In general.--Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the day after the date on which Congress receives a certification under subsection (a) and, for the certification described in subsection (a)(1), ending on September 14, 2011, and for the certification described in subsection (a)(2), on the 6th day after the date on which Congress receives a certification under subsection (a) (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

"(B) Consideration.--Consideration of the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

"(C) Vote on passage.--If the Senate has voted to proceed to a joint resolution, the vote on passage of the joint resolution shall occur immediately following the conclusion of consideration of the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

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"(D) Rulings of the chair on procedure.--Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

"(e) Amendment Not in Order.--A joint resolution of disapproval considered pursuant to this section shall not be subject to amendment in either the House of Representatives or the Senate.

"(f) Coordination With Action by Other House.--

"(1) In general.-- If, before passing the joint resolution, one House receives from the other a joint resolution--

"(A) the joint resolution of the other House shall not be referred to a committee; and

"(B) the procedure in the receiving House shall be the same as if no joint resolution had been received from the other House until the vote on passage, when the joint resolution received from the other House shall supplant the joint resolution of the receiving House.

"(2) Treatment of joint resolution of other house.-- If the Senate fails to introduce or consider a joint resolution under this section, the joint resolution of the House shall be entitled to expedited floor procedures under this section.

"(3) Treatment of companion measures.-- If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

"(4) Consideration after passage.-- (A) If Congress passes a joint resolution, the period beginning on the date the President is presented with the joint resolution and ending on the date the President signs, allows to become law without his signature, or vetoes and returns the joint resolution (but excluding days when either House is not in session) shall be disregarded in computing the appropriate calendar day period described in subsection (b)(1).

"(B) Debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

"(5) Veto override.-- If within the appropriate calendar day period described in subsection (b)(1), Congress overrides a veto of the joint resolution with respect to authority exercised pursuant to paragraph (1) or (2) of subsection (a), the limit on debt provided in section 3101(b) shall not be raised, except for the \$ 400,000,000,000 increase in the limit provided by subsection (a)(1)(A).

"(6) Sequestration.-- (A) If within the 50-calendar day period described in subsection (b)(1), the President signs the joint resolution, the President allows the joint resolution to become law without his signature, or Congress overrides a veto of the joint resolution with respect to authority exercised pursuant to paragraph (1) of subsection (a), there shall be a sequestration to reduce spending by \$ 400,000,000,000. OMB shall implement the sequestration forthwith.

"(B) OMB shall implement each half of such sequestration in accordance with section 255, section 256, and subsections (c), (d), (e), and (f) of section 253 of the Balanced Budget and Emergency Deficit Control Act of 1985, and for the purpose of such implementation the term 'excess deficit' means the amount specified in subparagraph (A).

"(g) Rules of House of Representatives and Senate.--This subsection and subsections (b), (c), (d), (e), and (f) (other than paragraph (6)) are enacted by Congress--

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House."

(b) Conforming Amendment.--The table of sections for chapter 31 of title 31, United States Code, is amended by inserting after the item relating to section 3101 the following new item:

"3101A. Presidential modification of the debt ceiling."

[*302] Sec. 302. ENFORCEMENT OF BUDGET GOAL.

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

(a) In General.--The Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting after section 251 the following new section:

"Sec. 251A. <2 USC 901a> ENFORCEMENT OF BUDGET GOAL.

"Unless a joint committee bill achieving an amount greater than \$ 1,200,000,000,000 in deficit reduction as provided in section 401(b)(3)(B)(i)(II) of the Budget Control Act of 2011 is enacted by January 15, 2012, the discretionary spending limits listed in section 251(c) shall be revised, and discretionary appropriations and direct spending shall be reduced, as follows:

"(1) Revised security category; revised nonsecurity category.-- (A) The term 'revised security category' means discretionary appropriations in budget function 050.

"(B) The term 'revised nonsecurity category' means discretionary appropriations other than in budget function 050.

"(2) Revised discretionary spending limits.-- The discretionary spending limits for fiscal years 2013 through 2021 under section 251(c) shall be replaced with the following:

"(A) For fiscal year 2013--

"(i) for the security category, \$ 546,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 501,000,000,000 in budget authority.

"(B) For fiscal year 2014--

"(i) for the security category, \$ 556,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 510,000,000,000 in budget authority.

"(C) For fiscal year 2015--

"(i) for the security category, \$ 566,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 520,000,000,000 in budget authority.

"(D) For fiscal year 2016--

"(i) for the security category, \$ 577,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 530,000,000,000 in budget authority.

"(E) For fiscal year 2017--

"(i) for the security category, \$ 590,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 541,000,000,000 in budget authority.

"(F) For fiscal year 2018--

"(i) for the security category, \$ 603,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 553,000,000,000 in budget authority.

"(G) For fiscal year 2019--

"(i) for the security category, \$ 616,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 566,000,000,000 in budget authority.

"(H) For fiscal year 2020--

"(i) for the security category, \$ 630,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 578,000,000,000 in budget authority.

"(I) For fiscal year 2021--

"(i) for the security category, \$ 644,000,000,000 in budget authority; and

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

"(ii) for the nonsecurity category, \$ 590,000,000,000 in budget authority.

"(3) Calculation of total deficit reduction.-- OMB shall calculate the amount of the deficit reduction required by this section for each of fiscal years 2013 through 2021 by--

"(A) starting with \$ 1,200,000,000,000;

"(B) subtracting the amount of deficit reduction achieved by the enactment of a joint committee bill, as provided in section 401(b)(3)(B)(i)(II) of the Budget Control Act of 2011;

"(C) reducing the difference by 18 percent to account for debt service; and

"(D) dividing the result by 9.

"(4) Allocation to functions.-- On January 2, 2013, for fiscal year 2013, and in its sequestration preview report for fiscal years 2014 through 2021 pursuant to section 254(c), OMB shall allocate half of the total reduction calculated pursuant to paragraph (3) for that year to discretionary appropriations and direct spending accounts within function 050 (defense function) and half to accounts in all other functions (nondefense functions).

"(5) Defense function reduction.-- OMB shall calculate the reductions to discretionary appropriations and direct spending for each of fiscal years 2013 through 2021 for defense function spending as follows:

"(A) Discretionary.--OMB shall calculate the reduction to discretionary appropriations by--

"(i) taking the total reduction for the defense function allocated for that year under paragraph (4);

"(ii) multiplying by the discretionary spending limit for the revised security category for that year; and

"(iii) dividing by the sum of the discretionary spending limit for the security category and OMB's baseline estimate of nonexempt outlays for direct spending programs within the defense function for that year.

"(B) Direct spending.--OMB shall calculate the reduction to direct spending by taking the total reduction for the defense function required for that year under paragraph (4) and subtracting the discretionary reduction calculated pursuant to subparagraph (A).

"(6) Nondefense function reduction.-- OMB shall calculate the reduction to discretionary appropriations and to direct spending for each of fiscal years 2013 through 2021 for programs in nondefense functions as follows:

"(A) Discretionary.--OMB shall calculate the reduction to discretionary appropriations by--

"(i) taking the total reduction for nondefense functions allocated for that year under paragraph (4);

"(ii) multiplying by the discretionary spending limit for the revised nonsecurity category for that year; and

"(iii) dividing by the sum of the discretionary spending limit for the revised nonsecurity category and OMB's baseline estimate of nonexempt outlays for direct spending programs in nondefense functions for that year.

"(B) Direct spending.--OMB shall calculate the reduction to direct spending programs by taking the total reduction for nondefense functions required for that year under paragraph (4) and subtracting the discretionary reduction calculated pursuant to subparagraph (A).

"(7) Implementing discretionary reductions.----

"(A) Fiscal year 2013.--On January 2, 2013, for fiscal year 2013, OMB shall calculate and the President shall order a sequestration, effective upon issuance and under the procedures set forth in section 253(f), to reduce each account within the security category or nonsecurity category by a dollar amount calculated by multiplying the baseline level of budgetary resources in that account at that time by a uniform percentage necessary to achieve--

"(i) for the revised security category, an amount equal to the defense function discretionary reduction calculated pursuant to paragraph (5); and

"(ii) for the revised nonsecurity category, an amount equal to the nondefense function discretionary reduction calculated pursuant to paragraph (6).

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2011 Enacted S. 365; 112 Enacted S. 365

"(B) Fiscal years 2014-2021.--On the date of the submission of its sequestration preview report for fiscal years 2014 through 2021 pursuant to section 254(c) for each of fiscal years 2014 through 2021, OMB shall reduce the discretionary spending limit--

"(i) for the revised security category by the amount of the defense function discretionary reduction calculated pursuant to paragraph (5); and

"(ii) for the revised nonsecurity category by the amount of the nondefense function discretionary reduction calculated pursuant to paragraph (6).

"(8) Implementing direct spending reductions.-- On the date specified in paragraph (4) during each applicable year, OMB shall prepare and the President shall order a sequestration, effective upon issuance, of nonexempt direct spending to achieve the direct spending reduction calculated pursuant to paragraphs (5) and (6). When implementing the sequestration of direct spending pursuant to this paragraph, OMB shall follow the procedures specified in section 6 of the Statutory Pay-As-You-Go Act of 2010, the exemptions specified in section 255, and the special rules specified in section 256, except that the percentage reduction for the Medicare programs specified in section 256(d) shall not be more than 2 percent for a fiscal year.

"(9) Adjustment for medicare.-- If the percentage reduction for the Medicare programs would exceed 2 percent for a fiscal year in the absence of paragraph (8), OMB shall increase the reduction for all other discretionary appropriations and direct spending under paragraph (6) by a uniform percentage to a level sufficient to achieve the reduction required by paragraph (6) in the non-defense function.

"(10) Implementation of reductions.-- Any reductions imposed under this section shall be implemented in accordance with section 256(k).

"(11) Report.-- On the dates specified in paragraph (4), OMB shall submit a report to Congress containing information about the calculations required under this section, the adjusted discretionary spending limits, a listing of the reductions required for each nonexempt direct spending account, and any other data and explanations that enhance public understanding of this title and actions taken under it."

(b) Conforming Amendment.--The table of contents set forth in section 250(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting after the item relating to section 251 the following:

"Sec. 251A. Enforcement of budget goal."

TITLE IV--JOINT SELECT COMMITTEE ON DEFICIT REDUCTION

[*401] Sec. 401. ESTABLISHMENT OF JOINT SELECT COMMITTEE. <2 USC 900 note>

(a) Definitions.--In this title:

(1) Joint committee.-- The term "joint committee" means the Joint Select Committee on Deficit Reduction established under subsection (b)(1).

(2) Joint committee bill.-- The term "joint committee bill" means a bill consisting of the proposed legislative language of the joint committee recommended under subsection (b)(3)(B) and introduced under section 402(a).

(b) Establishment of Joint Select Committee.--

(1) Establishment.-- There is established a joint select committee of Congress to be known as the "Joint Select Committee on Deficit Reduction".

(2) Goal.-- The goal of the joint committee shall be to reduce the deficit by at least \$ 1,500,000,000,000 over the period of fiscal years 2012 to 2021.

(3) Duties.----

(A) In general.--

(i) Improving the short-term and long-term fiscal imbalance.--The joint committee shall provide recommendations and legislative language that will significantly improve the short-term and long-term fiscal imbalance of the Federal Government.

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

(ii) Recommendations of committees.--Not later than October 14, 2011, each committee of the House of Representatives and the Senate may transmit to the joint committee its recommendations for changes in law to reduce the deficit consistent with the goal described in paragraph (2) for the joint committee's consideration.

(B) Report, recommendations, and legislative language.--

(i) In general.--Not later than November 23, 2011, the joint committee shall vote on--

(I) a report that contains a detailed statement of the findings, conclusions, and recommendations of the joint committee and the estimate of the Congressional Budget Office required by paragraph (5)(D)(ii); and

(II) proposed legislative language to carry out such recommendations as described in subclause (I), which shall include a statement of the deficit reduction achieved by the legislation over the period of fiscal years 2012 to 2021. Any change to the Rules of the House of Representatives or the Standing Rules of the Senate included in the report or legislative language shall be considered to be merely advisory.

(ii) Approval of report and legislative language.--The report of the joint committee and the proposed legislative language described in clause (i) shall require the approval of a majority of the members of the joint committee.

(iii) Additional views.--A member of the joint committee who gives notice of an intention to file supplemental, minority, or additional views at the time of final joint committee vote on the approval of the report and legislative language under clause (ii) shall be entitled to 3 calendar days in which to file such views in writing with the staff director of the joint committee. Such views shall then be included in the joint committee report and printed in the same volume, or part thereof, and their inclusion shall be noted on the cover of the report. In the absence of timely notice, the joint committee report may be printed and transmitted immediately without such views.

(iv) Transmission of report and legislative language.--If the report and legislative language are approved by the joint committee pursuant to clause (ii), then not later than December 2, 2011, the joint committee shall submit the joint committee report and legislative language described in clause (i) to the President, the Vice President, the Speaker of the House of Representatives, and the majority and minority Leaders of each House of Congress.

(v) Report and legislative language to be made public.--Upon the approval or disapproval of the joint committee report and legislative language pursuant to clause (ii), the joint committee shall promptly make the full report and legislative language, and a record of the vote, available to the public.

(4) Membership.----

(A) In general.--The joint committee shall be composed of 12 members appointed pursuant to subparagraph (B).

(B) Appointment.--Members of the joint committee shall be appointed as follows:

(i) The majority leader of the Senate shall appoint three members from among Members of the Senate.

(ii) The minority leader of the Senate shall appoint three members from among Members of the Senate.

(iii) The Speaker of the House of Representatives shall appoint three members from among Members of the House of Representatives.

(iv) The minority leader of the House of Representatives shall appoint three members from among Members of the House of Representatives.

(C) Co-chairs.--

(i) In general.--There shall be two Co-Chairs of the joint committee. The majority leader of the Senate shall appoint one Co-Chair from among the members of the joint committee. The Speaker of the House of Representatives shall appoint the second Co-Chair from among the members of the joint committee. The Co-Chairs shall be appointed not later than 14 calendar days after the date of enactment of this Act.

(ii) Staff director.--The Co-Chairs, acting jointly, shall hire the staff director of the joint committee.

(D) Date.--Members of the joint committee shall be appointed not later than 14 calendar days after the date of enactment of this Act.

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2011 Enacted S. 365; 112 Enacted S. 365

(E) Period of appointment.--Members shall be appointed for the life of the joint committee. Any vacancy in the joint committee shall not affect its powers, but shall be filled not later than 14 calendar days after the date on which the vacancy occurs, in the same manner as the original designation was made. If a member of the joint committee ceases to be a Member of the House of Representatives or the Senate, as the case may be, the member is no longer a member of the joint committee and a vacancy shall exist.

(5) Administration.----

(A) In general.--To enable the joint committee to exercise its powers, functions, and duties, there are authorized to be disbursed by the Senate the actual and necessary expenses of the joint committee approved by the co-chairs, subject to the rules and regulations of the Senate.

(B) Expenses.--In carrying out its functions, the joint committee is authorized to incur expenses in the same manner and under the same conditions as the Joint Economic Committee is authorized by section 11 of Public Law 79-304 (15 U.S.C. 1024 (d)).

(C) Quorum.--Seven members of the joint committee shall constitute a quorum for purposes of voting, meeting, and holding hearings.

(D) Voting.--

(i) Proxy voting.--No proxy voting shall be allowed on behalf of the members of the joint committee.

(ii) Congressional budget office estimates.--The Congressional Budget Office shall provide estimates of the legislation (as described in paragraph (3)(B)) in accordance with sections 308(a) and 201(f) of the Congressional Budget Act of 1974 (2 U.S.C. 639(a) and 601(f))(including estimates of the effect of interest payment on the debt). In addition, the Congressional Budget Office shall provide information on the budgetary effect of the legislation beyond the year 2021. The joint committee may not vote on any version of the report, recommendations, or legislative language unless such estimates are available for consideration by all members of the joint committee at least 48 hours prior to the vote as certified by the Co-Chairs.

(E) Meetings.--

(i) Initial meeting.--Not later than 45 calendar days after the date of enactment of this Act, the joint committee shall hold its first meeting.

(ii) Agenda.--The Co-Chairs of the joint committee shall provide an agenda to the joint committee members not less than 48 hours in advance of any meeting.

(F) Hearings.--

(i) In general.--The joint committee may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, require attendance of witnesses and production of books, papers, and documents, take such testimony, receive such evidence, and administer such oaths as the joint committee considers advisable.

(ii) Hearing procedures and responsibilities of co-chairs.--

(I) Announcement.--The Co-Chairs of the joint committee shall make a public announcement of the date, place, time, and subject matter of any hearing to be conducted, not less than 7 days in advance of such hearing, unless the Co-Chairs determine that there is good cause to begin such hearing at an earlier date.

(II) Written statement.--A witness appearing before the joint committee shall file a written statement of proposed testimony at least 2 calendar days before the appearance of the witness, unless the requirement is waived by the Co-Chairs, following their determination that there is good cause for failure to comply with such requirement.

(G) Technical assistance.--Upon written request of the Co-Chairs, a Federal agency shall provide technical assistance to the joint committee in order for the joint committee to carry out its duties.

(c) Staff of Joint Committee.--

(1) In general.-- The Co-Chairs of the joint committee may jointly appoint and fix the compensation of staff as they deem necessary, within the guidelines for employees of the Senate and following all applicable rules and employment requirements of the Senate.

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2011 Enacted S. 365; 112 Enacted S. 365

(2) Ethical standards.-- Members on the joint committee who serve in the House of Representatives shall be governed by the ethics rules and requirements of the House. Members of the Senate who serve on the joint committee and staff of the joint committee shall comply with the ethics rules of the Senate.

(d) Termination.--The joint committee shall terminate on January 31, 2012.

[*402] Sec. 402. EXPEDITED CONSIDERATION OF JOINT COMMITTEE RECOMMENDATIONS. <2 USC 900 note>

(a) Introduction.--If approved by the majority required by section 401(b)(3)(B)(ii), the proposed legislative language submitted pursuant to section 401(b)(3)(B)(iv) shall be introduced in the Senate (by request) on the next day on which the Senate is in session by the majority leader of the Senate or by a Member of the Senate designated by the majority leader of the Senate and shall be introduced in the House of Representatives (by request) on the next legislative day by the majority leader of the House or by a Member of the House designated by the majority leader of the House.

(b) Consideration in the House of Representatives.--

(1) Referral and reporting.-- Any committee of the House of Representatives to which the joint committee bill is referred shall report it to the House without amendment not later than December 9, 2011. If a committee fails to report the joint committee bill within that period, it shall be in order to move that the House discharge the committee from further consideration of the bill. Such a motion shall not be in order after the last committee authorized to consider the bill reports it to the House or after the House has disposed of a motion to discharge the bill. The previous question shall be considered as ordered on the motion to its adoption without intervening motion except 20 minutes of debate equally divided and controlled by the proponent and an opponent. If such a motion is adopted, the House shall proceed immediately to consider the joint committee bill in accordance with paragraphs (2) and (3). A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(2) Proceeding to consideration.-- After the last committee authorized to consider a joint committee bill reports it to the House or has been discharged (other than by motion) from its consideration, it shall be in order to move to proceed to consider the joint committee bill in the House. Such a motion shall not be in order after the House has disposed of a motion to proceed with respect to the joint committee bill. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(3) Consideration.-- The joint committee bill shall be considered as read. All points of order against the joint committee bill and against its consideration are waived. The previous question shall be considered as ordered on the joint committee bill to its passage without intervening motion except 2 hours of debate equally divided and controlled by the proponent and an opponent and one motion to limit debate on the joint committee bill. A motion to reconsider the vote on passage of the joint committee bill shall not be in order.

(4) Vote on passage.-- The vote on passage of the joint committee bill shall occur not later than December 23, 2011.

(c) Expedited Procedure in the Senate.--

(1) Committee consideration.-- A joint committee bill introduced in the Senate under subsection (a) shall be jointly referred to the committee or committees of jurisdiction, which committees shall report the bill without any revision and with a favorable recommendation, an unfavorable recommendation, or without recommendation, not later than December 9, 2011. If any committee fails to report the bill within that period, that committee shall be automatically discharged from consideration of the bill, and the bill shall be placed on the appropriate calendar.

(2) Motion to proceed.-- Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order, not later than 2 days of session after the date on which a joint committee bill is reported or discharged from all committees to which it was referred, for the majority leader of the Senate or the majority leader's designee to move to proceed to the consideration of the joint committee bill. It shall also be in order for any Member of the Senate to move to proceed to the consideration of the joint committee bill at any time after the conclusion of such 2-day period. A motion to proceed is in order even though a previous motion to the same effect has been disagreed to. All points of order against the motion to proceed to the joint committee bill are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

order. If a motion to proceed to the consideration of the joint committee bill is agreed to, the joint committee bill shall remain the unfinished business until disposed of.

(3) Consideration.-- All points of order against the joint committee bill and against consideration of the joint committee bill are waived. Consideration of the joint committee bill and of all debatable motions and appeals in connection therewith shall not exceed a total of 30 hours which shall be divided equally between the Majority and Minority Leaders or their designees. A motion further to limit debate on the joint committee bill is in order, shall require an affirmative vote of three-fifths of the Members duly chosen and sworn, and is not debatable. Any debatable motion or appeal is debatable for not to exceed 1 hour, to be divided equally between those favoring and those opposing the motion or appeal. All time used for consideration of the joint committee bill, including time used for quorum calls and voting, shall be counted against the total 30 hours of consideration.

(4) No amendments.-- An amendment to the joint committee bill, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint committee bill, is not in order.

(5) Vote on passage.-- If the Senate has voted to proceed to the joint committee bill, the vote on passage of the joint committee bill shall occur immediately following the conclusion of the debate on a joint committee bill, and a single quorum call at the conclusion of the debate if requested. The vote on passage of the joint committee bill shall occur not later than December 23, 2011.

(6) Rulings of the chair on procedure.-- Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint committee bill shall be decided without debate.

(d) Amendment.--The joint committee bill shall not be subject to amendment in either the House of Representatives or the Senate.

(e) Consideration by the Other House.--

(1) In general.-- If, before passing the joint committee bill, one House receives from the other a joint committee bill--

(A) the joint committee bill of the other House shall not be referred to a committee; and

(B) the procedure in the receiving House shall be the same as if no joint committee bill had been received from the other House until the vote on passage, when the joint committee bill received from the other House shall supplant the joint committee bill of the receiving House.

(2) Revenue measure.-- This subsection shall not apply to the House of Representatives if the joint committee bill received from the Senate is a revenue measure.

(f) Rules to Coordinate Action With Other House.--

(1) Treatment of joint committee bill of other house.-- If the Senate fails to introduce or consider a joint committee bill under this section, the joint committee bill of the House shall be entitled to expedited floor procedures under this section.

(2) Treatment of companion measures in the senate.-- If following passage of the joint committee bill in the Senate, the Senate then receives the joint committee bill from the House of Representatives, the House-passed joint committee bill shall not be debatable. The vote on passage of the joint committee bill in the Senate shall be considered to be the vote on passage of the joint committee bill received from the House of Representatives.

(3) Vetoes.-- If the President vetoes the joint committee bill, debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

(g) Loss of Privilege.--The provisions of this section shall cease to apply to the joint committee bill if--

(1) the joint committee fails to vote on the report or proposed legislative language required under section 401(b)(3)(B)(i) not later than November 23, 2011; or

(2) the joint committee bill does not pass both Houses not later than December 23, 2011.

[*403] Sec. 403. FUNDING. <2 USC 900 note>

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

Funding for the joint committee shall be derived in equal portions from--

- (1) the applicable accounts of the House of Representatives; and
- (2) the contingent fund of the Senate from the appropriations account "Miscellaneous Items", subject to the rules and regulations of the Senate.

[*404] Sec. 404. RULEMAKING. <2 USC 900 note>

The provisions of this title are enacted by Congress--

- (1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and
- (2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

TITLE V--PELL GRANT AND STUDENT LOAN PROGRAM CHANGES

[*501] Sec. 501. FEDERAL PELL GRANTS.

Section 401(b)(7)(A)(iv) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(7)(A)(iv)) is amended--

- (1) in subclause (II), by striking "\$ 3,183,000,000" and inserting "\$ 13,183,000,000"; and
- (2) in subclause (III), by striking "\$ 0" and inserting "\$ 7,000,000,000".

[*502] Sec. 502. TERMINATION OF AUTHORITY TO MAKE INTEREST SUBSIDIZED LOANS TO GRADUATE AND PROFESSIONAL STUDENTS.

Section 455(a) of the Higher Education Act of 1965 (20 U.S.C. 1087e(a)) is amended by adding at the end the following new paragraph:

"(3) Termination of authority to make interest subsidized loans to graduate and professional students.----

"(A) In general.--Subject to subparagraph (B) and notwithstanding any provision of this part or part B, for any period of instruction beginning on or after July 1, 2012--

"(i) a graduate or professional student shall not be eligible to receive a Federal Direct Stafford loan under this part; and

"(ii) the maximum annual amount of Federal Direct Unsubsidized Stafford loans such a student may borrow in any academic year (as defined in section 481(a)(2)) or its equivalent shall be the maximum annual amount for such student determined under section 428H, plus an amount equal to the amount of Federal Direct Stafford loans the student would have received in the absence of this subparagraph.

"(B) Exception.--Subparagraph (A) shall not apply to an individual enrolled in course work specified in paragraph (3)(B) or (4)(B) of section 484(b).".

[*503] Sec. 503. TERMINATION OF DIRECT LOAN REPAYMENT INCENTIVES.

Section 455(b)(8) of the Higher Education Act of 1965 (20 U.S.C. 1087e(b)(8)) is amended--

(1) in subparagraph (A)--

(A) by amending the header to read as follows: "(A) Incentives for loans disbursed before July 1, 2012.--"; and

(B) by inserting "with respect to loans for which the first disbursement of principal is made before July 1, 2012," after "of this part";

(2) in subparagraph (B), by inserting "with respect to loans for which the first disbursement of principal is made before July 1, 2012" after "repayment incentives"; and

(3) by adding at the end the following new subparagraph:

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

"(C) No repayment incentives for new loans disbursed on or after July 1, 2012.--Notwithstanding any other provision of this part, the Secretary is prohibited from authorizing or providing any repayment incentive not otherwise authorized under this part to encourage on-time repayment of a loan under this part for which the first disbursement of principal is made on or after July 1, 2012, including any reduction in the interest or origination fee rate paid by a borrower of such a loan, except that the Secretary may provide for an interest rate reduction for a borrower who agrees to have payments on such a loan automatically electronically debited from a bank account."

[*504] Sec. 504. INAPPLICABILITY OF TITLE IV NEGOTIATED RULEMAKING <20 USC 1089 note> AND MASTER CALENDAR EXCEPTION.

Sections 482(c) and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the amendments made by this title, or to any regulations promulgated under those amendments.

Speaker of the House of Representatives.
Vice President of the United States and President of the Senate.

DESCRIPTORS: BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT; BUDGET CONTROL ACT; BUDGET OF THE U.S.; COMMITTEE ON DEFICIT REDUCTION, SELECT. JOINT; CONGRESS; CONGRESSIONAL BUDGET ACT; CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT; CONGRESSIONAL-EXECUTIVE RELATIONS; CONSTITUTIONAL AMENDMENTS; DEPARTMENT OF TREASURY; GOVERNMENT SPENDING; HIGHER EDUCATION ACT; OFFICE OF MANAGEMENT AND BUDGET; PELL GRANT PROGRAM; PUBLIC DEBT; PUBLIC DEBT; SEQUESTRATION OF APPROPRIATED FUNDS; STUDENT AID; 112 PL 25



Department of Defense INSTRUCTION

NUMBER 1100.22

April 12, 2010

USD(P&R)

SUBJECT: Policy and Procedures for Determining Workforce Mix

References: See Enclosure 1

1. **PURPOSE.** In accordance with the authority in DoD Directive 5124.02 (Reference (a)), this Instruction:

a. Establishes policy, assigns responsibilities, and prescribes procedures for determining the appropriate mix of manpower (military and DoD civilian) and private sector support.

b. Implements policy established in DoD Directive 1100.4 (Reference (b)).

c. Incorporates and cancels DoD Instruction 3020.37 (Reference (c)).

d. Provides manpower mix criteria and guidance for risk assessments to be used to identify and justify activities that are inherently governmental (IG); commercial (exempt from private sector performance); and commercial (subject to private sector performance).

e. Reconciles and consolidates the definitions and examples of IG from section 306 of title 5, United States Code (U.S.C.) (Reference (d)); sections 501 (note), 1115, and 1116 of title 31, U.S.C. (Reference (e)); Attachment A of Office of Management and Budget (OMB) Circular A-76 (Reference (f)); and Subparts 2 and 7.503(c) of the Federal Acquisition Regulation (Reference (g)) into a set of criteria for Defense-wide use.

f. Implements aspects of sections 113, 118(b), 129a, and 2463 of title 10, U.S.C. (Reference (h)).

g. Reissues and cancels DoD Instruction 1100.22 (Reference (i)).

2. **APPLICABILITY.** This Instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy that:

a. Consistent with Reference (a) and section 118(b) of Reference (h), the workforce of the Department of Defense shall be established to successfully execute Defense missions at a low to moderate level of risk. Accordingly, risk mitigation shall take precedence over cost savings when necessary to maintain appropriate control of Government operations and missions.

Consistent with Reference (a) and section 113 of Reference (h), the Defense workforce shall have sufficient flexibility to reconstitute or expand the capabilities of the Military Services on short notice to meet a resurgent or increased threat to U.S. national security. Accordingly, risk mitigation shall take precedence over cost savings when necessary to maintain core capabilities and readiness.

b. The Department shall provide ready forces. Accordingly, the peacetime workforce shall be structured with sufficient manpower to satisfy projected mobilization and crisis demands that cannot be met in sufficient time by mobilizing, hiring, recruiting, or reassigning DoD personnel or contracting for additional support.

c. Functions that are IG cannot be legally contracted. The Manpower Mix Criteria codes in this Instruction reconcile and consolidate definitions and examples for what is IG from References (d) through (g) and shall serve as the DoD standard for determining what is IG. Functions that are IG shall be designated for DoD civilian or military performance consistent with the criteria.

d. Functions that are not IG are commercial in nature. Commercial activities (CAs) that are exempted from private sector performance by law, Executive Order (E.o.), treaty, or international agreement (IA) shall be designated for DoD civilian or military performance. Consistent with Reference (a) and section 129a of Reference (h), CAs shall be exempted from private sector performance and designated for DoD civilian or military performance, as necessary, to provide for the readiness and workforce management needs of the Department - i.e., functions shall be exempted from private sector performance to mitigate operational risk and to provide sufficient personnel for wartime assignments, overseas or sea-to-shore rotation, career development, continuity of operations, and esprit de corps.

e. Consistent with sections 129a and 2463 of Reference (h) and with Deputy Secretary of Defense memorandum (Reference (j)), even if a function is not IG or exempted from private sector performance, it shall be designated for DoD civilian performance (subject to paragraph 4.g. of this section) unless an approved analysis for either of the following exceptions has been addressed consistent with the DoD Component's regulatory guidelines:

(1) A cost comparison required by Reference (j), or a public-private competition required by Reference (f), shows that DoD civilian personnel are not the low-cost provider.

(2) There is a legal, regulatory, or procedural impediment to using DoD civilian personnel. This shall include determinations by Human Resource (HR) officials that DoD civilians cannot be hired, hired in time, or retained to perform the work.

f. Consistent with Reference (a), manpower shall be designated as civilian except when one or more of the following conditions apply:

(1) Military-unique knowledge and skills are required for performance of the duties.

(2) Military incumbency is required by law, E.o., treaty, or IA.

(3) Military performance is required for command and control, risk mitigation, or esprit de corps.

(4) Military manpower is needed to provide for overseas and sea-to-shore rotation, career development, or wartime assignments.

(5) Unusual working conditions or costs are not conducive to civilian employment.

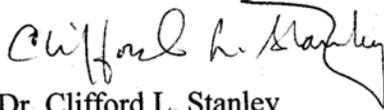
g. Consistent with DoD Instruction 1400.25, Volume 250 (Reference (k)), Civilian Strategic Human Capital Plans shall provide for the development of a DoD civilian workforce with competencies needed to meet missions requirements.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3.

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Instruction is effective immediately.


Dr. Clifford L. Stanley
Under Secretary of Defense for
Personnel and Readiness

Enclosures

1. References

2. Responsibilities
 3. Procedures
 4. Manpower Mix Criteria
 5. Guidance for Risk Assessments
- Glossary

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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 1100.4, “Guidance for Manpower Management,” February 12, 2005
- (b) DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008
- (c) DoD Instruction 3020.37, “Continuation of Essential DoD Contractor Services During Crisis,” November 6, 1990 (hereby cancelled)
- (d) Section 306 and Chapter 11 of title 5, United States Code
- (e) Sections 501 (note), 1115, 1116, 3711, and 3718 of title 31, United States Code
- (f) Office of Management and Budget (OMB) Circular A-76 (Revised), “Performance of Commercial Activities,” May 29, 2003
- (g) Federal Acquisition Regulation (FAR) sub-parts 2 and 7.5, current edition
- (h) Title 10, United States Code
- (i) DoD Instruction 1100.22, “Guidance for Determining Workforce Mix,” September 7, 2006 (hereby cancelled)
- (j) Deputy Secretary of Defense Memorandum, “Implementation of Section 324 of the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA)—Guidelines and Procedures of In-sourcing New and Contracted Out Functions,” April 4, 2008
- (k) DoD Instruction 1400.25, Volume 250, “DoD Civilian Personnel Management Systems: Volume 250, Civilian Strategic Human Capital Planning (SHCP),” November 18, 2008
- (l) Defense FAR Supplement (DFARS), current edition
- (m) DoD Instruction 5000.02, “Operation of the Defense Acquisition System,” December 8, 2008
- (n) DoD Instruction 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces,” October 3, 2005
- (o) DoD Instruction 3020.50, “Private Security Contractors Operating in Contingency Operations,” July 22, 2009
- (p) Sections 1038 and 1080 of Public Law 111-84, “The National Defense Authorization Act For Fiscal Year 2010,” October 28, 2009
- (q) Under Secretary of Defense for Personnel and Readiness Memorandum, “Interim Policy and Procedures for Strategic Manpower Planning and Development of Manpower Estimates,” December 10, 2003¹
- (r) DoD Instruction 7730.64, “Automated Extracts of Manpower and Unit Organizational Element File,” December 11, 2004
- (s) Deputy Under Secretary of Defense for Program Integration, “DoD Functions,” current edition²
- (t) DoD Directive 1404.10, “DoD Civilian Expeditionary Workforce,” January 23, 2009
- (u) DoD Directive 1200.7, “Screening the Ready Reserve,” November 18, 1999
- (v) Constitution of the United States
- (w) Articles 2, 3, 4, and 32 of the Geneva Convention Relative to the Treatment of Prisoners of War, of August 1949 (Third Geneva Convention)³

¹ Available at <http://www.defenselink.mil/prhome/pi.html>

² Available at <http://prhome.defense.gov/pi.html>

- (x) Articles 24, 28, and 30 of Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949, (GWS)⁴
- (y) DoD Directive 2310.01E, “The Department of Defense Detainee Program,” September 5, 2006
- (z) DoD 5210.41-M, “Nuclear Weapon Security Manual (U),” November 22, 2004
- (aa) DoD Directive 3115.09, “DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning,” October 9, 2008
- (ab) DoD Directive 5530.3, “International Agreements,” June 11, 1987
- (ac) DoD Directive 2311.01E, “DoD Law of War Program,” May 9, 2006
- (ad) DoD Instruction 1000.17, “Detail of DoD Personnel to Duty Outside the Department of Defense,” April 16, 2008
- (ae) DoD Directive 1100.20, “Support and Services for Eligible Organizations and Activities Outside the Department of Defense,” April 12, 2004
- (af) DoD Instruction 4000.19, “Interservice and Intragovernmental Support,” August 9, 1995
- (ag) DoD Instruction 6025.5, “Personal Services Contracts (PSCS) for Health Care Providers (HCPS),” January 6, 1995
- (ah) DoD Directive 1315.07, “Military Personnel Assignments,” January 12, 2005
- (ai) Section 1905 of title 18, United States Code
- (aj) Section 609 of title 40, United States Code
- (ak) Section 670(a) of title 16, United States Code
- (al) DoD Directive 8500.1E, “Information Assurance” October 24, 2002
- (am) Executive Order 12473, “Courts-Martial Manual, United States, 1984” April 13, 1984, as amended
- (an) Secretary of Defense Memorandum, “UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and a Contingency Operation,” March 10, 2008
- (ao) DoD Directive 1000.20, “Active Duty Service Determinations for Civilian or Contractual Groups,” September 11, 1989
- (ap) Joint Publication 1-02, “Department of Defense Dictionary of Military and Associated Terms,” current edition

³ Available at: www.unhchr.ch/html/menu3/b/91.htm

⁴ Available at: www.unhchr.ch/html/menu3/b/q_genev2.htm

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R) shall:

a. Maintain oversight of programs that implement this Instruction and work with the Heads of DoD Components to ensure that the DoD Components establish policies and procedures consistent with this Instruction.

b. Coordinate with the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) to issue annual guidance for the Inherently Governmental Commercial Activities (IGCA) Inventory consistent with this Instruction.

2. USD(AT&L). The USD(AT&L) shall:

a. Ensure that policies and procedures governing the acquisition process are consistent with this Instruction. This shall include requiring the contracting officer, concurrent with the transmittal of the statement of work (or any modification thereof), to obtain a written statement from the requiring official that the work is appropriate to contract consistent with this Instruction and References (f), (g), (h), (j), and Defense FAR Supplement (DFARS) (Reference (l)).

b. Ensure that policies and procedures governing the Defense acquisition process in DoD Instruction 5000.02 (Reference (m)) are consistent with this Instruction.

c. Ensure that policies and procedures governing contractor personnel in DoD Instruction 3020.41 (Reference (n)) and DoD Instruction 3020.50 (Reference (o)) are consistent with this Instruction.

d. Ensure that policies and procedures governing the Commercial Activities Program are consistent with this Instruction.

e. In coordination with the USD(P&R), issue annual guidance for the IGCA Inventory consistent with the procedures in this Instruction and use the data from the IGCA Inventory to develop the inventories required by Reference (f).

3. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE (USD(I)). The USD(I) shall:

a. Ensure that policies and procedures governing DoD intelligence and counterintelligence operations (to include intelligence interrogations and debriefings) are consistent with this Instruction.

b. Issue procedures for obtaining waiver authority to the prohibition on the interrogation of detainees by contractor personnel provided under section 1038 of Public Law 111-84 (Reference (p)) that are consistent with this Instruction. All waiver requests shall be submitted through the responsible Geographic Combatant Commander and the Joint Staff to the USD(I) for approval by the Secretary of Defense. Not later than 5 days after the Secretary issues a waiver, notification of the waiver shall be submitted to Congress.

4. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall require their designated manpower authority to:

a. Issue implementing guidance requiring use of this Instruction when:

(1) Determining the workforce mix for current, new, or expanded missions, to include determining the workforce mix for capabilities or support elements requested during a mobilization or crisis.

(2) Developing manpower estimates for Defense acquisition programs covered by USD(P&R) Memorandum (Reference (q)).

(3) Revalidating manpower during reorganizations, mission area analyses, efficiency reviews, and streamlining, reengineering, or restructuring efforts (to include most efficient organizations, high-performing organizations, and business process reengineering studies covered by OMB guidance).

(4) Developing inter- and intra-governmental service support agreements.

(5) Acquiring service support.

(6) Considering the advantages of converting from one source of support (military, DoD civilian, and contractor) to another when developing the annual personnel authorization request to Congress, as required by section 129a of Reference (h).

(7) Assessing the force structure and end strength for assigned missions.

(8) Assisting with the development of Strategic Human Capital Plans consistent with the principles of this Instruction.

b. Ensure the Manpower Mix Criteria codes in Enclosure 4 are used to document manpower in the centralized DoD database as required by DoD Instruction 7730.64 (Reference (r)).

c. Issue procedures that require manpower officials to make determinations as to whether functions to be contracted are IG or exempt from private sector performance, based on the procedures in this Instruction. This will allow the agency head or designated requiring official to provide the contracting officer, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed under

contract are IG or exempt from private sector performance as required by subpart 7.503(e) of Reference (g) and subpart 207.503 of Reference (l).

d. Provide sufficient oversight to ensure compliance with this Instruction through periodic reviews of the DoD Component's workforce and reviews of annual IGCA Inventory submissions.

5. CHAIRMAN OF THE JOINT CHIEFS OF STAFF. The Chairman of the Joint Chiefs of Staff, in addition to the responsibilities in section 4 of this enclosure, shall:

a. When reviewing the adequacy of manpower and manpower policies of the Military Services as required by sections 153(a)(3)(C) and 153(a)(4)(E) of Reference (h), assess whether the workforce mix is appropriate consistent with this Instruction.

b. When reviewing the adequacy of critical contract services that support the Combatant Commanders' contingency plans during the deliberative planning process of the Joint Strategic Planning System, assess the risks of using contract support consistent with this Instruction and require Combatant Commanders to develop contingency plans if they have a reasonable doubt that a contractor will continue to provide essential services during a mobilization or crisis.

c. Ensure that joint doctrine governing the acquisition and use of private security contractors (PSCs) is consistent with this Instruction.

d. When conducting periodic reviews of combat agencies, as required by section 193 of Reference (h), assess the adequacy of the agency's manpower and contract support consistent with this Instruction.

6. COMMANDERS OF THE COMBATANT COMMANDS (CCDRs). The CCDRs, in addition to the responsibilities in section 4 of this enclosure, shall:

a. When determining if the authority, direction, and control they have of assigned commands or forces are sufficient to command effectively as required by section 164 of Reference (h), assess whether the authority, direction, and control they have of DoD civilian and private sector contract support elements are sufficient.

b. Ensure that procedures governing the use of PSCs during a military operation preclude PSCs from performing any IG or exempt function and restrict PSCs from areas of operation where, in the commander's judgment, PSCs would not have sufficient discretionary latitude, authority, equipment, weapons, or fire power to perform successfully their contract.

c. Ensure that the workforce mix (military, DoD civilian, or contractor support) for requests for forces, additional capabilities, or support elements during a military operation (e.g., contingency, humanitarian, peacekeeping) or crisis is based on the policy and procedures in this Instruction.

ENCLOSURE 3

PROCEDURES

1. WORKFORCE MIX DECISION PROCESS

a. Initial Steps. When establishing the workforce mix, manpower planners shall review all mission requirements and design units and/or organizations to accomplish baseline operations and transition quickly and easily to support military operations (e.g., contingency, humanitarian, peacekeeping) and crises. Manpower analysts shall identify the type of work from the list of DoD functions (Reference (s)). They shall use the manpower mix criteria at Enclosure 4 of this Instruction to distinguish between functions that are IG and commercial and to identify which IG and commercial functions will be performed by military personnel and which will be performed by DoD civilian personnel. Manpower analysts also shall use the guidance for risk assessments at Enclosure 5 of this Instruction to help identify risks. The Table lists the manpower mix criteria.

Table. Manpower Mix Criteria

A	Direction and Control of Combat and Crisis Situations	
B	Exemption of Combat Support and Combat Service Support due to Operational Risk	
D	Exemption of Manpower Dual-Tasked For Wartime Assignments	
E	DoD Civilian Authority Direction & Control	F Military-Unique Knowledge & Skills
G	Exemption for Esprit de Corps	
H	Exemption for Continuity of Infrastructure Operations	I Military Augmentation of the Infrastructure During War
J	Exemption for Civilian & Military Rotation	K Exemption for Civilian & Military Career Development
L	Exemption by Law, Executive Order, Treaty or International Agreement	
M	Exempted by DoD Management Decision	
P	Pending Restructuring of Commercial Activities	
R	Subject to Review for Public-Private Competition	
W	Non-Packageable Commercial Activity	
X	Alternative to Public-Private Competition	

b. IG Activities. In general, a function is IG if it is so intimately related to the public interest as to require performance by Federal Government personnel. IG functions shall include, among other things, activities that require either the exercise of substantial discretion when applying Federal Government authority, or value judgments when making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. Criteria A, E, F, and I identify activities that are IG consistent with section 306 of Reference (d); sections 501 (note), 1115, and 1116 of Reference (e); Attachment A of Reference (f); and subparts 2 and 7.503(c) of Reference (g). Criterion I identifies IG activities performed during a mobilization or other national emergency. Manpower authorities shall consult mobilization and crisis planners to identify these IG activities. Manpower analysts shall designate IG functions for performance by military or DoD civilian personnel as provided by criteria A, E, F, and I.

c. CAs That are Exempted from Private Sector Performance. Criterion L identifies CAs that are exempted from private sector performance due to a law, E.o., treaty, or IA. All other CAs are subject to private sector performance except when the work is exempted to provide for DoD readiness or workforce management needs.

(1) DoD Readiness Needs. Manpower analysts shall exempt service support functions performed in-theater from private sector performance for risk mitigation purposes as addressed by criterion B. Because operational risk is often dependent on the threat level in a geographical region, CCDRs shall reevaluate these exemptions as threat levels change and recommend workforce changes, as appropriate. Manpower analysts shall confer with mobilization and crisis planners within the DoD Component to exempt manpower dual-tasked for wartime assignments as addressed by criterion D. Manpower analysts also shall confer with mobilization and crisis planners to exempt commercial work from private sector performance that is needed for continuity of operations during a national emergency or war as addressed by criterion H.

(2) Workforce Management Needs of the Department. Criterion G identifies CAs that are exempted from private sector performance for esprit de corps reasons. Manpower analysts shall confer with personnel officials within the DoD Component to exempt commercial work from private sector performance to provide for overseas or sea-to-shore rotation (criterion J) and career development (criterion K). In addition, manpower analysts shall exempt CAs to provide for continuity of baseline operations as addressed by criterion H. CAs are also exempted based on DoD management decisions (criterion M). However, these exemptions are usually temporary, pending final resolution by the DoD Component and OSD.

d. CAs Subject to Private Sector Performance or Divestiture. All other CAs are subject to private sector performance or divestiture. These activities may be subject for review for a public-private competition (criterion R). They may be identified for divestiture or military to civilian conversion, or contracted without going through a public-private competition (criterion X). Also, CAs are sometimes temporarily retained in-house pending restructuring of the activity (criterion P), or because the CA cannot be packaged for public-private competition (criterion W).

2. IG FUNCTIONS AND ACTIVITIES CLOSELY ASSOCIATED WITH IG FUNCTIONS

a. How management responsibilities are delegated within an organization often has a direct impact on the workforce mix. For example, approval authority is an IG task. How approval authority is assigned (centralized or decentralized) has a direct bearing on the number of personnel performing IG work. Also, if a function entails both IG and commercial tasks, how the work is organized dictates the workforce mix. For instance, if IG and commercial tasks are non-severable (both have to be performed by all the manpower in the activity to accomplish the mission), then all of the manpower in the activity are designated IG to ensure that all IG tasks are performed by Government personnel. However, if IG and commercial tasks can be separated into sub-functions without adverse consequence to mission success, the manpower performing each sub-function shall be designated IG or commercial according to the sub-function performed. (See subparagraph 1.d.(2) of Enclosure 4 of this Instruction for an example.)

b. Particular attention should be paid to activities that are closely associated with IG functions. Functions listed at section 7.503(d) of Reference (g) are closely associated with IG functions (see section 2383 of Reference (h)). However, the list of functions at section 7.503(d) of Reference (g) is illustrative and not all-inclusive. Functions that are closely associated with IG functions (to include those listed in section 7.503(d) of Reference (g)) are addressed in the manpower mix criteria at Enclosure 4 of this Instruction.

(1) Although activities that are closely associated with IG functions are generally not considered to be IG, they may become IG because of the way they are performed or the circumstances under which they are performed. Decisions as to whether or not a function is IG should place emphasis on the degree to which the conditions or facts restrict or put at risk the discretionary authority, decision-making responsibility, or accountability of Defense officials. When an activity is so closely associated with an IG function that it cannot be separated or distinguished from the IG function, it should be identified as IG to preclude transferring governmental authority, responsibility, or accountability to the private sector. This includes situations where: a contractor could have to assume IG responsibilities to accomplish the job; a contractor's role with regard to an IG function would no longer be discernible from a DoD official's role; or a contractor's advice or direction could be mistaken for that of a DoD official's on a matter that involves IG responsibilities. These functions shall be designated IG as prescribed in paragraphs 1.d., 4.b., and 5.g. of Enclosure 4. The guidance for risk assessments at Enclosure 5 provides examples and additional clarification.

(2) Activities closely associated with IG functions are also exempted from private sector performance for risk mitigation purposes as addressed at paragraphs 2.b. and 7.b. of Enclosure 4.

3. PERSONAL SERVICES. Personal services shall be performed by military or DoD civilian personnel and not contracted unless specifically authorized (subpart 37.104 of Reference (g)). See subparagraph 1.b.(2) of Enclosure 5 of this Instruction for an explanation of personal services.

4. PERSONNEL SHORTFALLS

a. If a DoD Component has a military or DoD civilian personnel shortfall, the shortfall is not sufficient justification for contracting an IG function. Likewise, a personnel shortfall is not sufficient justification for contracting activities that are closely associated with IG functions if contracting the activity would result in an inappropriate risk as provided in subparagraph 2.b.(1) of this enclosure. Personnel shortfalls shall be addressed by hiring, recruiting, reassigning military or DoD civilian personnel; authorizing overtime or compensatory time; mobilizing all or part of the Reserve Component (when appropriate); or other similar actions.

b. Manpower authorities shall not designate manpower for military performance based on the assumption that DoD civilians cannot be recruited or will not deploy to perform activities during a mobilization or other national emergency. Manpower authorities shall consult the director of the DoD Component's Human Resource Office to verify whether DoD civilian employees are available or can be recruited and trained as emergency essential (E-E) employees to provide support during a mobilization or other national emergency. A sufficient number of E-E positions shall be established as are required to support a national emergency or war.

5. COST AS A DECIDING FACTOR IN WORKFORCE MIX DECISIONS. As provided in paragraph 4.f. above the signature of this Instruction, even if a function is not IG or exempt from private sector performance, DoD Components shall use DoD civilian personnel to perform the function unless DoD civilians are not the low-cost provider or there is a legal, regulatory, or procedural impediment to using DoD civilian personnel. When assessing workforce costs, manpower analysts shall not assume that one source of support (military, DoD civilian, or contractor) is less costly than another. DoD Components shall conduct a cost comparison as provided by Reference (j) to determine the low-cost provider for all new or expanding mission requirements and for functions that have been contracted but could be performed by DoD civilian employees. DoD Components shall perform public-private competitions as provided by Reference (f) to determine the low-cost provider for CAs.

6. NON-AVAILABILITY OF DoD CIVILIAN EMPLOYEES. If there is a legal or regulatory impediment to using DoD civilian employees, or the director of the local Human Resource Office certifies that DoD civilians cannot be hired, hired in sufficient time, or retained to perform a function, the function may be contracted provided it is not IG or exempt from private sector performance. If the function is IG, the activity shall be designated for military performance as provided by section 8 of this enclosure. If the function is exempted from private sector performance for other than IG reasons, the exemption shall be handled through normal management actions.

7. ORDER OF PRECEDENCE FOR CODING MANPOWER IN DoD MANPOWER DATABASES. The codes assigned to each manpower mix criterion at Enclosure 4 of this Instruction shall be used to document manpower in DoD manpower databases. Manpower mix criteria are listed in descending order of precedence at the Table in this enclosure. When two or

more criteria apply, the criterion highest on the list shall take precedence. The order of precedence at the Table is structured to give manpower officials visibility of why activities are performed by DoD civilian or military personnel. By understanding the underlying reason for the workforce mix, Defense officials can assess the risks that manpower shortfalls have on IG responsibilities, readiness, workforce management, and mission accomplishment.

8. CODING MILITARY-TO-CIVILIAN AND CIVILIAN-TO-MILITARY CONVERSIONS.

If manpower analysts decide that military personnel are performing functions that should be performed by DoD civilian personnel, or that DoD civilian personnel are performing functions that should be performed by military personnel, they shall use the appropriate code to show that the activity should be converted from military to civilian or from civilian to military performance. For example, manpower analysts shall designate military manpower with code "E," "Civilian Authority Direction & Control," if criterion "E" best describes the type of work. Also, civilian manpower that performs work that requires "Military-Unique Knowledge & Skills" shall be coded "F."

9. CODING MILITARY MANPOWER LOCATED IN DoD ACTIVITIES OUTSIDE THE MILITARY DEPARTMENTS.

When manpower authorities from OSD, the Joint Staff, Combatant Commands, DoD Field Activities, Defense Agencies, or other organizations outside the Military Departments determine or revalidate their workforce mix, they shall consult officials from the Military Services to ensure that manpower needed for military rotation, career development, and wartime assignments are properly coded. This shall include manpower for interagency assignments.

ENCLOSURE 4

MANPOWER MIX CRITERIA

1. CRITERION A - DIRECTION AND CONTROL OF COMBAT/CRISIS SITUATIONS.

Manpower analysts shall code manpower in operating forces “A” if the manpower performs any of the IG functions addressed in this section. Civilian manpower in overseas locations that are coded “A” are also designated E-E as provided by DoD Directive 1404.10 (Reference (t)). E-E positions are also designated key following the procedures in DoD Directive 1200.7 (Reference (u)) to indicate they are not to be filled by Ready Reservists that can be called to active duty.

a. Command of Military Forces. Command of military forces is an IG function according to Reference (g). Command within the Military Services is implemented through a unique construct of command authority, known as the “military chain of command.” Within the operating forces, this authority begins with field commanders and extends to the lowest level of command responsible for discretionary decision making, personnel safety, and mission accomplishment. Accordingly, manpower in operational command or that may have to assume operational command of military forces is designated military and coded “A.”

b. Operational Control of Combat, Combat Support, and Combat Service Support Units. Operational control is derived, in part, from IG responsibilities assigned to commanders and their military subordinates as explained in subparagraphs 1.b.(1) and 1.b.(2) of this enclosure.

(1) Military Discipline. Military officers and enlisted personnel are subject to a strict form of discipline – i.e., they must obey all lawful orders at all times and are trained and prepared to immediately perform all duties as directed by military commanders. In addition, military personnel may not quit or abandon their duties. See subparagraphs 2.d.(1) through 2.d.(4) of Enclosure 5 concerning responsibilities inherent to military discipline that are uniquely military. This strict discipline provides military commanders with the control and flexibility needed to quickly reassign duties, reconstitute operations, provide relief and assistance to military forces during hostilities, and fight and win wars. It also provides for the orderly transfer of command and control of military operations if the commander is killed or incapacitated. This strict discipline is an IG responsibility unique to the military establishment. The unique nature of the military establishment and its role in defense of the Nation has been recognized by the Supreme Court—i.e., the differences between the military and civilian communities result from the fact that it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise.

(2) Uniform Code of Military Justice (UCMJ) Authority. Operational control is enforced, among other means, by Chapter 47 of Reference (h), also known and hereafter referred to as “the UCMJ.” Consistent with section 809 of Reference (h), commissioned officers have the authority to order the arrest or confinement of an enlisted Service member who violates the UCMJ. Commanding officers may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of their command or individuals subject to their authority who violate the UCMJ into arrest or confinement. Commissioned and warrant

officers, and those civilians subject to the UCMJ, may be ordered into arrest or confinement only by a commanding officer to whose authority they are subject. Civilians are subject to the UCMJ when serving with or accompanying U.S. armed forces in the field during a declared war or a qualifying contingency operation (as defined in Enclosure 5). The authority to order the arrest or confinement of civilians subject to the UCMJ, commissioned officers, and warrant officers may not be delegated by the commanding officer. UCMJ authority, together with the operational control it provides, entails substantial discretion and is IG-consistent with References (e), (f), and (g).

c. Combat Operations. When armed fighting or use of force is deemed necessary for national defense, the Department of Defense may authorize deliberate destructive and/or disruptive action against the armed forces or other military objectives of another sovereign government or against other armed actors on behalf of the United States. This entails the authority to plan, prepare, and execute operations to actively seek out, close with, and destroy a hostile force or other military objective by means of, among other things, the employment of firepower and other destructive and disruptive capabilities.

(1) Combat authorized by the U.S. Government is IG, coded “A,” and designated for military performance because:

(a) The U.S. Government has exclusive responsibility for discretionary decisions concerning the appropriate, measured use of combat power, including the offensive use of destructive or deadly force on behalf of the United States.

(b) Since combat operations authorized by the U.S. Government entail the exercise of sovereign Government authority and involve substantial discretion – i.e., can significantly affect the life, liberty, or property of private persons or international relations - they are IG-consistent with References (e), (f), and (g).

(c) The appropriate, measured use of combat power during hostilities is of critical national interest. Under certain circumstances, the United States can be liable for its misuse or compelled to make restitution due to its unintended collateral effects. The Department of Defense safeguards U.S. sovereign authority and reduces the risk of using destructive and/or disruptive force inappropriately by:

1. Delegating responsibility for combat operations only to military commanders through the military chain of command.

2. Holding military commanders and their forces accountable for the appropriate and controlled use of combat power and adherence to rules of engagement and the law of war. (See section 164 of Reference (h) concerning the responsibility of CCDRs for their authority, direction, and control of commands and forces assigned to their command. This responsibility entails substantial discretion and is IG-consistent with References (e), (f), and (g).)

3. Ensuring that the discretionary judgment, leadership, knowledge, and discipline necessary to perform effectively and responsibly under fire is developed and reinforced through extensive training of military commanders in tandem with their forces.

4. Holding commanders responsible for assessments of the training, discipline, and readiness of their forces to conduct assigned missions. (See section 117 of Reference (h) concerning the commanders' responsibility for force readiness. This responsibility entails substantial discretion and is IG-consistent with References (e), (f), and (g).)

(2) Consistent with subparagraph 1.c.(1) of this enclosure, manpower shall be designated military and coded "A" if the planned use of destructive combat capabilities is part of the mission assigned to this manpower (including destructive capabilities involved in offensive cyber operations, electronic attack, missile defense, and air defense). This includes manpower located both inside and outside a theater of operations if the personnel operate a weapon system against an enemy or hostile force (e.g., bomber crews, inter-continental ballistic missile crews, and unmanned aerial vehicle operators). This does not include technical advice on the operation of weapon systems or other support of a non-discretionary nature performed in direct support of combat operations.

d. Security Provided to Protect Resources and Operations in Hostile or Volatile Areas

(1) Security provided for the protection of resources (people, information, equipment, supplies, facilities, etc.) or operations in uncontrolled, unpredictable, unstable, high risk, or hostile environments inside or outside the United States entails a wide range of capabilities, some of which are IG and others of which are commercial. (See paragraph 2.b. of this enclosure for a discussion of security functions that are not IG but are exempted from private sector performance.) Subparagraphs 1.d.(1)(a) through (f) of this enclosure are examples of IG security functions.

(a) If security forces that operate in hostile environments as part of a larger, totally integrated and cohesive armed force perform operations in direct support of combat (e.g., battlefield circulation control and area security), the operations are IG. These operations entail the discretionary use of deadly force — i.e., although these operations are governed by rules of engagement, mission statements, and orders expressing the commander's intent, the military troops are still required to exercise initiative and substantial discretion when deciding how to accomplish the mission, particularly when unanticipated opportunities arise or when the original concept of operations no longer applies. These security operations require command decisions, military training, and operational control for reasons stated in subparagraph 1.c.(1) of this enclosure and must be provided through a military means. As PSCs may not perform these security operations, private security contracts are not a force structure substitute for these requirements.

(b) Security is IG if it is performed in environments where there is such a high likelihood of hostile fire, bombings, or biological or chemical attacks by groups using sophisticated weapons and devices that, in the judgment of the military commander, the situation could evolve into combat. Security performed in such high-risk environments requires command

decisions, military training, and operational control for reasons stated in subparagraph 1.c.(1) of this enclosure and shall be designated for military performance. In such situations, private security contracts are not a force structure substitute for these requirements.

(c) Security actions that entail assisting, reinforcing, or rescuing PSCs or military units who become engaged in hostilities are IG because they involve taking deliberate, offensive action against a hostile force on behalf of the United States. This type of security requires command decisions, military training, and operational control for reasons stated in subparagraph 1.c.(1) of this enclosure and shall be designated for military performance. As PSCs may not be given the discretionary latitude to engage in offensive actions, private security contracts are not a force structure substitute for these requirements. Nothing in this subparagraph of the Instruction shall preclude a PSC from defending another contractor or government entity of their own volition if consistent with U.S., international, and host nation (HN) law; Status of Forces Agreement (SOFA) and other IA; HN support agreement; and Federal regulation.

(d) Security is IG if, in the commander's judgment, an offensive response to hostile acts or demonstrated hostile intentions would be required to operate in, or move resources through, a hostile area of operation. Decisions to offensively respond to hostile acts or demonstrated hostile intentions (e.g., assault or preemptively attack) entail substantial discretion and are IG. (See subparagraph 2.d.(6)(a) of Enclosure 5 of this Instruction for additional information and an example.) This type of security requires command decisions, military training, and operational control for reasons stated in subparagraph 1.c.(1) of this enclosure and shall be designated for military performance. As PSCs may not be given the discretionary latitude to authorize or engage in offensive actions against an enemy or hostile force, private security contracts are not a force structure substitute for these requirements.

(e) Security is IG if, in the commander's judgment, decisions on the appropriate course of action would require substantial discretion, the outcome of which could significantly affect U.S. objectives with regard to the life, liberty, or property of private persons, a military mission, or international relations. Such actions typically require high-risk, on-the-spot judgments on the appropriate level of force, acceptable level of collateral damage, and whether the target is friend or foe in situations pivotal to U.S. interests. These actions are so intimately related to U.S. interests as to require government performance and, as provided by Reference (e), is IG. Private security contracts are not a force structure substitute for these requirements.

(f) If consistent with applicable U.S., international, and HN law; SOFAs and other IAs; HN support agreements; and Federal regulations, a DoD PSC may be authorized to provide security services so long as the services are not IG as provided by this Instruction. As provided by References (n) and (o), contractors may provide security services for other than uniquely military functions as identified in subparagraphs 1.d.(1)(a) through 1.d.(1)(e) of this enclosure, so long as the geographic CCDR can:

1. Clearly articulate rules on the use of force that preclude ceding governmental control and authority of IG functions to private sector contractors as addressed in subparagraphs 1.d.(1)(a) through 1.d.(1)(e) of this enclosure.

2. Set clear limits on the use of force based on U.S. law and policy, and applicable HN law, relevant SOFAs, IAs, and international law, including the law of war.

3. Include in the contract for security services a description of where the PSC will operate, a description of the anticipated threat, a description of any known or potentially hazardous situations, and a plan for how appropriate assistance will be provided to PSC personnel who become engaged in hostile situations.

(2) Security shall be designated for military performance and the manpower coded "A" if, in the judgment of the commander, it meets one or more of the criteria addressed in subparagraphs 1.d.(1)(a) through 1.d.(1)(e) of this enclosure. This includes combat support (CS) and combat service support (CSS) if all the manpower in the unit must perform one or more of these IG security functions to accomplish the mission. For example, manpower in Marine Corps CS and CSS units are coded "A" because they are required to use offensive tactics to defend the unit and accomplish the mission. In this example, two functions are performed by all of the manpower in the unit and the IG function (security) takes precedence over the commercial function for coding purposes so that IG work is always performed by government personnel. However, if IG security operations can be performed separately without adverse impact to mission success, only manpower performing IG security operations are coded "A." For example, if a Military Service has a new weapon system available for use during hostilities, but sufficient numbers of military maintainers are not yet trained, the commander might be able to use contract maintenance in a secure compound without degrading the operational capability of the system. In such cases, only the IG security forces at the compound are coded "A." However, in such cases, contractor personnel may be issued weapons for self-defense as provided by Reference (n).

(3) It should be in the sole discretion of the commander of the relevant combatant command to determine whether or not the performance by a PSC under a contract awarded for a particular activity, a series of activities, or activities in a particular location, within a designated area of combat operations, is appropriate. Such a determination shall not be delegated to any person who is not in the military chain of command.

e. Medical and Chaplain Services Performed in Hostile Areas. Services provided by military medical personnel and chaplains embedded in military units that engage in hostile action are IG. This manpower shall be designated military and coded "A" because:

(1) During hostilities, military medical personnel function as an inherent part of the unit and (as with other members of the unit) use substantial discretion when defending their patients.

(2) The First Amendment prohibits any law respecting the establishment of religion or prohibiting the free exercise thereof. Although the Department of Defense can and does contract for religious ministry from individual faiths, the Department of Defense cannot contract for the type of religious pluralism required in operational environments.

(3) The Department of Defense cannot impose upon civilian religious ministry professionals the type of religious pluralism exercised by military chaplains without risk of

challenge under the establishment clause of the First Amendment of the Constitution (Reference (v)). Accordingly, sections 3073, 5347, 5142, and 8067 of Reference (h) authorize the appointment of military chaplains. Chaplains provide for military members' religious "free exercise" rights and satisfy both the "establishment" and "free exercise" clauses of Reference (v). Legal efforts to invalidate this contention have been unsuccessful. In addition, military chaplains have support from over 230 endorsing bodies that represent over 300 faith groups to work cooperatively with other faith groups to provide for the pluralistic religious needs of military members.

(4) Even though many aspects of their duties are governed by policy and practice, military chaplains must use substantial discretion and make value judgments when interpreting DoD policy and ministering to the pluralistic religious needs of the military. To avoid proselytizing, chaplains often have to balance their personal religious beliefs with the requirements of ministering to members of different faiths or to persons of no particular faith who are brought to personal crises during war. Also, chaplains must use substantial discretion when requested for actions that certain faith groups consider essential but are inconsistent with the chaplain's personal religious beliefs, as opposed to civilian religious ministry professionals who provide specifically focused rites and sacraments according to their faith groups.

(5) Military chaplains also play an active, discretionary role in planning and preparation of activities when religion and other cultural issues and ideologies could have a pronounced influence on civil-military operations, psychological operations, or public affairs activities.

(6) If captured during an international armed conflict, unlike civilian or PSC employees performing religious or medical services, military chaplains and military medical personnel are not held as prisoners of war (POWs). They are retained persons who are permitted to attend to the religious and medical needs of U.S. POWs under the Geneva Convention. Their unique role is performed on behalf of the U.S. Government and cannot be delegated to DoD civilians or private sector contractors. (See Article 32 of the Third Geneva Convention (Reference (w)) and Articles 24, 28, and 30 of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Reference (x)).)

f. Criminal Justice and Law Enforcement Operations Performed in Operational Environments

(1) How enemy prisoners of war (EPWs), civilian internees (CIs), retained persons (RPs), other detainees, terrorists, and other criminals are to be treated when captured, transferred, detained, and interrogated during or in the aftermath of hostilities, as addressed in DoD Directive 2310.01E (Reference (y)), falls under the discretionary exercise of government authority. Responsibility for their handling as well as decisions concerning how they are treated cannot be transferred to private sector contractors.

(2) Consistent with Reference (g), control of prosecutions and performance of adjudicatory functions in support of UCMJ criminal justice proceedings are IG activities. Consistent with Reference (h) these activities must be performed by military personnel. Accordingly, this manpower shall be designated military and coded "A."

(3) Certain law enforcement operations, to include issuing warrants, making arrests, and preservation of crime scenes, are IG activities. According to Reference (g), direct conduct of criminal investigations is an IG activity. This includes interrogations and interviews conducted for law enforcement purposes. If these activities are carried out under the UCMJ as prescribed in Chapter 47 of Reference (h), or are performed in hostile areas where security necessary for DoD civilian performance cannot be provided, the operation shall use only military personnel. The Department of Defense shall build the appropriate mix of code "A" manpower and acquire and train the requisite military and civilian personnel to meet the requirements. Contractors, to include PSCs, are prohibited from performing law-enforcement activities. However, in areas where adequate security is available and expected to continue, properly trained and cleared contractors may perform special non-law-enforcement security activities that do not directly involve criminal investigations, so long as they are monitored by sufficiently trained government officials as required by Reference (g).

(4) Direction and control of confinement/correctional facilities for U.S. military prisoners in areas of operation are IG functions. Manpower performing these activities shall be designated military and coded "A" if the facility is for the confinement of offenders of the UCMJ as prescribed in section 951 of Reference (h) and the prisoners are under military command.

(5) Direction and control of detention facilities for EPWs, CIs, RPs, other detainees, terrorists, and other criminals in areas of operation are IG activities. Consistent with Chapter 47 of Reference (h) and Reference (y), these activities must be performed by military personnel. Manpower performing these activities shall be designated military and coded "A." This includes detention under the law of war as part of ongoing operations for their own protection or to remove potential threats from the battle space.

g. Intelligence and Counterintelligence Operations Performed in Operational Environments. Consistent with Reference (g), direction and control of intelligence and counterintelligence operations are IG activities. This includes the approval, supervision, and oversight of intelligence interrogations and detainee debriefings. Also, consistent with References (e), (f), and (g), intelligence and counterintelligence activities (to include intelligence interrogations and detainee debriefings) that require the exercise of substantial discretion in applying government authority and/or in making decisions for the government are IG. When performed in hostile areas where security necessary for DoD civilian performance cannot be provided, the manpower shall be designated military and coded "A." Otherwise, the manpower shall be designated DoD civilian and coded "A." (See subparagraph 2.a.(2) of this enclosure for exemptions.)

h. Federal Procurement Activities Performed in Operational Environments. According to Reference (g), Federal procurement activities with respect to prime contracts (to include determining what supplies or services are to be acquired; approving, awarding, administering, and terminating contracts; and determining whether contract costs are reasonable, allocable, and allowable) are IG. When performed in hostile areas where security necessary for DoD civilian performance cannot be provided, the operation shall use only military personnel. Otherwise, the operation shall be performed by DoD civilian manpower. The Department of Defense shall

build the appropriate mix of code “A” manpower and acquire and train the requisite military and civilian personnel to meet the requirements.

2. CRITERION B - EXEMPTION OF CS AND CSS DUE TO OPERATIONAL RISK. Section 118(b) of Reference (h) requires that the Department of Defense plan to successfully execute the full range of missions called for in the national defense strategy at a low to moderate level of risk. Consistent with Reference (a), certain commercial CS and CSS functions are exempted from private sector performance and designated for DoD civilian or military performance for risk mitigation purposes.

a. Exemption for Military CS and CSS

(1) Manpower authorities shall designate CS or CSS support functions for military performance and code the manpower “B” if, in the commander’s judgment, performance of the function by DoD civilians or contractors or total reliance on DoD civilians or contractors would constitute an unacceptable risk. This includes situations where there is a significant risk that:

(a) The threat level could increase and military personnel would be needed on short notice to provide or augment a military capability. (Section 113 of Reference (h) requires the Department to maintain the capability to reconstitute or expand the defense capabilities of the armed forces on short notice to meet a resurgent or increased threat.)

(b) There would be an unsafe number of personnel in hostile areas who are not combatants.

(c) Activities that are closely associated with IG functions would be put at an inappropriate level of risk if contracted as addressed at subparagraph 1.b.(3) of Enclosure 5.

(d) DoD civilians or private sector contractors will not or cannot continue to perform their work. This includes situations where, in the commander’s judgment:

1. The contractor can no longer fulfill the terms of the contract because the threat level, duration of hostilities, or other terms specified in the contract have changed significantly. (See paragraph 2.d. of Enclosure 5 of this Instruction for examples.)

2. A U.S., international, or HN law; SOFA or other IA; or HN support agreement has changed in a manner that affects the terms of the contract.

3. There is too great a risk that a contractor would default or not comply with the rules on the use of force.

(e) Security provided by contractors could prove inadequate due to the contractor’s weapons, operational security, communications systems, or training. For example, contract security may be inadequate for a large cache of conventional arms, ammunitions, or explosives. In addition, a commander may determine that contract security is inadequate because there is too

great a risk that an encounter with an enemy or hostile force would lead to hostilities and necessitate assistance, reinforcement, or rescue. Contractors shall not provide security for nuclear weapons (in accordance with DoD 5210.41-M (Reference (z))) or other weapons of mass destruction, e.g., captured chemical, biological, radiological, or high-explosive weapons.

(2) There are prohibitions on the use of contractors for intelligence interrogations.

(a) Consistent with section 1038 of Reference (p), no enemy prisoners of war, civilian internee, retained personnel, other detainee, or any other individual who is in the custody or under the effective control of the Department of Defense or otherwise under detention in a DoD facility in connection with hostilities may be interrogated by contractor personnel unless the following four conditions are met:

1. The Secretary of Defense determines that a waiver to this prohibition is vital to the national security interests of the United States and waives the prohibition for a period of 60 days; or determines that a renewal of the waiver is vital to the national security interests of the United States and renews the waiver for an additional 30-day period (see section 3 of Enclosure 2 concerning submission of requests for waivers to the USD(I)).

2. The contract interrogator is properly trained and certified to DoD standards consistent with DoD Directive 3115.09 (Reference (aa)).

3. A sufficient number of properly trained and certified DoD military and/or DoD civilian interrogators supervise and closely monitor the contract interrogator in real time throughout the interrogation process to ensure that the contract interrogator does not deviate from the government-approved interrogation plan or otherwise perform any IG function.

4. A video and audio recording is made of the interrogation to the extent required by section 1080 of Reference (p) and consistent with Reference (aa).

(b) Consistent with section 1038 of Reference (p), in areas where adequate security is available and is expected to continue, contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions (including as trainers of, and advisors to, interrogators) in the interrogation of persons described above if:

1. Such persons are subject to the same rules, procedures, policies, and laws pertaining to detainee operations and interrogations as apply to government personnel in such positions in such interrogations; and,

2. Appropriately qualified and trained military or civilian personnel of the Department of Defense are available to oversee the contractor's performance and to ensure that contractor personnel do not perform activities that are prohibited under this section.

(3) Manpower authorities also shall designate CS or CSS support functions for military performance and code the manpower "B" if there is a law, IA, HN support agreement, or

regulatory impediment to contracting the support service and DoD civilians cannot perform the work. For example, as explained at subparagraph 1.b.(2) of Enclosure 5 of this Instruction, DoD Components may not award personal services contracts unless specifically authorized by statute.

(4) This manpower provides a ready and controlled source of technical competence (core capability) necessary to ensure an effective and timely response to a national emergency or crisis. Decisions about the number of CS and CSS units necessary to provide a core capability are based on the guidance for risk assessments at Enclosure 5 of this Instruction.

b. Exemption for Civilian CS and CSS

(1) Manpower authorities shall designate CAs that support the operating forces for DoD civilian performance and code the manpower “B” if, in the commander’s judgment, performance of the function by PSCs or total reliance on PSCs would constitute an unacceptable risk.

(2) This includes:

(a) E-E manpower that provides continuity of operations for essential functions, maintains the availability of combat-essential systems, or performs duties critical to combat operations in overseas locations during a crisis when other civilians are evacuated as provided by Reference (t).

(b) Manpower that performs personal services, or that performs activities that are closely associated with IG functions that would be put at an inappropriate level of risk if contracted (see subparagraphs 1.b.(2) and (3) of Enclosure 5).

(3) This manpower is exempted from private sector performance and designated for DoD civilian performance. These positions cannot be vacated or eliminated during a mobilization or other national emergency without seriously impairing the ability of the activity to function effectively. These positions are also designated as key following the procedures in Reference (u) to indicate that they are not to be filled by Ready Reservists who can be called to active duty.

(4) Examples include supply and maintenance of strategic weapon systems, Army units at echelon above division, Army logistical support elements that deploy to hostile areas, technology escort units that retrieve chemical and biological weapons in forward areas, and Navy ships with CS missions that are part of the combat logistics force.

c. Threat Levels. Because operational risk often depends on the threat level in a geographic region, coding for this manpower should be reevaluated as threat levels change.

3. CRITERION D - EXEMPTION OF MANPOWER DUAL-TASKED FOR WARTIME ASSIGNMENTS. Consistent with Reference (a), manpower authorities shall establish sufficient manpower in the infrastructure so that an adequate pool of personnel is available for critical assignments in the operating forces during a mobilization or other national emergency. Manpower authorities shall consult mobilization and crisis planners within the DoD Component

to identify personnel in the infrastructure who are needed for assignments in the operating forces during such emergencies. The manpower shall be coded “D” to indicate the incumbents are dual-tasked for wartime assignments (i.e., assigned to positions in the infrastructure and also counted for assignments in the operating forces).

a. Military Manpower Designated for Wartime Assignments. Manpower in the infrastructure shall be designated military and coded “D” if the incumbents are active military or Active Guard and Reserve who are designated for assignments in the operating forces or serve as replacements for personnel in the operating forces during a mobilization or other national emergency, but perform CAs in the infrastructure during peacetime. For example, the Navy uses active-duty military from the shore establishment to stand-up fleet hospitals and to staff hospital ships with medical personnel during emergencies. Also, Air Force unit type code military are coded “D.” This manpower is designated military and exempted from private sector performance because the incumbents are needed for assignments in the operating forces during a mobilization or other national emergency before Reserve Component personnel are recalled and before post-mobilization recruits (i.e., personnel acquired after mobilization) can be trained and assigned to the operating forces to support or sustain a military operation.

b. Civilian Manpower Designated for Assignments During a Mobilization or Crisis. Manpower in the infrastructure shall be designated DoD civilian and coded “D” if the incumbents are designated for assignments in operating forces overseas or serve as alternates or replacements for personnel in overseas assignments in the operating forces during a mobilization or other national emergency. For example, E-E personnel who are assigned overseas during a crisis or who replace E-E personnel assigned to positions in overseas locations according to Reference (t) are coded “D.” These positions are also designated as key following the procedures in Reference (u) to indicate that they are not to be filled by Ready Reservists that can be called to active duty. Also, DoD civilians who are dual-status military technicians covered by section 115(c) of Reference (h) who train the Selected Reserve (SELRES) or maintain or repair equipment issued to the SELRES or Active Component forces during peacetime are coded “D” if they are designated for military wartime assignments in units of the SELRES.

c. Designations for Assignments. Manpower authorities shall consult mobilization and crisis planners within the DoD Component to determine the number and skills required for these assignments and centrally manage the coding for this manpower.

4. CRITERION E - DoD CIVILIAN AUTHORITY, DIRECTION, AND CONTROL. The IG duties in this section are inherent to DoD civilian authority, direction, control, and accountability of the Department of Defense consistent with Reference (h). Manpower analysts shall designate this work for civilian performance and code the manpower “E.” If the incumbents also have emergency-essential responsibilities, the manpower also shall be designated E-E as provided by Reference (t). If the positions cannot be vacated or eliminated during a mobilization or other national emergency without seriously impairing the ability of the activity to function effectively, the manpower shall be designated as key following the procedures in Reference (u) to indicate that they are not to be filled by Ready Reservists that can be called to active duty.

a. Civilian Leadership and Control. Manpower shall be designated civilian and coded “E” if the incumbents are directly and ultimately accountable for accomplishment of missions, discretionary exercise of DoD authority, or judgments relating to monetary transactions and entitlements. This includes ultimate control of the acquisition, use, or disposition of U.S. property (real or personal, tangible or intangible). It includes the authority to obligate Federal funds or to commit the Department of Defense to take or not take action by contract, policy, regulation, authorization, order, or otherwise. Examples include the duties and responsibilities vested in the Secretary of Defense; Secretaries of the Military Departments; Directors of Defense Agencies and DoD Field Activities; and other civilian officials specified in sections 131-142, 3013-3022, 5013-5026, and 8013-8022 of Reference (h). This also includes program/project managers, contracting officers, and other officials delegated management authority (direction and final decision making) and accountability for:

(1) Conduct of foreign relations and determination of foreign policy according to Reference (g), including implementation of IAs and treaties covered by DoD Directive 5530.3 (Reference (ab)), law of war under DoD Directive 2311.01E (Reference (ac)), and foreign military sales and security assistance programs.

(2) Recommendations and responses to Congress for changes to governing legislation and comments to draft legislation on matters concerning the Department of Defense.

(3) Determination of policies, directives, and regulatory guidance to include determining the content and application of regulations, consistent with Reference (g). However, contractors may perform services that involve or relate to the development of regulations so long as the work is properly reviewed by government personnel according to Reference (g).

(4) Approval of strategic plans according to section 306 of Reference (d), as well as program goals and objectives (including national security objectives).

(5) Determination of DoD program priorities for budget requests and determination of budget policy, guidance, and strategy according to Reference (g).

(6) Discretionary decisions concerning the effective, efficient, and economical organization, administration, and operation of the Department of Defense, such as decisions to transfer a function, power, or duty; delegate authority; or approve support agreements, cooperative agreements, and non-procurement transactions.

(7) Direction and control of certain functions and operations, to include intelligence and counterintelligence operations and activities, criminal investigations, and adjudications (other than those relating to arbitration or other methods of alternative dispute resolution) according to Reference (g).

(8) Control of treasury accounts and the administration of public trusts and grants according to Reference (g).

(9) Direction and ultimate control over the acquisition, use, or disposal of property (real or personal, tangible or intangible), to include the collection, control, and disbursement of appropriated and non-appropriated funds according to References (e), (f), and (g).

b. Civilian Expertise and Experience. Manpower shall be designated civilian and coded “E” if Defense officials require the incumbent’s judgment and insight to make informed decisions and preclude sole reliance on contract advisory assistance. The incumbents of these positions enable Defense officials to maintain ultimate control and accountability of government operations, federally funded projects, contracts, or government property or funds. Their role is closely associated with, and inherent to, the decision maker’s. They perform an active and informed role in policy development, program execution, contract administration, and judiciary or fiduciary matters. They also perform a discretionary role in establishing objectives, setting priorities, judging risks, or deciding on a course of action by narrowing the number of alternatives and recommending the DoD-preferred position based on their corporate knowledge; technical expertise; and advice, opinions, and recommendations provided by sources inside and outside the Department of Defense. Examples include manpower that has been delegated authority to:

(1) Establish terms for IAs, treaties, foreign military sales, and security assistance programs. However, contractors may assist in these activities by gathering information or providing advice, opinions, or recommendations.

(2) Draft or develop proposed changes to governing legislation and comments to draft legislation and draft Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the Government Accountability Office, or other Federal audit entity according to Reference (g). However, contractors may provide background information to assist governmental personnel with these activities.

(3) Interpret, develop, or evaluate legal opinions and implementing policy for laws, E.o.s, treaties, and IAs. However, contractors may assist government personnel by providing non-legal advice according to Reference (g).

(4) Draft, develop, or evaluate strategic plans, justifications for strategic plans, planning options, priorities, and strategies required under section 306 of Reference (d); and draft or develop performance goals, performance indicators, performance plans, program evaluations, and program performance reports required under sections 1115 and 1116 of Reference (e).

(5) Develop or evaluate program and budget requests. However, contractors may assist government personnel with these activities through workload modeling, efficiency studies, fact finding, feasibility studies, “should-cost” analyses, and other analyses per Reference (g).

(6) Maintain control and accountability of government operations, federally funded programs and projects, contracts, and Federal property and funds. However, contractors may assist government personnel with these activities through workload modeling, fact finding, feasibility/efficiency studies, and other analyses of a non-discretionary nature to support program

management, acquisition planning, and evaluations as provided by Reference (g). Manpower shall be designated DoD civilian and coded “E” if they are responsible for:

(a) Administering and managing government operations to include discretionary decisions on the reorganization and improvement of activities. However, contractors may assist government personnel by providing advice, opinions, ideas, or recommendations; gathering information; and performing other non-discretionary services that involve or relate to reorganizing or improving activities consistent with Reference (g).

(b) Systems acquisition management. However, according to section 2383 of Reference (h), contractors may support government personnel in acquisition planning by gathering information; providing advice, opinions, recommendations, or ideas; and assisting in program monitoring, milestone and schedule tracking, and other non-discretionary tasks.

(c) Allocating resources (dollars and manpower) and obligating Federal funds. However, employee utilization of government credit cards for the purchase of office supplies or temporary duty travel does not meet the funds obligation criteria specified here.

(d) With respect to prime contracts, determining what supplies or services are to be acquired by the government. However, according to Reference (g), an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the Department of Defense, subject to government oversight and acceptance.

(e) Awarding, terminating, and administering contracts for goods and services to include ordering changes to contract performance or contract quantities, taking action based on evaluation of contract performance, and accepting or rejecting contract products or services as prescribed in Reference (g). However, subject to applicable conflict-of-interest laws and regulations, contractors may assist in the development of statements of work and provide technical evaluations of contract proposals, so long as the contractor’s involvement is properly administered. In such cases, the government must not allow the contractor to perform in conflicting roles that might bias its judgment, or to gain an unfair competition advantage by virtue of access to confidential business information or other sensitive information.

(f) Approving any contractual document (including documents defining requirements, incentive plans, and evaluation criteria) or participating as a voting member on any source selection boards or performance evaluation boards according to Reference (g). However, contractors may participate as technical advisors to a Source Selection Evaluation Board according to section 2383 of Reference (h).

(g) Determining whether contract costs are reasonable, allocable, and allowable according to Reference (g).

(h) Determining what government property (real or personal, tangible and intangible) is to be disposed of and on what terms. However, contractors may be given authority under government oversight to dispose of property identified by the government at prices within clearly

specified ranges as determined by the government and subject to other reasonable conditions deemed appropriate by the Department of Defense consistent with Reference (g).

(i) Consistent with Reference (g), collecting, controlling, and disbursing fees, royalties, duties, fines, taxes, and other public funds unless the function involves:

1. Activities authorized by statute, such as sections 3711 and 3718 of Reference (e) relating to private collection contractors and private collection services.

2. Collection of fees, fines, penalties, or other charges from visitors to or patrons of mess halls, post or base exchange concessions, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard cash management techniques.

3. Routine voucher and invoice examination.

(7) Maintain direction and control of the Defense workforce and contract services to include responsibility for:

(a) Actions to commission, appoint, direct, or control military and civilian personnel of the United States, consistent with Reference (e), to include the selection or non-selection of individuals for Federal government employment (including the interviewing of individuals for employment) and the approval of position descriptions and performance standards for Federal employees according to Reference (g). However, when activities are identified for competition or private sector performance, concomitant supervisory duties may also be designated for competition or private sector performance if they are not otherwise IG.

(b) Volunteers including those covered by section 1588 of Reference (h), and direct- and indirect-hire foreign national employees.

(c) Personal service contracts and general service contracts. However, contractors may be used for contract quality control and performance evaluation or inspection services under government oversight, provided guidelines for products or services can be specified and contractor involvement properly administered. In such cases, contractors must be precluded from influencing official evaluations of other contractors, and from gaining access to confidential business information or other sensitive information according to Reference (g).

(d) Supervision of contractor performance of acquisition functions required by section 2383(a)(2)(A) of Reference (h).

(8) Represent DoD interests at official functions, negotiations, and hearings, or conduct activities involving criminal justice, labor relation, law enforcement, or entitlement matters. Examples include:

(a) Control and performance of adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution according to Reference (g).

However, contractors may assist government personnel with these activities by gathering information or providing advice, opinions, recommendations, or ideas.

(b) Negotiation (e.g., endangered species negotiations and re-negotiations for Federal personnel rules for bargaining units). However, contractors may assist government personnel with these activities by gathering information or providing advice, opinions, and recommendations.

(c) Certain law enforcement operations. This includes the authority to execute and serve warrants, make arrests without a warrant, and other duties assigned to special agents of the Defense Criminal Investigative Service according to section 1585a of Reference (h). It also includes the preservations of crime scenes. However, properly trained and cleared contractors may perform special non-law-enforcement security activities that do not directly involve criminal investigations according to Reference (g).

(d) Direct conduct of criminal investigations according to Reference (g).

(e) Conduct of employee labor relations. However, contractors may serve as arbitrators or provide alternative methods of dispute resolution according to Reference (g).

(f) Conduct of administrative hearings to determine eligibility for security clearances or eligibility to participate in government programs; addressing actions that affect matters of personal reputation according to Reference (g); or resolving matters related to government employment except as provided in Chapter 11 of Reference (d).

(g) Approval of Federal license applications (except for vehicles or support equipment) and inspections according to Reference (g).

(9) Develop and clarify policy, to include DoD decisions regarding responses to requests for information in accordance with section 552 of Reference (d) (also known and hereafter referred to as “the Freedom of Information Act (FOIA)”) and administrative appeals of denials of FOIA requests. However, according to Reference (g), contractors may assist government officials with routine responses that, because of statute, regulation, or agency policy, do not require the exercise of any judgment in determining whether documents are to be released or withheld.

(10) Conduct test and evaluations (T&E) to determine the potential utility and operational suitability and effectiveness of systems and technologies; or the suitability of critical human design and human factors engineering features for systems that will be operated or maintained by DoD civilians. However, contractors may be used to provide direct support to organic T&E activities under government oversight and according to applicable laws.

(11) Direct or control intelligence and counterintelligence operations consistent with Reference (g), and perform intelligence activities that require the exercise of substantial discretion in applying government authority and/or in making decisions for the government consistent with Reference (e), (f), and (g). This includes clandestine intelligence operations. It

also includes direction, control, approval, supervision, and oversight of intelligence interrogations and detainee debriefings and, consistent with References (e), (f), and (g), performance of those aspects of intelligence interrogations and detainee debriefings that require the exercise of substantial discretion in applying government authority and/or in making decisions for the government. (See subparagraph 2.a.(2) of this enclosure for additional exemptions.)

c. Support to Agencies Outside the Department of Defense. Manpower shall be designated civilian and coded “E” if they provide advisory assistance on defense-related matters on behalf of the Department of Defense while on permanent duty outside the Department of Defense (e.g., to Congress, the White House, and other Federal or State agencies). This manpower is established by formal request and approved following procedures in DoD Directive 1000.17 (Reference (ad)) or some other formal approval process.

d. Support Provided to International Organizations and Foreign Nations. Manpower that provides advisory assistance and support to international organizations and foreign nations on defense-related matters shall be designated civilian and coded “E” if the work requires proficiencies that are not authorized to be obtained from the private sector or other government agencies. For example, exchanges of civilian personnel between the Department of Defense and defense ministries of foreign governments intended to encourage a democratic orientation of defense establishments of other countries as prescribed in section 168 of Reference (h) are coded “E.”

5. CRITERION F - MILITARY-UNIQUE KNOWLEDGE AND SKILLS

a. Military Advice and Counsel. Manpower shall be designated military and coded “F” if the incumbents are specifically required by Reference (h) to provide military advice and counsel to the President, Congress, National Security Council, Secretary of Defense, senior DoD officials, or Secretaries, Under Secretaries, and Assistant Secretaries of the Army, Navy, and Air Force. Examples include the Chairman and Vice Chairman of the Joint Chiefs of Staff; Chiefs, Vice Chiefs, Deputy Chiefs, and Assistant Chiefs of Staff of the Army, Air Force, and Marine Corps; Chief, Vice Chief, Deputy Chiefs, and Assistant Chiefs of Naval Operations; and Commandant and Assistant Commandant of the Marine Corps. These are IG responsibilities, established by post or appointment under Reference (h), that require extensive military judgment based on military experience and cannot be transferred to DoD civilians or to the private sector.

b. Accomplishment of Military Missions. CCDRs are responsible to the President and Secretary of Defense for the execution of military missions. These are IG responsibilities established under Reference (h) that require military judgment based on extensive military experience and cannot be transferred to DoD civilians or to the private sector. This manpower shall be designated military and coded “F.”

c. Policy and Procedure. Manpower in infrastructure activities shall be designated military and coded “F” if the incumbents have the authority to commit the Department of Defense to take action by direction, order, policy, regulation, contract, authorization, or otherwise; or have

responsibility for activities listed in paragraph 4.a. of this enclosure and the work requires military-unique knowledge and skills. This includes program directors, managers, directors of line operations, or principal staff elements, and other military personnel that are delegated these authorities and whose recent military training and current military experience are required for the successful performance of the prescribed duties.

d. Military Justice. Manpower in infrastructure activities responsible for military justice on behalf of the United States shall be designated military and coded “F.” These are IG responsibilities established by Reference (h) that require military representation and cannot be transferred to DoD civilians or to the private sector. For instance, responsibility for the administration of justice under the UCMJ in general and special courts-martial, summary courts-martial, courts of inquiry, and other legal proceedings is assigned to the Judge Advocates General, military judges, and judge advocates (staff judge advocates, prosecutors, defense counsel, and appellate counsel), as defined in section 801 of Reference (h). The exercise of judicial and non-judicial punishment under the UCMJ is a responsibility assigned to commanding officers, as defined in section 801 of Reference (h), pursuant to sections 822-824 and section 815 of Reference (h).

e. Law Enforcement Under the UCMJ. Manpower that issue warrants, make arrests, preserve crime scenes, or (consistent with Reference (g)) conduct criminal investigations shall be designated military and coded “F” if the duties are carried out under the UCMJ as prescribed in Chapter 47 of Reference (h).

f. Administration of Military Confinement/Correctional Facilities. Manpower responsible for the direction and control of military confinement/correctional facilities shall be designated military and coded “F” if the facility is established for the confinement of offenders of the UCMJ as prescribed in section 951 of Reference (h), and the prisoners are under military command.

g. Military-Unique Knowledge and Experience. Manpower shall be designated military and coded “F” if Defense officials require the incumbent’s military-unique judgment and insight to make informed decisions and preclude sole reliance on contract advisory assistance. The incumbents of these positions enable Defense officials to maintain ultimate control and accountability of government operations, federally funded projects, Federal contracts, government property, and funds. Their role is closely associated with, and inherent to, the decision maker’s. They perform an active and informed role in policy development, program execution, contract administration, and judiciary or fiduciary matters. The incumbents ensure that DoD officials are properly connected to the warfighting establishment and are aware of the warfighter’s perspective on programs and actions intended to support military operations. They perform a discretionary role in establishing objectives, setting priorities, assessing alternatives, judging risks, and deciding the course of action on military-related matters by narrowing the number of alternatives and recommending the preferred position. They decide the DoD preferred position based on their military-unique knowledge and experience; technical expertise; and advice, opinions, recommendations, and ideas provided by sources inside and outside the Department of Defense. (The required knowledge and experience must be more substantial than what DoD civilians with prior military experience could provide.) This includes activities

identified and examples listed in paragraph 4.b. and subparagraphs 5.g.(1) through (5) of this enclosure.

(1) Manpower that determines operational requirements and gaps in military capabilities shall be designated military and coded “F” if the work entails judgment based on military-unique knowledge and experience acquired through recent assignments in the operating forces.

(2) Manpower that provides military training shall be designated military and coded “F” if it meets the following criteria.

(a) Training shall be designated military and coded “F” if the instructor commands military trainees (as with basic training) or provides training that is specifically designed to acculturate military personnel on military standards or conventions. In addition, training of military doctrine or tactics is IG if the course material is evolving and not yet covered by government practice, policy, or procedures, or the training requires military expertise that can only be acquired through recent operational experience. Training is also IG if military presence is needed to demonstrate military leadership; to ingrain responsibility for the proper use of deadly force and proper conduct during armed conflicts; or, through example, to reinforce the integrity of the military command structure. Training functions that require substantial discretion are IG. For example, oversight of the instruction and approval of the curriculum are IG functions.

(b) Training that is coded “F” may be imparted formally in a classroom or in a unit. Examples include drill instructors; commandants of cadets at military academies; instructors in fleet training centers and schools that provide tactical aviation or field training based on current operational experience; and Active Component advisors to the United States National Guard and United States Army Reserves.

(c) Contractors may assist government instructors or provide training on the mechanics, supply, maintenance, functionality, or operation of military equipment or weapons, provided the course material is approved by government personnel and proper oversight of the instruction is maintained.

(3) Manpower that performs research, development, test, and evaluation shall be designated military and coded “F” if the work requires judgment concerning the potential utility of emerging technologies; strategies for integrating new systems with fielded systems on the battlefield or in the fleet; critical human design and human factors engineering features; or appropriate tests for operational suitability and effectiveness.

(a) This includes activities at program development agencies, testing facilities, aircraft plants, shipyards, or other armament production centers where recent “hands-on” experience and military judgment are needed to provide an independent and objective evaluation of operational effectiveness and suitability of acquisition systems that will be operated and supported by military personnel. (Defense policy requires that during operational test and evaluation, “typical” military users operate and maintain the test systems under conditions that

realistically simulate combat stress and peacetime environments if military personnel will be operating and maintaining the systems once they are fielded and/or deployed.)

(b) This does not include positions covered by section 1722 of Reference (h) that are competed for fill by both DoD civilian and military personnel unless the work requires military-unique judgment.

(4) How enemy EPWs, CIs, RPs, other detainees, terrorists, and other criminals are treated when captured, transferred, detained, and interrogated during or in the aftermath of hostilities (as addressed in Reference (y)) falls under the discretionary exercise of government authority. Responsibility for their handling as well as decisions concerning how they are to be treated cannot be transferred to the private sector to contractors who are beyond the reach of government controls. This does not include support functions performed by linguists, interpreters, report writers, command, control, communication, computer, and information technology technicians, etc., provided sufficient safeguards are implemented to ensure the work is non-discretionary and properly performed. (See Enclosure 5 of this Instruction.)

(5) Manpower that performs certain law enforcement functions, to include issuing warrants, making arrests, and preserving crime scenes, shall be designated military and coded "F." Consistent with Reference (g), manpower for the conduct of criminal investigations for EPWs, CIs, RPs, other detainees, terrorists, or other criminals shall be designated military and coded "F" if the individuals are detained under the law of war as part of ongoing operations for their own protection or to remove potential threats from the battle space. However, properly trained and cleared DoD civilians and contractors may perform special non-law-enforcement security activities that do not directly involve criminal investigations according to Reference (g).

(6) Manpower that directs and controls detention facilities for EPWs, CIs, RPs, other detainees, terrorists, and other criminals outside the areas of operation shall be designated military and coded "F" (consistent with Chapter 47 of Reference (h) and Reference (y)) if the individuals are detained under the law of war as part of ongoing operations for their own protection or to remove potential threats from the battle space.

(7) Manpower that directs and controls intelligence and counterintelligence operations consistent with Reference (g), and performs intelligence or counterintelligence activities/operations that require the exercise of substantial discretion in applying government authority and/or making decisions for the government consistent with References (e), (f), and (g) shall be designated military and coded "F" if the required knowledge and skills are military-unique. (See Enclosure 5 of this Instruction.) This includes clandestine intelligence operations and direction, control, approval, supervision, and oversight of intelligence interrogations and detainee debriefings and, consistent with References (e), (f), and (g), performance of those aspects of interrogations and detainee debriefings that require the exercise of substantial discretion in applying government authority and/or making decisions for the government. (See subparagraph 2.a.(2) of this enclosure for additional exemptions.)

h. Support to Agencies Outside the Department of Defense. Manpower that provides advisory assistance to agencies outside the Department of Defense on defense-related matters on

behalf of the Department shall be designated military and coded “F” if the work requires military-unique knowledge and skills.

(1) This includes personnel in permanent duty stations outside the Department of Defense established by formal request and approved following procedures in Reference (ad) or some other formal approval process. Examples include attachés to U.S. embassies and couriers for the State Department, as prescribed in sections 711-720 of Reference (h).

(2) This does not include military support provided to eligible organizations and activities outside the Department of Defense that is incidental to military training, accomplished through innovative readiness training covered by DoD Directive 1100.20 (Reference (ae)) or interagency support to a DoD activity by a DoD activity according to DoD Instruction 4000.19 (Reference (af)).

i. Support Provided to International Organizations and Foreign Nations. Manpower that provides advisory assistance and support to international organizations and foreign nations on defense-related matters on behalf of the Department of Defense shall be designated military and coded “F” if the work requires military-unique knowledge and skills acquired through recent assignments in the operating forces. Examples include:

(1) Military details to republics in the Western Hemisphere to assist in military matters according to section 712 of Reference (h).

(2) Support to North Atlantic Treaty Organization military commands and agencies if the manpower is not part of DoD internal management or command structure.

(3) Exchanges of military personnel between the Department of Defense and defense ministries of foreign governments and between units of the Military Services and units of foreign armed forces to encourage a democratic orientation of defense establishments and military forces of other countries as prescribed in Reference (h).

6. CRITERION G - EXEMPTION FOR ESPRIT DE CORPS. Consistent with Reference (a), manpower authorities shall exempt a limited number of CAs in the infrastructure from private sector performance for esprit de corps, to foster public support for the Department of Defense and assist in meeting recruitment and retention objectives. This manpower shall be designated DoD civilian or military and coded “G” as explained in this section. These exemptions are intended to demonstrate DoD commitment to the men and women who serve in defense of the Nation and engender group spirit, camaraderie, and a sense of pride.

a. Military Esprit de Corps

(1) Examples of military esprit de corps include:

(a) Military bands that wear military uniforms and perform during peacetime and war to promote group spirit and pride.

(b) Honor guards such as the 3rd Infantry Old Guard and Honor Guards, who perform at funerals and other ceremonies during peacetime and war to promote group spirit, a sense of pride, and honor.

(c) Navy Blue Angels who demonstrate military expertise to the public.

(d) Superintendents at the U.S. Military Academy, the U.S. Naval Academy, and the U.S. Air Force Academy, covered by Reference (h), and Reserve Officers' Training Corps instructors, who all serve as military role models.

(e) The Army Director of Religious Education who provides religious education and counseling to soldiers and their family members. (Chaplain assistants in garrison assignments are not included.)

(f) A set number of military recruiters who wear military uniforms to instill a sense of pride in military service and serve as military role models for potential recruits.

(2) These exemptions are for functions that can be performed by DoD civilians or, in some cases, the private sector, but without the same effect. Military performance of these activities carries special meaning for military personnel, their families, and the public.

(3) In the manpower mix order of precedence, "Exemptions for Military and Civilian Wartime Designations (dual status)," code "D," takes precedence over esprit de corps. Therefore, manpower that promote esprit de corps during peacetime but are dual-tasked for wartime assignments (such as Thunderbirds, Golden Knights, Army Marksmanship Units, and Parachute Units that demonstrate military expertise to the public) are coded "D." Only manpower that promote military esprit de corps during peacetime and war are coded "G."

b. Civilian Esprit de Corps

(1) Examples of civilian esprit de corps include faculty at the U.S. Military Academy, U.S. Naval Academy, and U.S. Air Force Academy, as authorized by Reference (h), and principals and faculty at DoD Dependents' Schools to demonstrate family support, promote quality of life, and foster camaraderie for recruitment and retention purposes.

(2) These exemptions are for functions that can be performed by the contractors but without the same effect. Direct involvement by DoD civilians demonstrates DoD dedication to family matters and carries special meaning for military members and their families.

7. CRITERION H - EXEMPTION FOR CONTINUITY OF INFRASTRUCTURE

OPERATIONS. Consistent with Reference (a), manpower authorities shall provide sufficient manpower for the efficient and effective operation of the Department of Defense. This includes manpower needed for continuity of operations during peacetime, crisis, or war.

a. Continuity of Operations During National Emergency or War. During a national emergency or war, when military and DoD civilian personnel dual-tasked for wartime assignments (code “D”) are reassigned to operating units, their vacant positions might not be backfilled immediately, or at all, depending on the wartime mission and workload. However, because high numbers of vacant positions can impair the ability of an activity to function effectively, activities with critical wartime missions that employ code “D” manpower must retain sufficient manpower to continue operations until critical vacated positions are filled.

(1) Manpower in the infrastructure shall be designated civilian and coded “H” if the positions cannot be vacated or eliminated during a national emergency or war without seriously impairing the ability of the activity to function effectively. This manpower serves as a corps capability during a national emergency or war. For example, the Department requires a corps capability for training critical skills. Manpower authorities also shall designate these positions as key positions following the procedures in Reference (u) to indicate that they are not to be filled by Ready Reservists that can be called to active duty.

(2) Decisions to code manpower “H” shall be made in conjunction with decisions to code manpower “D” as addressed in section 3 of this enclosure.

b. Continuity of Peacetime Operations

(1) CAs with manpower that are designated for rotation (code “J”) or career development (code “K”) must have sufficient manpower to continue operations as personnel transfer in and out of the activity. (See sections 9 and 10 of this enclosure.) Manpower shall be designated civilian and coded “H” if it is needed for continuity of operations in CAs where there is high personnel turnover due to rotation or career development. This manpower serves as a corps capability during peacetime. Decisions to code manpower “H” shall be made in conjunction with decisions to code manpower “J” and “K.” Also, decisions on the numbers of civilians needed for the continuity of direct patient care shall be determined in conjunction with decisions for shared health care as provided by DoD Instruction 6025.5 (Reference (ag)).

(2) Some activities require personal services for their efficient and effective operation. Consistent with Subpart 37.104 of Reference (g), personal services may not be contracted unless specifically authorized by statute. Determination as to what qualifies as personal services is often tied to how the work is performed or administered. A key indicator of personal services is when the government must exercise relatively continuous supervision and control over the personnel performing the work. This includes situations where (due to the nature of the service or the manner in which it is provided) government direction or supervision is needed to adequately protect the government’s interests, retain control of the function involved, or retain full personal responsibility for the function supported in a government official or employee. (See subparagraph 1.b.(2) of Enclosure 5 of this Instruction for examples.) When assessing these positions, particular attention should be paid to services that are closely associated with IG functions since they often require the type of continuous supervision or control that is prohibited under section 37.104 of Reference (g). This includes, but is not limited to, functions listed in section 7.503(d) of Reference (g). Also, not all personal services are prohibited from being contracted. This includes personal services for experts and consultants authorized under section

129b of Reference (h) and health care authorized under section 1091 of Reference (h). Manpower shall be designated civilian and coded “H” if the incumbents provide personal services that are required for the efficient and effective operation of an activity but are prohibited from being contracted.

(3) CAs that are closely associated with IG functions may be designated for DoD civilian performance rather than contracted when the manpower is needed to respond quickly and efficiently to constantly changing priorities or peak workloads within IG activities, or to properly administer or retain control of operations. This includes, but is not limited to, functions listed in section 7.503(d) of Reference (g). For example, this includes civilian personnel that would be needed to perform acquisition functions closely associated with IG functions as required by section 2383(a)(1) of Reference (h). To be coded “H,” the manpower must be needed as a ready and controlled source of technical or professional expertise (a core capability) to quickly respond to recurring or sporadic surges in IG workload or to enable managers to more effectively manage or control work that is associated with IG functions so that IG responsibilities are not put at risk and continuity of operations is maintained. (See subparagraph 1.b.(3) of Enclosure 5 of this Instruction for examples.)

c. Emergency Operations Critical to the Department of Defense. Manpower in CAs in the infrastructure shall be designated civilian and coded “H” if they are needed to provide a ready and controlled source of technical competence for emergency operations involving skills and equipment critical to the Department of Defense. Examples include firefighting and rescue operations at areas with chemical, biological, nuclear, or other agents that require special firefighting equipment or training.

d. Core Logistic Capabilities with Unique Skills. Manpower in logistics functions shall be designated civilian and coded “H” if they are needed to provide a ready and controlled source of technical competence necessary for an effective and timely response to a mobilization or other national emergency involving skills unique to the Department of Defense. Manpower for the maintenance and repair of Navy nuclear propulsion systems at Navy shipyards is an example.

8. CRITERION I - MILITARY AUGMENTATION OF THE INFRASTRUCTURE DURING WAR. During a crisis, military personnel in IG activities in the infrastructure (code “F”) that are dual-tasked for wartime assignments may be reassigned to operating units and their vacated positions might not be backfilled immediately, or at all, depending on the wartime mission and workload of the activity. Manpower needed to backfill critical positions vacated by active-duty military shall be designated military and coded “I” if the duties require military-unique knowledge and skills. Also, manpower that is needed to augment infrastructure activities during a mobilization or other national emergency due to increased workload shall be designated military and coded “I” if the work requires military-unique knowledge and skills.

a. Determining Manpower Requirements. Manpower authorities shall use a formally approved process for determining mobilization or crisis demands as required by Reference (a) and centrally manage the coding for this manpower within the DoD Component.

b. Continuity of Operations During Crises. This work is IG and designated military because it is needed for continuity of operations during a mobilization or other national emergency and the work requires military-unique knowledge and skills.

9. CRITERION J - EXEMPTION FOR CIVILIAN/MILITARY ROTATION. Consistent with Reference (b), DoD Component shall provide a rotation base for overseas and sea-to-shore rotation. This coding shall be centrally managed within the DoD Component by manpower officials. Decisions to code manpower “J” shall be made in conjunction with decisions to code manpower “H” and “K.” (See sections 7 and 10 of this enclosure.)

a. Civilian Rotation. Manpower authorities shall designate manpower in CAs in the infrastructure that perform work that could be considered for private sector performance as civilian code “J” if it is needed to provide a rotation base for civilian positions outside the United States. This shall be done when the number of civilian manpower coded “A” through “I” is not sufficient to satisfy peacetime rotation needs. This manpower is designated civilian and exempted from private sector performance because it is needed to maintain civilian overseas tour lengths and civilian personnel turnover at appropriate levels as required by section 1586 of Reference (h). This manpower shall be determined by civilian series and based on assignment, rotation, and other relevant policies. Manpower authorities shall consult the DoD Component HR authorities to verify the validity of these requirements and ensure the numbers are determined using a formally approved process.

b. Military Rotation. Manpower authorities shall designate manpower in CAs in the infrastructure that would not otherwise require military incumbents as military code “J” if it is needed to provide a rotation base for overseas or sea-to-shore assignments. This shall be done when the number of manpower coded “A” through “I” is not sufficient to satisfy peacetime rotation needs. This manpower is designated military and exempted from private sector performance because it is needed to maintain military tour lengths and personnel turnover at appropriate levels and, by so doing, keep recruitment, retention, and training costs to a minimum. This manpower shall be determined by occupational specialty and based on assignment, rotation, and career development policies and personnel tempo goals governed by DoD Directive 1315.07 (Reference (ah)). Manpower authorities shall consult military personnel officials to verify the validity of these requirements and ensure the numbers are determined using a formally approved process.

10. CRITERION K - EXEMPTION FOR CIVILIAN/MILITARY CAREER DEVELOPMENT. Consistent with Reference (a), DoD Components shall provide reasonable opportunities for the development of both military and civilian personnel. This coding shall be centrally managed within the DoD Component. Decisions to code manpower “K” shall be made in conjunction with decisions to code manpower “H” and “J.” (See sections 7 and 9 of this enclosure.)

a. Civilian Career Development. Manpower authorities shall designate manpower in CAs in the infrastructure that perform work that could be considered for private sector performance as civilian code “K” if it is needed to provide career-broadening opportunities for civilian

personnel. This shall be done when the number of manpower coded “A” through “J” does not provide adequate developmental assignments and day-to-day work experiences necessary to produce competent leaders, administrators, and personnel with skills critical to the Department of Defense. To be coded “K,” the manpower must provide career-broadening assignments for developing critical technical or leadership skills (competencies) that cannot be taught or directly acquired, or acquired in sufficient numbers from the private sector. Manpower authorities shall consult DoD Component HR authorities to verify the validity of these requirements and ensure the numbers are determined using a formally approved process.

b. Military Career Development. Manpower authorities shall designate manpower in CAs in the infrastructure that do not otherwise require military incumbents as military code “K” if it is needed to provide career paths for development of military-unique competencies. This shall be done when the number of manpower coded “A” through “J” does not provide adequate career development opportunities for the military coded “A,” “B,” “D,” “F,” and “I.” This manpower is designated military and exempted from private sector performance because it is needed to provide developmental assignments and day-to-day work experiences necessary to produce military leaders and develop military-unique knowledge and skills. Manpower authorities shall consult military personnel authorities to verify the validity of these requirements and to ensure they are determined by military occupational specialty using a formally approved process that considers options for combining occupational specialties and restructuring grade requirements.

11. CRITERION L - EXEMPTED BY LAW, E.O., TREATY, OR IA

a. Law and E.o. Military and civilian manpower shall be coded “L” if the activity is not IG or exempt from private sector performance for reasons covered by criteria A through K but is restricted from private sector performance due to a law or E.o., including:

(1) Manpower that performs firefighting and security guard functions at DoD military installations/facilities covered by section 2465 of Reference (h), that are not coded “A” through “K.”

(2) Manpower that performs depot-level maintenance and repairs functions necessary to provide a “Core Logistics Capability” or comply with the “50 percent rule” as specified in sections 2464 and 2466 of Reference (h), that are not coded “A” through “K.”

(3) Manpower in activities that are not coded “A” through “K” with access to trade secrets that cannot be properly protected from contractors as required by section 1905 of title 18, U.S.C. (Reference (ai)).

(4) Manpower in activities that are not coded “A” through “K” that performs CAs because HN laws prevent the use of contract support or performance by U.S. or foreign national (FN) civilians.

(5) Dual-status military technicians that are not coded “A” through “K,” but are required to meet Congressional end-strength floors in section 115 of Reference (h).

b. Treaties and IAs

(1) Manpower shall be designated FN civilian and coded “L” if the terms of a treaty or IA specifically require the United States to use direct- or indirect-hire FNs, or make it impractical to convert from FN support. For example, under the Army’s cost-sharing agreements with the governments of Korea and Japan, 70 percent and 100 percent of the costs of the FN workforces are borne by the Korean and Japanese governments, respectively.

(2) Manpower shall be designated U.S. civilian and coded “L” if, due to a SOFA, using other than U.S. civilians would require increasing FN authorizations beyond what is required. (The U.S. and FN civilian workforce mix is agreed upon in each SOFA and varies by country.)

(3) Manpower shall be designated military or DoD civilian and coded “L” if, due to a treaty, SOFA, or other IA, private sector contract support may not be used and military or DoD civilian performance is required.

12. CRITERION M - EXEMPTED BY DoD MANAGEMENT DECISION. Manpower authorities shall code military and civilian manpower “M” if a DoD official who exercises management authority over a functional area has exempted the manpower from private sector performance for reasons not covered by criteria A through L. This authority is vested in the Heads of the DoD Components as listed in section 2 above the signature of this Instruction. Under Secretaries of Defense with subordinate Assistant Secretaries of Defense can delegate this authority to those Assistant Secretaries of Defense or equivalent levels; however, this authority shall not be delegated below the Assistant Secretaries of Defense or equivalent level.

a. Pending a Final DoD Decision. Manpower that has been exempted from private sector performance based on a formally approved DoD Component exemption that is not covered by criteria A through L and has not yet been formally reviewed by OSD shall be coded “M.” This restriction is temporary, pending a formal DoD review. Supporting documentation for the decision must be maintained by the DoD Component.

(1) CAs that could be performed by civilian personnel may be designated for military performance and coded “M” on an exception basis if the DoD Component manpower authority has determined that the required work must be performed by military personnel for reasons not covered by criteria A through L. In such cases, there must be sufficient justification and appropriate documentation to support the decision. These designations shall be reviewed at least every 2 years to ensure the validity of the exemption.

(2) IG work that is normally performed by civilian personnel may be designated for military performance and coded “M” on an exception basis if the manpower authority has documentation to show that the required work must be performed by military personnel for reasons not covered by criteria A through L. For example, IG work that is performed in a remote location where a sufficient number of civilians with the appropriate knowledge, skills, and abilities are not available and cannot be recruited and trained may be designated for military

performance. These designations shall be reviewed at least every 2 years to ensure the validity of the exemption.

b. Pending Resolution of the Workforce Mix During a Crisis. Manpower in activities that are established on an emergency basis shall be coded “M” pending final resolution of the appropriate workforce mix. For instance, manpower may be designated M on an emergency basis to respond to increased threat levels; to address a time-sensitive, high-priority national defense need; or as a safeguard against premature loss or interruption of an essential support function during a mobilization or other national emergency.

c. Pending Change of Authorized Military End Strength. If the Department of Defense is unable to obtain immediate relief from floors set on military personnel strengths in section 115 of Reference (h) or the annual National Defense Authorization Act, manpower authorities shall code the manpower “M.”

13. SUBJECT TO REVIEW FOR PRIVATE SECTOR PERFORMANCE OR DIVESTITURE. DoD Components shall designate all other manpower in CAs by using codes “P,” “R,” “W,” or “X” as provided in this enclosure. DoD Components shall periodically review the work to determine if it can be more efficiently or cost-effectively performed by another source or eliminated.

14. CRITERION P - PENDING RESTRUCTURING OF CAs. DoD Components shall use code “P” for all DoD military or civilian manpower in CAs that are pending the results of an approved major restructuring initiative that has been approved in writing. This code is limited to major restructuring initiatives, such as base closures; functional realignments; functional assessments; or consolidation actions. Coding for this manpower is temporary, normally not to exceed 3 years, pending the schedule of the formally approved restructuring initiative.

15. CRITERION R - SUBJECT TO REVIEW FOR PUBLIC-PRIVATE COMPETITION. DoD Components shall use code “R” for military or civilian manpower performing CAs if:

a. The DoD civilian and/or military manpower is performing the activity as a result of a public-private competition that was performed in accordance with Reference (f).

b. The DoD civilian and/or military manpower is performing work in an activity that has a performance decision pending in a public-private competition.

c. The DoD Component has determined, based on a comparison of the costs (as provided by Reference (j)), that a new, expanded, or contracted requirement for a CA can be performed at less cost by DoD civilian employees than by the private sector.

d. If the DoD Competitive Sourcing Official has determined, based on a review of documentation provided by the contracting officer, that there is not satisfactory commercial source following the procedures in Reference (f).

e. The DoD Component has determined that the civilian and/or military manpower may be considered for a future public-private competition pending the outcome of a management determination.

16. CRITERION W - NON-PACKAGEABLE CA. DoD Components shall designate manpower performing CAs with code “W” when a competition is not possible because the work has been certified as not packageable for competition with the private sector by the DoD Component’s Competitive Sourcing Official. This criterion differs from criterion H, which applies to CAs that are closely associated with IG functions (see subparagraph 7.b.(3) of this enclosure).

17. CRITERION X – ALTERNATIVE TO PUBLIC-PRIVATE COMPETITION. DoD Components shall designate manpower with code “X” if the CA can be contracted without performing a public-private competition. This includes certain aspects of research and development as provided by section 114 (note) of Reference (h); architecture and engineering as provided by section 4540 of Reference (h) and section 609 of title 40, U.S.C. (Reference (aj)); and natural resources management planning as provided by section 670(a) of title 16, U.S.C. (Reference (ak)). This also includes manpower performing CAs that have undergone, or are identified to undergo, a public-private partnership, divestiture, privatization initiative, or intra-governmental support agreement with a non-DoD agency. CAs are also coded “X” if they have been designated in writing as a high-performing organization by the DoD CSO, or if the military manpower in a CA has been identified for future conversion from military to civilian performance. This criterion differs from criterion L, which applies if a law, E.o., treaty, or IA prohibits any means of contracting.

ENCLOSURE 5

GUIDANCE FOR RISK ASSESSMENTS

1. RISKS TO OVERSIGHT/CONTROL OF IG AND CAs. The degree of government involvement and expertise necessary to keep sufficient oversight and control of government operations will vary by function and situation, depending on such factors as delegation of approval authority, complexity of operation, geographic dispersion of the activity, regulatory authority, and consequence of default. The following factors should be considered when conducting risk assessments to preclude ceding governmental control and authority of IG functions to the private sector where there is insufficient public accountability and transparency. This list is not all-inclusive and should be expanded to address the specific activity under review. These factors should be considered when determining the source of support for functions in both the operating forces and support establishment.

a. Contract Advisory Assistance

(1) Need for Informed, Independent Judgment. Discretionary decisions made by government officials must be based on informed, independent judgments, and must not be unduly influenced or controlled by private contractors who are beyond management controls applicable to public employees and who might not have objectives in concert with the public's best interests. Although a DoD official may consider a contractor's advice when making a decision, the official may not rely solely or so extensively on a contractor's recommendations that, by so doing, the decision no longer reflects an independent judgment. For example, although a contractor may develop options for a government decision maker, or develop options for expanding decisions already made by government officials, the contractor may not be given the authority to decide on a course of action for the government. DoD Components shall:

(a) Ensure contract advisory assistance is not used to support a government decision without thorough knowledge and understanding of the work submitted by the contractor and recognition of the need to apply independent judgment in the use of the work products.

(b) Take steps to ensure that a contractor's involvement on a project is not so extensive or so far advanced that the government does not have the ability (sufficient time, information, or resources) to develop and consider options other than those provided by the contractor (such as during staff coordination of products developed by contractors).

(c) Ensure that contractors do not have undue influence in the final decision to include determining which, and how, options or recommendations are provided to Defense officials for a final decision; or why an option is recommended to the deciding official as the government's preferred alternative.

(2) Government Oversight. To safeguard the government's authority, when plans and recommendations are developed by a PSC or by joint public-private teams, government personnel alone shall be responsible for a final review, revision, or comment on the product.

Defense officials shall conduct risk assessments to determine whether there are a sufficient number of knowledgeable and experienced government employees available to maintain sufficient oversight of the project; to determine whether the contractor has met the terms of the contract and provided a complete and objective product; and review and revise the contractor's recommendations to the extent necessary to ensure the decision expresses the views of the Department of Defense, conforms to Defense policy, complies with the law, and supports public interests; and to provide an alternative point of view or recommendation to the deciding official.

b. Contract Support Services

(1) Discretionary Decisions. As provided at paragraph 1.b. of Enclosure 3 of this Instruction, IG functions include, among other things, activities that require either the exercise of substantial discretion when applying Federal Government authority, or value judgments when making decisions for the Federal Government. Although some support services involve discretionary decisions, not all discretionary decisions are IG. For a decision to be IG, it must commit the government to a course of action when two or more alternative courses of action exist and have sufficient consequence to the Department of Defense to warrant government control. Consistent with Reference (f), decisions are not IG if they can be limited or guided by existing policies, procedures, directions, orders, or other guidance that identify specific ranges of acceptable decisions or conduct and where the decisions can be subjected to final approval or regular oversight by agency officials. DoD officials shall review projects in enough detail to determine the risks and consequences to contracting the service. As a part of this review, they must determine if the consequences of the discretionary decision (to include possible unintended consequences) are of sufficient significance to the Department of Defense to warrant government control. This shall include determining whether the way the function is performed would result in inappropriate contract relationship (e.g., personal services), inappropriately affect assignment of liability, or inappropriately circumvent the Federal Government's standards of conduct.

(2) Personal Services. Some support services require a level of government supervision and control that is inappropriate in a contractual arrangement. Subpart 37.104 of Reference (g) states that contracts for personal services shall not be awarded unless specifically authorized by statute, i.e., authorized by sections 129b and 1091 of Reference (h). A personal services contract is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. This kind of relationship occurs when, due to the terms of the contract or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a government officer or employee. Particular attention should be paid to services that are closely associated with IG functions since they often require the type of continuous supervision or control that is prohibited under section 37.104 of Reference (g). The following should be used as a guide in assessing whether or not the work is personal in nature:

(a) Due to the inherent nature of the service or the manner in which it is provided, government direction or supervision of the employees is required (directly or indirectly) in order to adequately protect the government's interest; retain control of the function involved; or retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

(b) Services are applied directly to the integral effort of the DoD Component in furtherance of assigned function or mission.

(c) Comparable services, meeting comparable needs, are performed in the same or similar situations using military or DoD civilian personnel.

(d) The service is performed on-site; the government furnishes principal tools and equipment; and the need for the service can reasonably be expected to last beyond 1 year.

(3) Contract Support Services Involving Discretionary Decisions. Contractors may provide a support service if the required level of performance or quality of service is specified in the contract in quantifiable and measurable terms and is not left to the discretion of the contractor, and a DoD official has final approval of the product or service through a government review or test. Support services shall not be contracted if discretionary decision making is involved which cannot be adequately covered by the terms of the contract or cannot be separated from the services provided (i.e., it is an inherent part of the service provided). Particular attention should be paid to services that are closely associated with IG functions since they often involve discretionary decisions that cannot be adequately covered by the terms of the contract. DoD Components shall conduct risk assessments to verify if the DoD official, in the administration of the contract, would have to:

(a) Regularly address policy issues not covered, or not adequately covered, by DoD issuances, doctrine, or other formally approved document.

(b) Regularly or routinely provide guidance on procedural matters of a discretionary nature because the Department of Defense does not have established practices or procedures or a clear vision for how to accomplish the work.

(c) Regularly change how the service is performed to match evolving law, policy, doctrine, or tactics because the situation is so fluid that revisions are needed on a recurring basis (such as security services performed in uncontrolled, unpredictable, unstable high-risk environments).

(d) Supervise and control the daily activities of the contractor as opposed to reviewing or testing the final product because how the services are performed and with what consistency is critical to an acceptable outcome.

(e) Retain the right to add or remove employees from the project for other than security or misconduct reasons, as opposed to specifying performance standards, because the activity is too complicated to specify how or what should be accomplished or ranges of acceptable actions (such as time-sensitive projects where a short suspense drives decisions about the scope of work and what can reasonably be accomplished in the allotted timeframe).

(f) Intervene in operations involving FN individuals or other Federal agencies not governed by the same laws, treaties, E.o.s, rules, regulations, or policies as DoD personnel (e.g.,

Central Intelligence Agency agents) in order to mediate policy or procedural differences, or prevent other parties from usurping DoD authority.

(4) Maintaining a Core Capability for Critical Operations. Even if a support function does not entail discretionary decisions or personal services, DoD Components shall review the function to verify whether the work should be performed by government personnel to provide a core capability for readiness or risk mitigation purposes, or for continuity of operations as addressed at sections 2, 3, 7, and 8 of Enclosure 4 of this Instruction.

2. RISKS TO COMMAND AND OPERATIONAL CONTROL. The following should be used to assess the risks of using military, DoD civilian, and private sector contractor personnel to accomplish Defense missions.

a. Readiness Reporting. If commanders do not have visibility of the readiness of critical support elements, they may not be able to judge the readiness of the military forces to conduct and/or sustain military operations. The less information the commander has to assess the readiness of DoD civilians and Defense contractors who are responsible for providing critical support functions, the greater the risk. The following should be considered when assessing whether to use DoD civilians and Defense contractors to provide critical support in operational environments:

(1) Whether readiness reporting is addressed to the commander's satisfaction by the contractor under the terms of the contract.

(2) Whether there are historical records/studies indicating whether Defense contractors or DoD civilian E-E employees perform satisfactorily under environmental conditions, threat levels, and for the length of time required.

b. Replacing Lost Support. The fewer options the Defense officials have for replacing lost support, the greater the risk. When conducting risk assessments, the following should be considered:

(1) Whether an alternative source of support can be obtained from an alternative private sector provider in sufficient time. The higher the number of contractors that can provide the support service, the lower the risk of using contract support.

(2) Whether an alternative source of in-house support can be obtained in sufficient time. The higher the number of in-house sources, the lower the risk of using contract support.

c. Continuity of Operations During Hostilities

(1) Sustainability. Contractors that cannot replace contractor employees who are killed, injured, or otherwise lost; rotate personnel during a protracted conflict; or replace equipment, supplies, and tools, represent an inappropriate risk to combat operations. The higher the number of contract personnel or resources needed to sustain a conflict, the higher the risk.

(2) Surge Capability. Contractors might be able to perform a support function during peacetime but lack the resources or technology to increase or surge operations during a crisis. Contractors that have a limited capacity (e.g., adequate facilities) or capability (e.g., adequate equipment, tools, or trained personnel) to increase or surge operations to the required operating tempo (OPTEMPO), represent a risk to military operations. The higher the increase in OPTEMPO required for a mobilization or other national emergency, the higher the risk.

(3) Information Assurance. Military commanders should verify whether contractors can safeguard information and information systems consistent with policy in DoD Directive 8500.1E (Reference (al)). If they cannot, there is a risk that disrupted communications could delay or prevent timely delivery of critical services or supplies and adversely impact military operations.

d. Operational Control in Hostile Environments

(1) Risk of Non-Performance. Section 802(a)(10) of Reference (h) states that in time of declared war or a qualifying contingency operation, persons serving with or accompanying an armed force in the field are subject to the UCMJ. However, because desertion (covered under Article 85 of the UCMJ) and absence without leave (covered under Article 86 of the UCMJ) both apply to “a member of the armed force,” neither UCMJ offense is likely to apply to a civilian who is serving with or accompanying the armed forces in the field during a declared war or qualifying contingency operation, but who is not actually a member of the armed force. As a result, DoD civilian and DoD contractor employees arguably may quit their jobs or not perform their duties without risk of criminal prosecution under the UCMJ. If the risk of non-performance is high enough to adversely impact the readiness status of the unit, commanders should switch to an alternate source of support.

(2) Misbehavior Before the Enemy. Section 899 of Reference (h) punishes “misbehavior before the enemy,” to include, among other things, running away and cowardly conduct in the presence of the enemy and not affording all practicable relief and assistance to other troops when engaged in battle. Section 899 of Reference (h) only applies to members of the armed forces. Therefore, this offense is not likely to apply to a civilian who is serving with or accompanying the armed forces in the field during a declared war or a qualifying contingency operation, but who is not actually a member of the armed forces. Depending on the scenario, heavy dependence on DoD civilian or contractor personnel could represent an inappropriate risk.

(3) Reconstitution of Support Functions and Cross-Utilization of Personnel. If support units are attacked or sustain damage, the military commander may require direct control and unconstrained use of all available personnel to reconstitute essential support functions. The ability of field commanders to reconstitute support functions and/or sustain operations is maximized if personnel can be cross-utilized to perform more than one function.

(a) Flexibility. Commanders often cannot compel DoD civilians or contractor employees to perform work or assume risks that were not agreed upon under the terms of their employment or covered in the terms of the contract. In emergency situations, a military commander may direct DoD civilians to take lawful actions. However, a military commander

may only direct contractor employees to take lawful actions so long as those actions do not require them to assume IG responsibilities and the actions are covered by the terms of the contract. Because contract personnel may not perform IG duties, use of contractors may limit the commander's flexibility in crisis situations and represent an inappropriate risk.

(b) Responsiveness. Generally, contractor employees (unlike U.S. and foreign national civilian and military personnel) are not under the direct supervision of the military commander. The contracting officer, or designee, serves as the liaison between the commander and the defense contractor for directing or controlling the contractor's performance. Separate command and contractual lines of authority could hamper or overly complicate the commander's control and constitute an inappropriate risk.

(4) Disciplinary Authority. Defense contractors are responsible for ensuring that their employees perform under the terms of the contract and comply with applicable laws, directives, regulations, and orders. During a declared war or a qualifying contingency operation, UCMJ jurisdiction over DoD contractor personnel serving with or accompanying the armed forces overseas is governed by Reference (h), Executive Order 12473 (Reference (am)), and the Secretary of Defense Memorandum (Reference (an)). Limits in Reference (an) could overly complicate operations in high-risk situations.

(5) Restrictions Due to Laws and IAs. Laws and IAs often restrict how DoD civilians and DoD contractors can be utilized.

(a) Law of War. During international armed conflicts, if civilians who are authorized to accompany armed forces are captured, they are entitled to POW status under Reference (y). It is not a violation of the law of war for DoD civilians and Defense contractor employees who are authorized to accompany the armed forces in the field during hostilities to be issued a weapon on the authority of the Combatant Commander for individual self-defense as addressed in References (n), (o), and (t). However, while supporting military operations, DoD civilians and contractor employees may be at risk of injury or death incidental to enemy actions while supporting military operations. Also, under the law of war, civilians accompanying the armed forces may be directly targeted for such time as they take a direct part in hostilities but, if captured, do not lose their entitlement to POW status.

(b) Local National (LN) and HN Laws and IAs. Absent a SOFA or other IA or international law to the contrary, contractor employees might be subject to the domestic criminal laws of the HN. For example, use of force by contractor employees may be strictly limited by LN and HN law and not protected by IAs and SOFA provisions. Contractor personnel who exceed the limits imposed by applicable laws and agreements may be subject to prosecution and civil liability. In addition, in certain situations, IAs and HN support agreements might restrict services that can be contracted by limiting contracted services to HN contractors or by prohibiting contractor use altogether.

(c) U.S. Law and U.S. Government Regulations. U.S. law and U.S. Government regulations also impose restrictions on the use of Defense contractors. For example, IG functions may not be contracted and the Department of Defense may not award a personal

service contract except when authorized by statute. (See subparagraph 1.b.(2) of this enclosure concerning personal services.) Also, U.S. laws restrict the types of weapons that can be exported or procured for use by the private sector.

(6) Rules Governing Security Services. Consistent with subpart 52.225-19 of Reference (g) and subpart 252.225-7040 of Reference (l), contractor personnel performing security functions are authorized to use deadly force in self-defense and when use of such force is consistent with the terms and conditions contained in the contract or with their job description and terms of employment.

(a) Consistent with Reference (n), geographic CCDRs issue rules on the use of force that govern the use of weapons by civilians. Rules on the use of force that govern PSCs are different from the rules of engagement applicable to military forces. Rules of engagement may authorize military forces to respond offensively. Although rules on the use of force may authorize PSCs to use deadly force in defense of hostile acts or demonstrated hostile intentions, they may not authorize PSCs to use offensive tactics as a means of achieving their mission/contract objective. Security that requires the type of tactics that are authorized only to military forces (as discussed in paragraph 1.d. of Enclosure 4 of this Instruction) should not be contracted because the security entails IG responsibilities that are uniquely military.

(b) Threat levels are neither static nor uniform across all regions of a conflict. Even though it may be appropriate for PSCs to provide security services at certain times and in certain regions of a conflict, contract security services may have to be curtailed or suspended if the level of hostilities increases significantly. They also may have to be curtailed if the terms or conditions contained in the contract no longer apply or it appears that the contractor can no longer fulfill the terms of the contract without assuming IG responsibilities. Commanders must use judgment when making these decisions and err on the side of caution to avoid the inadvertent transfer of IG responsibilities to the private sector. According to Reference (f), in order to avoid transferring IG authority to a contractor, government officials must consider the provider's authority to take action that will significantly and directly affect life, liberty, or property of individual members of the public. Requiring officials must consider the likelihood of the provider's need to resort to force in support of a police or judicial activity; whether the provider is more likely to use force, especially deadly force; and the degree to which the provider may have to exercise force in public or relatively uncontrolled areas.

e. Risk of Active Duty Service Determinations for Civilian or Contractual Groups. Commanders shall not hire or plan to use DoD civilians or contractor employees in a manner that could qualify as active military service. Consistent with DoD Directive 1000.20 (Reference (ao)), active duty service is considered to be equal to active military service for purposes of qualifying for Department of Veterans Affairs benefits, based on the extent to which the group was under the control of the U.S. armed forces in support of a military operation or mission during an armed conflict. A determination of active duty service that is considered to be equivalent to active military service is made based on the extent to which the group was under control of the U.S. Armed Forces in support of a military operation or mission during an armed conflict. The extent of control must be similar to that exerted over military personnel and is determined based on the uniqueness of service; organizational authority over the group;

integration into military organization; subjection to military discipline; subjection to military justice; prohibition against members of the group joining the armed forces; and receipt of military training and/or achievement of military capability. This issue is particularly relevant to PSCs operating in hostile environments that are at risk of performing IG responsibilities.

f. Operational/Logistic Footprint. Manpower analysts shall verify whether use of civilians or contractors would increase the size of the operational “footprint” (e.g., personnel numbers or physical security needs) or the logistic “footprint” (e.g., medical support, mess, transportation, or supplies) beyond that required by military personnel. A large operational/logistic footprint could limit the commander’s flexibility in certain situations and represent an inappropriate risk.

g. Use of Indigenous Personnel. Military commanders shall verify whether contractors plan to employ indigenous personnel to fulfill contract needs and the concomitant threat to the security of U.S. personnel. The use of local workers during a fluid counterinsurgency mission or the use of members of one ethnic group to the exclusion of others could create unrest and raise the risk of sabotage. For example, use of indigenous personnel as linguists for support when interrogating prisoners may invite problems when personnel from one ethnic or religious group are asked to translate conversations involving prisoners from another ethnic or religious group.

h. Operational Security. Defense officials do not have visibility into the contractor’s hiring practices and background checks and should assess the risk of using contractors for operations that entail operational security.

3. RISKS TO FISCAL RESPONSIBILITIES. When assessing the merits of contracting functions, manpower authorities shall also assess whether it would require more manpower to develop the statement of work; award and execute the contract; and assess the quality of the final product or service, than it would take to perform the service with government personnel. These costs should be considered when conducting cost comparisons required by Reference (j).

GLOSSARY

PART I. ACRONYMS AND ABBREVIATIONS

CA	commercial activity
CCDR	Commanders of the Combatant Commands
CI	civilian internee
CS	combat support
CSS	combat service support
E-E	emergency essential
E.o.	Executive order
EPW	enemy prisoner of war
FN	foreign national
FOIA	Freedom of Information Act
HN	host nation
HR	human resources
IA	international agreement
IG	inherently governmental
IGCA	Inherently Governmental Commercial Activities
LN	local national
OMB	Office of Management and Budget
POW	prisoner of war
PSC	private security contractor
RP	retained person
SELRES	Selected Reserve
SOFA	status of forces agreement
T&E	test and evaluation
UCMJ	Uniform Code of Military Justice
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology and Logistics
USD(P&R)	Under Secretary of Defense for Personnel and Readiness
USD(I)	Under Secretary of Defense for Intelligence

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this Instruction.

combat. When determining what is IG, an authorized, deliberate, destructive, and/or disruptive action against the armed forces or other military objectives of another sovereign government or other armed actors on behalf of the United States (i.e., planning, preparing, and executing operations to actively seek out, close with, and disrupt and/or destroy an enemy, hostile force, or other military objective). Includes employing firepower and/or other destructive/disruptive capabilities to the foregoing ends. This definition is not intended and should not be construed to limit in any way the inherent right of an individual to act in self-defense.

combat power. Defined in Joint Publication 1-02 (Reference (ap)).

commander's intent. A clear, concise statement of what the force must do to succeed with respect to the enemy and the terrain and the desired end state. It provides the link between the mission and concept of operations by stating the key tasks that, along with the mission, are the basis for subordinates to exercise initiative when unanticipated opportunities arise or when the original concept of operations no longer applies.

concept of operations. Defined in Reference (ap).

hostile act. Defined in Reference (ap).

hostile environment. Defined in Reference (ap).

hostile force. Defined in Reference (ap).

hostile intent. Defined in Reference (ap).

operating forces. Defined in Reference (ap).

operation. Defined in Reference (ap).

preemptive attack. Defined in Reference (ap).

qualifying contingency operation. Military contingency operation conducted for the purpose of engaging an enemy or a hostile force in combat. Disciplinary authority over civilians under Article 2(a)(10) of the UCMJ is governed by References (h), (al), and (am).

rules of engagement. Defined in Reference (ap).

DCMA Administrative Record for FY 2013 Furlough Appeals

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**AGREEMENT
BETWEEN
DEFENSE CONTRACT MANAGEMENT AGENCY
AND
AFGE COUNCIL 170**



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PREAMBLE

This Agreement is made and entered into by and between the Defense Contract Management Agency (DCMA), hereinafter referred to as the “Agency,” and the American Federation of Government Employees (AFGE) AFL-CIO, and its agent, AFGE Council 170 of DCMA Locals, hereinafter collectively referred to as the “Union”.

The parties agree that the provisions of this Agreement apply to all professional and non-professional DCMA employees in the bargaining unit.

The Agency and the Union share the conviction that the public interest can be best served by a constructive labor-management relations (LMR) program that provides for optimum participation of employees, through a cooperative relationship in the formulation and implementation of policies and practices which affect them. Both parties are committed to the development of a program which achieves that objective.

ARTICLE 1

**PARTIES TO THE AGREEMENT
AND
BARGAINING UNIT COVERED**

SECTION 1 - EXCLUSIVE REPRESENTATIVE

The sole and exclusive representative and the bargaining unit are defined in FLRA Certificate Case Number WA-RP-01-0050 dated February 20, 2004 and any subsequent amendments thereto.

SECTION 2 - AUTHORITY

As the delegated bargaining agent of AFGE, the DCMA Council has the full authority to meet and confer with the Agency for the purpose of entering into negotiated agreements covering the members of the nationwide unit on all subjects, matters and issues covered by said agreements, and to administer this collective bargaining agreement and all future bargaining agreements covering the nationwide unit. The DCMA Council accepts the obligation to represent all members of the nationwide unit on a fair and impartial basis. This Agreement is the sole and exclusive agreement between the Agency and the Union. Further supplemental agreements are strictly prohibited.

SECTION 3 - DELEGATED AUTHORITY

No other organization, association, or union, or any officer or representative thereof, shall be recognized, in any capacity or for any purpose, as the bargaining agent of the nationwide unit. When either party designates an agent to act on its behalf in filing charges, complaints, petitions or any other documents which have the purpose or the result of involving an outside agency or third party in any labor management relations matter involving the Agency and the Union, each party will notify the other of the name and authority delegated to such agent. Such notification shall be in writing.

SECTION 4 - FUTURE RECOGNITION

A. The DCMA Council and the Agency agree that in the event that AFGE or any local affiliated with AFGE obtains recognition in the future as the exclusive bargaining agent of any group of DCMA employees which are not presently a part of the unit, it will be the joint position of the DCMA Council and the Agency to the Federal Labor Relations Authority that the employees should become a part of the professional and nonprofessional employees' nationwide unit. These employees will automatically be covered by this agreement.

B. The DCMA Council and the Agency agree that, should a new DCMA Council Local be established and the employees they represent become a part of the bargaining unit, the new DCMA Council Local shall be permitted to negotiate on matters relating specifically and solely to the new employees represented as allowed in this agreement.

ARTICLE 2

EFFECT OF THE AGREEMENT

This Agreement hereby revokes, supersedes and replaces any and all oral, written or otherwise implied collective bargaining agreements, supplements, memoranda of understanding, memoranda of agreement and past practices that are in place prior to this agreement's implementation, between the Agency and any labor organization or its representative at any level in their entirety.

ARTICLE 3

GOVERNING LAWS AND REGULATIONS

SECTION 1- GENERAL

The Agency and the Union shall be governed by all applicable laws of the United States, including those in effect on the effective date of this Agreement and those which are subsequently enacted. They also are and shall be governed by all applicable Government-wide regulations in effect at the time that this Agreement is executed. The Agency will not enforce any Government-wide rule or regulation promulgated after the effective date of this Agreement which is in conflict with the provisions of this Agreement unless such rule or regulation is properly subject to the provisions of 5 U.S.C. § 7116(a)(7).

SECTION 2 - COMPELLING NEED

The Union, however, recognizes that the Agency is a component of the Department of Defense (DoD) and that it must, therefore, operate strictly within the limits of the authority delegated to the Director of the Agency by the Secretary of Defense and that it must comply with and implement all non-discretionary directives issued by the Office of the Secretary of Defense (OSD) concerning matters not covered in this Agreement and not in conflict with this Agreement. At the same time, the Agency recognizes the right of the Union, in any given case, to allege that no compelling need exists for the Agency to implement a specific DoD directive and to seek relief by exercising the privileges accorded to it by 5 U.S.C. Section 7117. Where the DoD, or the Federal Labor Relations Authority, determines that no compelling need for the directive exists, the matter may be negotiated at that time.

SECTION 3 - MANAGEMENT RIGHTS

Nothing in this Agreement does, or ever shall, impinge upon, negate, reduce or detract from the rights and privileges which are vested in the Agency by virtue of the provisions of 5 U.S.C. § 7106, "Management Rights."

ARTICLE 4

DEFINITIONS

1. Agency – DCMA or its successor.
2. Agreement – the collective bargaining agreement executed between the Agency and the Union governing the personnel practices, policies, procedures, and working conditions of employees in the unit.
3. Consultation – for purposes of labor management relations between the Agency and the Union, an exchange of views, opinions, and rationale on matters of mutual concern which allows discussions of a broad range of topics that require each side duly consider the views of the other. This does not preclude negotiations when appropriate.
4. DCMA Council – the DCMA Council Executive Board or designee.
5. DCMA Council Local – any AFGE local representing DCMA bargaining unit employees.
6. Day – a calendar day unless otherwise specified in the body of the Agreement.
7. Employee – a DCMA bargaining unit employee.
8. Grievance – any complaint by any employee concerning any matter relating to the employment of the employee; by any labor organization concerning any matter relating to the employment of any employee; or by any employee, labor organization or Agency concerning the effect or interpretation, or a claim of breach of a collective bargaining agreement; or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.
9. Meet – means face-to-face unless otherwise specified in the Agreement. Alternatives to face-to-face meetings, such as VTC, conference call, etc., may be used for meetings of less than 1 day in duration when agreed to by both parties.
10. Memorandum of Agreement (MOA) – the document resulting from mid-term bargaining during the term of the Agreement.
11. Negotiate – meet, confer, bargain or otherwise communicate for the purpose of discussing and settling terms leading to an agreement.

12. Official Time - time during normal duty hours, as approved by the supervisor, when a Union representative performs representational duties.
13. Organization – any subordinate entity below the Agency level.
14. Position – a position within the bargaining unit.
15. Statute – the Federal Service Labor Management Relations Statute, 5 U.S.C. §7101 et seq.
16. Supervisor – an individual as defined in 5 U.S.C. § 7103(a)(10) of the Statute.
17. Union – the DCMA Council Executive Board, all Local officers, or their respective designees, acting as agents for the American Federation of Government Employees, AFL-CIO, for purposes of representing employees in the unit.
18. Unit Representative – the principal representative for DCMA Employees when a DCMA Council Local President is not an employee of DCMA.

ARTICLE 5

AVAILABILITY OF AGREEMENT

The Agency will make this Agreement available electronically to all bargaining unit employees. New employees will be made aware of this Agreement and how to access it electronically.

ARTICLE 6

DURATION AND TERMINATION

SECTION 1 - DURATION

This Agreement shall remain in effect for a period of 5 years from its effective date and shall be automatically renewed for an additional period of 3 years, subject to applicable law and/or regulations, unless either party gives written notice to the other party of its desire to renegotiate portions of this Agreement between 60 to 90 calendar days prior to 5 year anniversary. Such renegotiations, if held, will be separate and distinct from mid-term bargaining set forth in this Agreement.

SECTION 2 - ARTICLES AND SIGNATURES

This Agreement consists solely of a Preamble and 47 Articles. This Agreement is executed and binding upon the parties as of April 3, 2006.

SECTION 3 - PROVISIONS FOR THE AGREEMENT

The date of execution shall be the date that the parties sign the Agreement for the purpose of Agency Head approval under 5 U.S.C. § 7114(c). Implementation shall be effective the day of Agency Head approval, but not later than the 31st day after the date of execution, except for any noncompliance noted in the post review.

ARTICLE 7

OFFICIAL TIME

SECTION 1 - UNION REPRESENTATION

The DCMA Council shall inform the Agency of all Union representatives who shall be afforded official time to perform representational functions in accordance with law and this Agreement. Each organization will recognize Union representatives and grant official time, in the amount and circumstances described elsewhere in this Agreement. Official time under this Article will only be used to perform representational duties on behalf of DCMA bargaining unit employees.

1. All Union representatives are responsible for judicious use of official time.
2. Union representatives may not be evaluated on or rewarded for representational activities; however this does not preclude the use of non-monetary awards as a means of recognition.
3. In accordance with 5 U.S.C. § 7131(b), official time may not be expended for any activities performed by employees relating to internal Union business (including the solicitation of membership, election of Union officials, and collection of dues).

SECTION 2 - COUNCIL PRESIDENT

The President of the DCMA Council or designee, if a member of the bargaining unit and if otherwise in a duty status, will be entitled to 100% official time to:

1. prepare and represent the Union on grievances filed by the DCMA Council;
2. respond to grievances initiated by the Agency;
3. prepare the DCMA Council's case and represent the Union in an arbitration hearing;
4. participate in meetings arranged by the Agency and interface with Agency personnel as necessary;
5. represent the DCMA Council in negotiating with the Agency;
6. prepare and represent the Union on unfair labor practice cases filed by or against the Agency;

7. serve as a member of any National/Department/Agency labor-management relations committee;
8. meet, confer and participate with AFGE officials and DCMA Headquarters on representational issues;
9. represent the Council on any issues including, but not limited to, matters before Merit Systems Protection Board (MSPB), Office of Special Counsel (OSC) or Office of Personnel Management (OPM) classification appeals, or workers compensation;
10. attend training including but not limited to labor management relations;
11. conduct discussions and inquiries over interpretation of the Agreement and higher level law, rules and regulations;
12. participate in Senior Leadership Team Meetings;
13. participate in the development and implementation of instructions/policies promulgated by the Agency which affect the working conditions of bargaining unit employees; and
14. perform any other duties and responsibilities allowed per 5 U.S.C. Chapter 71.

SECTION 3 - FULL-TIME REPRESENTATIVES

The President of the DCMA Council or designee (assigned in writing by the DCMA Council President), shall provide a list of fifteen (15) designees to the Agency who will be authorized 100% official time to perform the duties listed in Section 2 and Section 4 of this article or other duties assigned by the DCMA Council. The Council President, or designee, will provide reasonable advance notice in writing when re-designating Union Representatives identified under this provision.

SECTION 4 - TIME FOR REPRESENTATIONAL DUTIES

A. Local Presidents, Unit Representatives and all other recognized representatives of the Union will be accorded time to perform the following duties:

1. gather input for contract and mid term negotiations;
2. attend formal discussions as provided by 5 U.S.C. 7114(a)(2)(A);

3. attend meetings arranged by management, when invited by management;
4. participation on committees and panels as authorized by this agreement;
5. attendance at labor management meetings;
6. discuss and investigate specifically identified complaints of employees with respect to matters covered by this Agreement;
7. prepare and present grievances under the negotiated grievance procedure;
8. attend the examination of an employee by a management representative if the examination is in connection with an investigation, if the employee reasonably believes that the examination may result in disciplinary action against the employee, and if the employee requests a Union representative;
9. prepare and present a grievance at an arbitration hearing;
10. prepare and present unfair labor practice cases filed against the Agency;
11. prepare and present a reply to a proposed disciplinary or adverse action;
12. respond to grievances initiated by the Agency;
13. prepare and present unfair labor practice cases filed by the Agency;
14. perform those functions stated elsewhere in this agreement for which official time has been expressly provided;
15. witness preparation time for all hearings required as a part of the Union official's representational duties;
16. Union participation in the development and implementation of instructions/policies promulgated by the Agency which affect the working conditions of bargaining unit employees; and
17. perform any other duties and responsibilities allowed per 5 U.S.C. Chapter 71.

B. Any recognized Union Representative not accorded 100% official time will be accorded a reasonable amount of time up to sixteen (16) hours per pay period to perform those duties in Section 4 A . Representatives may exceed this limit on official time on a case-by-case basis when required by extenuating circumstances and the parties agree it is of mutual benefit. Disputes over exceeding the limit on official time will be resolved on an expedited basis by the Council President and the Agency's designee. Any time limits in the Agreement affected by this dispute will be held in abeyance pending resolution.

C. The following representational activities will not be counted against the limitations on official time in Section 4 A:

1. attendance at meetings initiated by management when invited (excludes attendance at formal discussions as provided by 5 U.S.C. § 7114(a)(2)(A) and attendance at the examination of an employee by a management representative if the examination is in connection with an investigation, if the employee reasonably believes that the examination may result in disciplinary action against the employee, and if the employee requests a Union representative); or

2. travel necessary for the performance of representational functions.

SECTION 5 - NUMBER OF REPRESENTATIVES

A. Only one employee may be on official time to represent the Union in the performance of a particular representational function at any given time. Exceptions will be made when:

1. there is a need for training;

2. where a back-up is deemed necessary by the Union;

3. more than one representative has been expressly provided for by this Agreement;

4. more than one representative has been invited by management to attend a meeting; or

5. more than one attendee is mutually agreed to by the parties.

B. The word "representative" as used in this Agreement means one representative. However, the Agency agrees that in those situations when meetings require the attendance of an employee and their representative, the Agency will normally and reasonably limit attendance to not more than two (2) supervisory/managerial employees. When more than two supervisory/managerial personnel are required, the number of Council

representatives may be increased by one (i.e., three management representatives equals an employee plus two Council representatives). In the event that advisory staff is needed to deal with a matter of mutual concern (i.e., labor relations, safety, health, etc.) both parties may mutually agree not to count these advisors as supervisory/managerial representatives. The advisory staff will be in a duty status with time charged appropriately.

SECTION 6 - REQUESTING OFFICIAL TIME

Union representatives (except those entitled to 100 percent official time) must seek and obtain the approval of their immediate supervisor before engaging in a representational activity on official time.

1. The representative will advise the supervisor of the estimated amount of official time needed, the date and time when the official time will be used, where the representational function will occur and the reason for which the official time is requested. Permission to conduct official Union business, including representation and assistance activities, will normally be granted unless absence of the representative from his or her work duties would cause substantial adverse effect on the work product of his or her area. In those instances, an alternate time will be authorized.

2. To minimize the amount of official time used and employee absences from assigned duties, contacts between an employee and his or her representative during working time will normally take place at or near the vicinity of the employee's work place. The organization will arrange a private enclosed space suitable for the employee and the representative to meet if requested by the Union representative.

3. TDY may be authorized, as appropriate, when local on-site representation is not available.

SECTION 7 - SECRETARY/TREASURER

The secretary/treasurer of each local and the DCMA Council shall be granted a reasonable amount of official time to maintain records and reports which are required by federal agencies and which are not related to internal Union business within the meaning of 5 U.S.C. § 7131(b).

SECTION 8 - IDENTIFICATION OF UNION REPRESENTATIVES

Within 60 days after the effective date of this agreement, the DCMA Council will provide the Agency with a current list of representatives and the organization(s) they are assigned to represent. An updated listing will be provided as necessary.

SECTION 9 - SUBJECT MATTER EXPERTS

Where a subject matter expert is critical to the successful representation of employees with the Agency and the expertise is not available from the DCMA Council representatives in Sections 2 and 4, the Agency will make that individual available and may authorize travel and per diem as appropriate.

SECTION 10 - LEGISLATIVE ACTIVITIES

The Parties agree to abide by current legislation and Federal Labor Relations Authority (FLRA) interpretations (i.e., 54 FLRA 38 & 39) relative to the propriety of using appropriated funds for the purpose of influencing pending legislation. Unless prohibited by the above constraints, the Union will be authorized official time to present the views of the Union to members of Congress on matters affecting the working conditions of bargaining unit employees.

SECTION 11 - WORK CONSIDERATIONS

The Agency shall consider the time utilized by officials to perform labor management/representational duties in assigning workload to support mission accomplishment, so as to ensure that employees are not adversely affected by exercising their right to assist the Union.

SECTION 12 - RECORDING OFFICIAL TIME

All DCMA Council representatives using official time will record their time in the labor accounting system using the categories mutually agreed to by the Agency and the DCMA Council. This labor accounting system is the sole record for the Agency.

SECTION 13 - NATIONAL AFGE REPRESENTATIVES

A. The Agency recognizes that AFGE National is accorded recognition and retains the right for any AFGE National Officer, National Vice President or AFGE staff to conduct business of AFGE.

B. The Agency agrees that duly designated National AFGE representatives will be admitted to the installation for scheduled meetings with management and/or Union representatives during working hours in accordance with local facility security requirements.

ARTICLE 8

LABOR MANAGEMENT RELATIONS BETWEEN THE PARTIES

SECTION 1 - RECOGNITION

A. The Agency will publish the list(s) of identified DCMA Council Officers on the Agency website. Changes will be published as they occur.

B. Quarterly, each organization will provide a copy of their most recent organization chart to the DCMA Council Local. The chart will include the organizational structure, and the names, series and grades of all assigned personnel.

SECTION 2 - COMMUNICATION

A. The Union's access to and use of the Agency's communications resource (e.g. bulletin boards, Intranet, E-mail) shall not interfere with the mission or operation of the Agency.

B. Any and all Union communication using Agency communication resources or distributed on Agency premises will not violate law, advocate violating the law, or contain items relating to partisan political matters and will not malign, disparage or harm the character of any individual or the Agency.

C. The Union may distribute paper (i.e. hard copy or leaflet) material on the Agency's premises in work areas to individual employees before and after the Agency's tour of duty, subject to internal security requirements and contractor security requirements if applicable, and in the non-work areas, provided that both the employee distributing and the employee receiving such material are not in duty status. All such material will be properly identified as official Union material.

SECTION 3 - MEETINGS BETWEEN THE PARTIES

A. The DCMA Council shall be afforded the opportunity to send up to five representatives to Agency Commander's conferences and one representative to all other Agency conferences. These representatives will be granted official time and travel and per diem to attend. Copies of all briefings charts from the Agency Commander's conferences will be made available to all personnel.

B. The DCMA Council President and fifteen DCMA Council Representatives as designated by the DCMA Council President will be authorized travel and per diem to participate in an annual labor-management meeting with the Agency Director and/or Deputy Director for the purpose of addressing and discussing issues and matters affecting all AFGE bargaining unit employees in DCMA.

C. Normally, organization Commanders/Deputies/Directors will meet with the Council Local President or designee at least monthly to discuss subjects and issues of mutual concern. These meetings will be held during regular duty hours.

D. Labor-Management Relations Committee (LMRC)

1. The parties agree to form a labor-management relations committee to meet on a quarterly basis for the purpose of cooperative and collaborative dealings in resolving ongoing or reasonably foreseeable issues.

2. The committee shall be composed of ten members, six from the DCMA Council and four from the Agency. At least one of the Agency representatives and council representatives in attendance shall have the authority to commit on behalf of their respective parties. The Agency and the DCMA Council will chair the Labor Management Relations Committee meeting on an alternating basis. The Agency will be responsible for the administrative arrangements for the meeting. Attendance at a labor-management relations committee meeting by employees who are committee members will be on official time.

3. The Agency will be responsible for any other costs such as travel and per diem for current DCMA employees, in accordance with the JTR. Travel for committee members will be scheduled to take place during the normal workweek.

4. Meetings will be held quarterly on the following schedule, unless agreed otherwise: 3rd Week of October, 2nd Week of January, 1st Week of April and 2nd Week of July. The duration of the meeting will generally be one to two days in length dependent upon the agenda.

5. The location of the quarterly meeting will be rotated within the Agency.

6. Proposed agendas and topics shall be submitted to the other party in writing as early as possible, but no later than ten days in advance of the date of the meeting, including the specific items for discussion. Additional items may be added after that date by mutual consent.

7. The committee may discuss matters of mutual concern pertaining to personnel policies and practices and working conditions that have unit-wide impact. Individual complaints, grievances or appeals will not be discussed.

SECTION 4 - OFFICIAL USE OF FACILITIES AND EQUIPMENT

A. Office Space

The Agency will provide one private office for each DCMA Council Local, to include furniture, telecommunications and equipment, a lockable cabinet and supplies. In those instances where the 100 percent full time Union

representative is not a local president, the 100 percent full time Union representative will also be provided a private office as described above. In addition to access during regular duty hours, the Union will be provided access to the office during non-duty hours subject to local security procedures and practices. The work area, equipment, utilities and housekeeping services provided by the Agency will be at no cost to the Union.

B. Meeting Space

Upon advance request by the DCMA Council or designee, the Agency will provide space for meetings with employees for use during non-duty hours of the employees involved, provided that space is available.

C. Bulletin Boards

The DCMA Council or designee may post literature on bulletin boards or other authorized areas in accordance with DoD 5500.7-R, Joint Ethics Regulation.

D. Telephones and Electronic Communications

To ensure that Union representatives have a reasonable opportunity to communicate with employees, other Union representatives, and management officials, the Agency agrees that Union representatives may use existing activity telephones, fax or other electronic devices for authorized representational duties, when such use does not interfere with the Agency requirements.

E. Mail/Bulletin Boards

1. The Agency's internal mail system, including electronic mail, may be utilized by the Union in conjunction with official representational duties.
2. The Agency shall provide an e-mail bulletin board for the DCMA Council's exclusive use to communicate with all bargaining unit employees in the Agency. Posting capability shall be limited to the DCMA Council or designee.
3. When appropriate, the Agency agrees to provide suitable wall bulletin boards to be placed in locations frequently utilized by bargaining unit employees. Posting capability shall be limited to the DCMA Council Local officers or designees.
4. The Agency agrees that the Union may use inter-office mail and regular mail. The Union shall have use of Agency metered mail for labor relations representational matters.

F. Transportation

Either local GOV or reimbursement for other transportation will be provided for Union representational responsibilities involving bargaining unit employees if use of or reimbursement for such transportation meets applicable laws and regulations.

G. Email

The Agency will provide a Union email address for each of the DCMA Council Locals.

H. Office Moves

When required to relocate from the existing office space, the Agency will notify the DCMA Council as soon as possible and the DCMA Council will be afforded the opportunity to negotiate.

SECTION 5 - LOCAL NEGOTIATIONS

A. Any matters covered by the scope of this Agreement are not subject to further negotiation below the Agency and DCMA Council level unless otherwise stated in this agreement.

B. If third-party interpretation and/or application of this Agreement is initiated and processed by the parties at the DCMA Council Local level, it shall only be binding upon the individual DCMA Council Local and the organization.

C. Local negotiations are limited to those topics mutually agreed upon by the Agency and the DCMA Council. If the Agency and the DCMA Council cannot agree, the issue will be forwarded to FMCS for mediation after 15 days. Local negotiations will be documented in a Memorandum of Agreement (MOA). All MOAs negotiated at subordinate organizations shall be subject to review and approval by the Agency and DCMA Council prior to implementation.

D. Procedures for Local Negotiations

1. The party requesting approval for local negotiations should forward the request to the Agency and the DCMA Council with a courtesy copy to the other affected party. The request shall include the specific proposal the requesting party is seeking to implement.

2. The approval to conduct local negotiations and designation of representatives shall be given in writing by the Agency and DCMA Council.

3. Each party shall be permitted no more than two representatives unless expressly agreed to by the Agency and the DCMA Council in advance.

4. Travel and associated costs will be borne by the Agency.
5. Upon receipt of approval for local negotiations from the Agency and the DCMA Council, the responding party has 14 days to provide its counterproposal.
6. Within 14 days of receiving the responding party's proposals, both parties will negotiate, as necessary to achieve an agreement. It is intended that this will be accomplished primarily through telephone, video teleconferencing and/or written communication when the parties are not at the same physical location.
7. If at the end of 14 days any proposals remain unresolved, the parties will engage in "face-to-face" negotiations within 30 days. If the parties are still unable to reach agreement, the parties will refer the matter to the Agency and the DCMA Council for further consideration and action.

SECTION 6 - MID-TERM BARGAINING

A. Matters Not Covered by the Agreement

1. Whenever the Agency or the DCMA Council proposes any change under this Article to any DCMA directive or policy relating to the personnel practices or matters affecting the condition of employment of bargaining unit employees, on matters not covered by this Agreement, the proposal will be transmitted to the President of the DCMA Council or the Agency, or their designated representatives, as appropriate.
2. The Agency or the Union will be provided 14 calendar days from receipt of the notice to request to bargain. The Agency or the Union will submit written bargaining proposals or request additional information or a briefing with its request to bargain. If the Agency or the Union has requested additional information or a briefing with its request to bargain, the Agency or the Union will submit written bargaining proposals within 28 calendar days of the Agency's or Union's response to the request for information or the date of the briefing.
3. If the Union fails to request to bargain within 14 calendar days from the receipt of the Agency's notice or fails to submit written proposals within the required time frames, the Agency may implement the changes.
4. The first negotiating session will take place as soon as possible but no later than ten (10) working days from the receipt of the written proposals.
5. The time frames set forth in this section may be modified in writing by mutual agreement of the parties.

6. If DoD mandates any change in any matters affecting conditions of employment on issues not specifically covered by this agreement, the procedures set forth in paragraphs 1-5 shall apply.

B. Matters Covered by the Agreement

1. If a future law or regulation mandates a change to this Agreement, the Agency will promptly notify the DCMA Council President or his/her designee in writing of the proposed specific change.

2. The Union will be provided 14 calendar days from receipt of the notice to request to bargain. The Union will submit written bargaining proposals or request additional information or a briefing with its request to bargain. If the Union has requested additional information or a briefing with its request to bargain, the Union will submit written bargaining proposals within 28 calendar days of the Agency's response to the request for information or the date of the briefing.

3. If the Union fails to request to bargain within 14 calendar days from the receipt of the Agency's notice or fails to submit written proposals within the required time frames, the Agency may implement the changes.

4. The first negotiating session will take place as soon as possible but no later than ten (10) working days from the receipt of the Union's written proposals.

5. The time frames set forth in this section may be modified in writing by mutual agreement of the parties.

6. For purposes of carrying out the intent of this Section, the Agency and DCMA Council mutually recognize and agree that their respective proposals may be modified during the course of the negotiations to permit realistic good-faith bargaining of all aspects of but limited to the negotiable subject matter, including aspects directly related to but not anticipated when the written proposals were exchanged.

C. Ground Rules for Mid-Term Bargaining

1. When mutually agreed, the Parties will use available technology (e.g. VTC, teleconference) to negotiate.

2. The Agency will provide a meeting room for negotiations and reasonable equipment.

3. The Agency and the Union will be represented at the negotiations at all times by one duly authorized chief negotiator who is authorized to execute agreements.

4. The Union will be authorized the same number of Union representatives on official time as the Agency has representatives at the negotiations table. There shall be a minimum of two Union representatives at the table. The designated Union negotiators will be granted official time for time spent during the actual negotiations, including attendance at impasse proceeding during the time the employee would otherwise be a duty status. The Union will be permitted to have negotiators who are not employees of the Agency but if it does so, it agrees to pay any and all costs incurred by these negotiators.

D. Execution of Agreements

All written agreements or memoranda of understanding reached under the provisions of this Article will be duly executed and incorporated into, and to the extent not inconsistent with this agreement, will be subject to all the terms and conditions of this agreement.

E. No Waivers

Nothing in this agreement shall be deemed to waive either party's statutory rights including, without limitation, the right to assert the "covered by" doctrine.

SECTION 7 - DUES WITHHOLDING

A. General

For the purpose of this Article:

1. The term "employee" refers to any bargaining unit employee who is a member in good standing of any DCMA Council Local.
2. The term "servicing payroll office" refers to the Defense Accounting and Finance Service (DFAS), which is responsible for processing the pay of DCMA employees . The Agency acts as a liaison for the process of dues withholding between the Union and DFAS.
3. The term "payroll allotment" refers to a voluntary authorization by the employee for a deduction in a specified amount to be made from the employee's pay each pay period for the payment of dues associated with their membership, to the DCMA Council Local.

B. The Agency and the DCMA Council agree that:

1. The DCMA Council Local is responsible for fully informing the employee that their authorization for a payroll allotment:

a. is completely voluntary; and

b. cannot be revoked for a period of 1 year from the date that the Agency receives the assignment. Thereafter, such revocation will not be effective until the first full pay period following September 1, provided the form is received by the Agency no later than September 1 and no earlier than August 1.

2. When dues are erroneously withheld due to the DCMA Council's failure to comply with the procedures above, any overpayment of dues by the employee will be a matter solely between the Union and the employee. When dues are erroneously withheld due to the Agency's failure to comply with the procedures above, any overpayment of dues by the employee will be the Agency's responsibility.

C. Authorization of Payroll Allotment

1. Only one payroll allotment for dues withholding shall be authorized for an employee.

2. Standard Form (SF) 1187, Request for Payroll Deductions for Labor Organization Dues, or equivalent shall be used. The DCMA Council Local shall distribute this form to the employees.

3. The DCMA Council Local shall furnish the Agency with written notification of the name and title of the DCMA Council Local official who is designated to sign the certification on the SF 1187 or equivalent.

4. The DCMA Council Local shall be responsible for furnishing the servicing payroll office with a certified schedule of payroll allotments supported by completed SF 1187 or equivalent signed by the designated DCMA Council Local official and the employees.

5. The payroll allotment shall be in an amount determined by the DCMA Council Local.

6. The DCMA Council Local shall furnish a written notification of a change in the amount of the payroll allotment to the servicing payroll office.

7. The change in the amount of the payroll allotment shall become effective with the first complete pay period which occurs 30 days after the written notification is received by the servicing payroll office.

D. Termination of Authorization

The payroll allotment shall be terminated when any of the following situations occur:

1. the employee retires;
2. the employee dies;
3. the employee is separated;
4. the employee ceases to be a member of the bargaining unit;
5. the employee ceases to be a member in good standing of the DCMA Council Local. If this occurs, the DCMA Council Local shall be responsible for promptly furnishing written notification to the servicing payroll office; or
6. the employee files a written notification through the DCMA Council Local (SF 1188, Cancellation of payroll Deductions for Labor Organization Dues or equivalent) to the servicing payroll office. This revocation must be signed by the local president or designee prior to processing. In this case the termination becomes effective on the first full pay period after the notification is received by the servicing payroll office.

E. Processing Payroll Allotments

1. The parties recognize that payroll processing matters are the exclusive province of the Defense Finance and Accounting Service (DFAS). However, insofar as the Agency is able to request certain action discussed in the provision, it will facilitate them to the extent practicable.
2. Payroll allotments shall be processed at no cost to the DCMA Council Local or the employee.
3. The DCMA Council Locals agree to furnish DFAS with the name and address of the Union Official designated to receive the Union dues withholding monies and the Union dues withholding list.
4. After each pay period the servicing payroll office shall remit a check or electronic deposit to the DCMA Council Local for the payroll allotment deductions together with the following:
 - a. the names of employees from whom deductions were made and the amount of each deduction, their Social Security Numbers and their organization assignment;
 - b. the total number of employees from whom dues were withheld;
 - c. the total amount withheld;

d. the names of employees from whom no dues were deducted;
and

e. a copy of any written revocation received by the servicing payroll office since the previous remittance.

F. Effective Dates

1. Completed SF 1187s or equivalent will be submitted by the Union to the Agency for certification of dues withholding eligibility. This certification will be completed within 5 days of receipt. Dues withholding will be effective at the beginning of the first full pay period after receipt of a certified SF 1187 or equivalent by the Agency.

2. Revocation of dues withholding will be effected by filing SF 1188 or equivalent with the Agency. Such revocation will not be effective until the first full pay period following one year from the date the Agency received the assignment. (See D.6 above).

3. Termination of dues withholding as a result of the separation of an employee or other action affecting the employee's eligibility for withholding will be effective at the end of the pay period in which the separation or other action occurs.

4. If the Agency fails to process SF 1187s or SF 1188s (or equivalents), and the Local suffers a financial loss, the Agency will reimburse the Local.

SECTION 8 - LABOR-MANAGEMENT TRAINING

A. It is to the advantage of both the Agency and the DCMA Council if the Union representatives are knowledgeable about applicable laws, regulations, and new developments pertaining thereto. Subject to mission requirements, Union representatives may be granted reasonable amounts of administrative leave to attend AFGE-sponsored training sessions or other training courses which are available at no cost to the Agency, either for tuition or for travel and per diem.

ARTICLE 9

UNION RIGHTS

SECTION 1- UNION RIGHTS

In all matters relating to personnel policies, practices and other conditions of employment, the parties will have due regard for the obligations imposed by 5 U.S.C. Chapter 71 and this Agreement.

SECTION 2 - APPROPRIATE ARRANGEMENTS

See the Labor-Management Relations Between the Parties Article 8, Section 6, and 5 U.S.C. Chapter 71.

SECTION 3 - ORDER OF PRECEDENCE

In any conflict between this Agreement and Agency Regulations, the provisions of this Agreement will be followed.

SECTION 4 - PRESENTING VIEWS

The Union has the right to present its views to the Agency on matters of concern, either orally or in writing. The Union has the right to negotiate personnel policies, practices and working conditions as provided in 5 U.S.C. Chapter 71.

SECTION 5 - FORMAL DISCUSSIONS

A. Consistent with 5 U.S.C. § 7114(a)(2)(A), as the exclusive representative of unit employees, the Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Agency and one or more employees or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.

B. The DCMA Council Local will be advised in advance of the time, location and general nature of the subject matter to be addressed at these formal discussions. Normally the Agency will provide such notification two (2) working days in advance. Copies of any briefing charts/documents provided to the bargaining unit employees will be provided to the DCMA Council Local prior to the formal discussion.

C. During the formal discussion, the Union representative will be permitted to respond to issues affecting bargaining unit employees and any comments made about the Union and/or its views.

SECTION 6 - COMMUNICATIONS WITH BARGAINING UNIT EMPLOYEES

Consistent with 5 U.S.C. Chapter 71, the Agency may communicate directly with employees regarding conditions of employment provided that it does not do so in a manner which will improperly bypass the Union under the statute.

SECTION 7 - SURVEYS

A. Employee surveys related to personnel policies, practices or working conditions will be provided to the Union in advance of dissemination. The Union shall respond with any concerns within ten working days.

B. In those instances when the information received as a result of the survey causes the Agency to implement changes that affect bargaining unit employees in the areas of personnel policies, practices, or working conditions, the Agency agrees to negotiate as appropriate.

SECTION 8 - UNION OFFICIAL ASSIGNMENTS

Union officials will be given consideration for lateral assignment to vacancies that will better enable them to perform their representational duties.

SECTION 9 - ACCESS TO RECORDS

Upon a written request demonstrating a particularized need, the Union has the right to reasonable access to data normally maintained by the Agency pertaining to personnel and conditions of employment. Release of data to the Union is subject to applicable regulatory and legal restrictions.

SECTION 10 - RESPONSIBILITY

The President of the DCMA Council Local, or designee, will be the primary person in all contacts with the organization(s) on matters involving personnel policies and/or practices or other general conditions of employment affecting employees represented by the DCMA Council Local. The President of the DCMA Council Local will notify the organization(s) of those officials who will carry out the provisions of this Agreement in his/her absence.

ARTICLE 10

EMPLOYEE RIGHTS AND RESPONSIBILITIES

SECTION 1 - GENERAL

In accordance with 5 U.S.C. § 7102, each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.

SECTION 2 - EMPLOYEE RIGHT TO PARTICIPATE

Employees have the right to engage in collective bargaining with respect to conditions of employment through representatives of the Union.

SECTION 3 - EMPLOYEE CONCERNS

Employees have the right and shall be encouraged to bring matters of personal concern regarding conditions of employment to the attention of the appropriate Agency or Union representative at the lowest level capable of resolving the matter.

SECTION 4 - EMPLOYEE RIGHT TO REPRESENTATION

A. A representative of the Union shall be given an opportunity to be present at any examination of an employee in connection with an investigation if: (1) the employee reasonably believes that the examination may result in a disciplinary action against them; and (2) the employee requests such representation. When such an examination is held, every reasonable effort will be made to schedule it at a time and site, which is acceptable to all of the participants.

B. When an employee exercises their rights under this section and when the DCMA Council Local representative of the employee is not immediately available, the meeting will be deferred for a reasonable period of time to permit the presence of the DCMA Council Local representative if the Agency elects to hold the meeting.

C. The Agency shall annually inform all members of the bargaining unit of their rights, as set forth in this Section.

D. The Agency will recognize the employee's right to seek DCMA Council Local representation at any time after the employee has been asked to make a statement about another bargaining unit employee should the employee

reasonably believe that such discussions could lead to subsequent disciplinary action against them.

SECTION 5 - EMPLOYEE NOTICE TO SUPERVISOR

If an employee has a problem or situation which he or she desires to discuss with a DCMA Council Local representative during working hours, he or she will advise his or her supervisor and request permission to leave the work area. Supervisors will grant reasonable requests for temporary absence for this purpose at such times and for such a period of time as the employee can be excused without unduly impeding the work of the Agency. If not immediately approved, the supervisor will inform the employee of the earliest time that the employee can leave.

SECTION 6 - EMPLOYEE PAY AND W-2 ASSISTANCE

A. Employees are entitled to their pay at the proper time and in the proper amount. The Agency will make reasonable efforts to assure that employees receive their proper pay at the proper time, and that their leave and earnings statements are available on the day they are due.

B. The Agency will make reasonable efforts to assure that W-2s are available by the end of January of each year.

SECTION 7 - NEW BARGAINING UNIT EMPLOYEES

A. The DCMA Council Local will be notified when bargaining unit employees are assigned to or separate from an organization.

B. The Agency will advise new employees of their right to join or assist the Union freely and without fear of penalty or reprisal or to refrain from any such activity, and will provide new employees access to the names and phone numbers of appropriate DCMA Council Local representatives.

C. All new employees shall be informed by the Union that the DCMA Council is the exclusive representative of employees in the unit. Each new employee will have access to a copy of this Agreement.

SECTION 8 - HEALTH BENEFITS

A. The Agency shall keep employees informed of "open seasons" and the health benefits available. The Agency shall support Health Fairs, which provide employees health benefits information on individual benefit carriers. Such fairs are contingent on the cooperation and availability of representatives from various health benefit carriers. Employees shall be given reasonable time to attend

Federally-sponsored Health Fairs in their local area to the extent individual participation does not conflict with other mission requirements.

B. The Agency will notify employees annually of the general requirements for payment of Health Benefits premiums during their non-pay status and the effects of cancellation of coverage. This notice will also remind the employees of their responsibility to seek Human Resources (HR) counseling and assistance on a case-by-case basis.

SECTION 9 - SUBPOENA AND WARRANTS

If any employee is to be served with a warrant or subpoena, it will be done in private to the extent such circumstances can be reasonably controlled by the Agency.

SECTION 10 - SENSITIVE DISCUSSIONS

Agency/employee discussions concerning performance deficiencies and disciplinary and adverse actions shall be conducted in a location which will ensure privacy.

SECTION 11 - RIGHTS AND BENEFITS

None of the rights and/or benefits accorded the DCMA Council through this agreement shall be waived except by the Council in writing.

SECTION 12 - LUNCH FACILITIES

The employees shall be provided a lunch area at each site where employees are duty stationed. If a separate room is available at the duty station or work site, the Agency shall provide this area as a lunch room. Lunch facilities on or adjacent to the duty station will satisfy these requirements.

SECTION 13 - RELOCATION OF WORKSTATION

Where management has a legitimate business-related reason for designating that bargaining unit members sit at particular work stations, this will be discussed with the employees and the DCMA Council Local. Those bargaining unit members who are physically relocated shall select their individual workstations by consensus within a set of workstations designated by management. If the bargaining unit members are unable to arrive at a consensus, seniority by service computation date shall be used to resolve the matter.

SECTION 14 - COMBINED FEDERAL CAMPAIGN (CFC)

Gifts to the Combined Federal Campaign (CFC) shall be confidential. Information shall not be gathered, published or disseminated regarding individual charitable contributions or lack thereof. Bargaining unit employees will be encouraged to volunteer to assist in the administration of the campaign. The Agency will encourage appropriate recognition of these volunteers.

SECTION 15 - DAMAGE TO EMPLOYEES CLOTHING

Employees will be compensated for damage to clothing incident to service in accordance with 31 U.S.C. § 3721.

ARTICLE 11

EMPLOYEE BENEFITS

SECTION 1- PARKING

The Agency will arrange for employee parking wherever practicable. Implementation may be negotiated locally.

SECTION 2 - EMPLOYEE USE OF THE INTERNET

A. The Agency has authorized limited personal use of the Internet including e-mail through government furnished resources in accordance with the Joint Ethics Regulation, DoD 5500.7-R.

B. Employees' use of the Internet utilizing Government furnished equipment and computer networks is consent to monitoring usage.

C. Examples of prohibited use of the Internet includes, but is not limited to, the following:

1. Storing, receiving, processing, displaying, sending or otherwise transmitting material that puts the Agency's communication system to use that adversely reflects on DCMA, such as chain letters, and offensive or obscene material. Offensive material includes, but is not limited to, "hate literature," such as racist literature, materials or symbols and sexually harassing materials. Obscene material includes, but is not limited to, pornography and other sexually explicit materials.

2. Participating in "chat lines" or open forum discussion unless for official purposes.

3. All Agency employees should report all suspected intrusions or compromises of Agency Internet or Intranet services, controls or any suspected alterations of the information that the Agency makes available on its Internet sites. Employees should contact the Agency Information Technology (IT) office to report suspected intrusions.

SECTION 3 - DEPENDENT CARE

A. The Parties to this Agreement support flexibility for employees in balancing their work and dependent needs. At Agency facilities where child care services are available, the Agency agrees that such facilities will be governed by applicable DoD regulations and the Military Child Care Act to ensure that a safe and healthful environment is provided. The Agency agrees to meet, confer, and

attempt to resolve specific issues related to child care services with the applicable DCMA Council Local.

B. To assist those employees in balancing work with family needs, the Agency will:

1. encourage the use of workplace flexibilities and programs such as flexible work schedules, compressed work schedules, telework, part-time employment, job share, and leave programs;
2. educate employees annually about Long-Term Care Insurance; and
3. increase manager and employee awareness of family-friendly programs.

C. The Agency may arrange for annual Child/Elder care fairs at each organization. Employees may attend these seminars during duty time and at no cost. The Agency will provide a link to the OPM website regarding dependent care.

ARTICLE 12

EMPLOYEE ASSISTANCE PROGRAM

SECTION 1 - GENERAL

A. The federal Employee Assistance Program (EAP) provides free, confidential short term counseling to identify the employee's problem and, when appropriate, make a referral to an outside organization, facility or program that can assist the employee in resolving his or her problem. It is the employee's responsibility to follow through with this referral, and it is also the employee's responsibility to make the necessary financial arrangements for this treatment, as with any other medical condition.

B. The Agency agrees to implement and promote an EAP for individuals suffering from alcoholism, drug abuse, financial problems or emotional disorders that may affect job performance and to make employees and supervisors aware of the program.

C. Employees suffering from any of the above may request from the EAP information and/or assistance in locating appropriate rehabilitative services or community support groups.

D. The objectives of this program are two-fold: (1) to enhance employee productivity and efficient personnel management by providing a mechanism for dealing with conduct and performance-related employee problems; and (2) to provide professional counseling services. The range of problems includes ANY employee problem which may adversely impact on job behavior, performance or conduct. These problems may include emotional, alcohol and drug-related, familial and marital, financial, legal and other problems.

E. Confidentiality is an essential component of the EAP. All counseling records will be maintained in the strictest confidence.

F. The Agency will insure that no employee will have job security or promotion opportunities jeopardized by a request for counseling or referral services.

SECTION 2 - COUNCIL/AGENCY COOPERATION

The DCMA Council agrees to cooperate fully with the Agency in attempting to rehabilitate and improve the work performance of affected employees who need assistance under the provisions of this program.

SECTION 3 - EMPLOYEE RESPONSIBILITY

A. When an employee's problem interferes with the efficient and proper performance of their duties, reduces their dependability, or reflects discredit upon the Agency, supervisors will either advise or encourage troubled employees to pursue help through the EAP before considering disciplinary or other corrective action.

1. Formal Agency Referrals

a. When the Agency formally refers an employee for EAP counseling, the time associated with the initial assessment/referral and all additional assessment visits with an EAP counselor will be without charge to leave.

b. Subsequent visits to the referred provider for rehabilitation or treatment of an employee problem will be charged to sick leave or other leave at the employee's option.

B. Employees retain the right to refuse to participate in the EAP. If the Agency refers the employee to EAP and the employee refuses to participate, the Agency is free to pursue disciplinary or other corrective action. Referring an employee for counseling service is not a bar to initiating corrective action. If an employee is referred, but there is still no improvement in performance or conduct, corrective action may be taken as warranted, on the basis of the deficiency.

C. The Agency will utilize a Management-encouraged referral to EAP in those situations when a supervisor becomes aware that an employee is experiencing a personal problem, but the work environment has not been affected. The supervisor will suggest use of the EAP services and offer to assist the employee in obtaining an EAP Counselor. No record will be made of the discussion. The time associated with the initial assessment/referral and all additional assessment visits resulting from Management-encouraged referrals will be without charge to leave. Subsequent visits to the referred provider (non-EAP counselor) for rehabilitation or treatment of an employee problem is charged to sick leave or other leave at the employee's option.

D. Employees who suspect they have such problem(s) whether or not it currently affects their work are encouraged to use EAP on a voluntary basis.

SECTION 4 - USE OF SICK LEAVE UNDER THE PROGRAM

Employees undergoing a prescribed program of treatment will be granted sick leave, upon request, on the same basis as any other illness when absence from work is necessary.

SECTION 5 - PROGRAM TRAINING AND PUBLICITY

A. DCMA Council Local representatives will attend local seminars, workshops, conferences or training sessions designed to acquaint supervisors, managers and employees with the program and its operation.

B. The Agency shall inform employees of the program and its services annually.

C. Information on services and the coordinator's name and telephone number will be made available to employees.

D. New employees will be provided orientation on the EAP Program and services available.

E. When the EAP provider is changed, all employees will be given information on the new provider in a timely manner.

ARTICLE 13

DRUG FREE WORKPLACE PROGRAM

SECTION 1 - GENERAL

The parties recognize that the Agency's principal mission is to protect the national defense. Accomplishment of this mission requires the highest standards of employee competence, reliability and integrity. Illegal use or possession of drugs by employees, on or off duty, is inconsistent with accomplishing the Agency's mission. Such conduct constitutes a hazard to personnel, property and operations; contributes to reduced employee productivity, reliability and increases employee absenteeism; and undermines the morale and discipline of the work force. Deterrence of illegal drug use and detection of employees who illegally use drugs is, therefore in furtherance of the Agency's national defense mission. Accordingly, the Agency, pursuant to Executive Order 12564, has established a Drug Free Workplace Program (DFWP) in furtherance of its national defense mission.

1. Where an employee is entitled to rely on a management personnel policy, rule or regulation with respect to drug testing, for which the employee derives some benefit; or conversely, where management's noncompliance would cause an adverse effect on the affected employee, management's own compliance with its personnel policy, rule or regulation, shall be subject to the negotiated grievance procedure. The parties recognize that as of the execution date of this Agreement these laws, rules and regulations include: Executive Order 12564, Public Law 100-71, government-wide Department of Health and Human Services (DHHS) and OPM regulations.

2. Employees are required to refrain from the illegal use or possession of drugs, on or off duty, as a condition of continued employment. Persons who illegally possess or use drugs, on or off duty, are not suitable for federal employment because such conduct is contrary to the efficiency of the service. Employees are required to comply with the DFWP, and refusal to do so will subject the employee to disciplinary action, including removal from the service.

3. It is agreed that drug abuse or addiction may not be used as an excuse for misconduct or less than fully satisfactory work performance. The employee's cooperation of availing him or herself of assistance will be considered by the Agency when proposing or effecting disciplinary or adverse action, related to conduct or performance of the employee.

SECTION 2 - EMPLOYEES SUBJECT TO TESTING

The goal of the DFWP is deterrence of illegal drug use through a carefully controlled and monitored program of drug testing. The program will include:

1. Random drug testing of bargaining unit employees in Testing Designated Positions (TDPs) and other bargaining unit employees who volunteer to be included in the random testing program;

2. Drug testing of any employee when:

a. there is a reasonable suspicion that the employee may be using drugs illegally;

b. the test is authorized as part of an investigation of an accident or unsafe practice and there is a reasonable basis to believe that the employee's actions may have contributed to the incident; or

c. the test is conducted as part of or follow-up to rehabilitation or counseling program under the EAP;

3. Testing of applicants for appointment (including reassignment, transfer, or detail for more than 120 days) in a TDP; and

4. All employees required to take a drug test at the direction of the Agency will be in a duty status. If the test extends beyond the regular shift, the employee will receive overtime or compensatory time or be released. When an employee is selected for random testing and is unable to transport themselves (for example, due to being in a car pool) to the collection facility, the Agency will make transportation arrangements to and from the facility. In cases of reasonable suspicion, accident or unsafe practice, or follow-up testing, the Agency will arrange for transportation of the employee to and from the collection site.

SECTION 3 - RANDOM SELECTION FOR TESTING

The Agency agrees that, except for volunteers, only those employees in TDPs will be subject to random selection for drug testing.

1. TDPs. The Agency agrees that designation of a position as a TDP will be in accordance with applicable law, rule and regulation.

a. An employee occupying a TDP will receive written notice that his or her position has been determined to meet the criteria and justification for random drug testing at least 30 days before the individual is subject to unannounced random testing.

b. Any bargaining unit employees selected for random testing will be selected on the basis of neutral criteria.

2. Volunteers. Any bargaining unit employee who does not occupy a TDP may volunteer to be included in the random testing program by informing the Agency Drug Program Coordinator (DPC) in writing of his or her desire to be included in the pool of TDPs subject to random testing. Employees volunteering to be included in the TDP pool will be subject to the same conditions and procedures for random testing as persons occupying TDPs.

SECTION 4 - SPECIFIC NOTIFICATION OF TEST

Employees selected for drug testing will be specifically informed of any impending test in accordance with applicable regulations. Each employee will be informed reasonably in advance of each of the following:

1. the reasons for ordering the drug testing and how the employee was selected for the test (e.g., random, reasonable suspicion (must be articulated), investigation of an accident, etc.);
2. the consequences of a positive result and the consequences of a refusal to cooperate, including possible adverse action(s); and
3. the right to grieve actions pursuant to the drug testing program under the negotiated grievance procedure and be represented by the Union in those proceedings.

The parties agree that methods and equipment used to test for illegal drug usage will conform to the DHHS mandatory guidelines.

SECTION 6 - COLLECTION PROCEDURES

The Agency agrees that collection procedures will be performed in accordance with applicable law, rule, and regulation.

1. Upon direction by management, designated employees will report to the designated location to be tested.
2. Unless direct observation collection is authorized by regulations, employees subject to testing will be permitted to provide a urine specimen in a rest room stall or similar enclosure so that the employee is not observed while providing the sample.
3. All samples collected will be subject to a strict chain of custody.

SECTION 7 - SAFE HARBOR

The Agency agrees to provide an opportunity for assistance to those employees who voluntarily seek treatment for illegal drug use. "Safe Harbor" insulates the employee from discipline only for admitted acts of using illegal drugs when the Agency was unaware of such use.

SECTION 8 - ADMINISTRATIVE ACTION

Any employee who is determined to be an illegal user of drugs and who occupies a sensitive position must be removed from that position through appropriate personnel action. The employee may be returned to duty in a sensitive position as part of a counseling or rehabilitation program if, in the sole discretion of the head of the organization, he or she determines that returning the employee to duty in the sensitive position would not endanger public health, safety or national security. Such determinations will be made in a fair, equitable and nondiscriminatory manner.

SECTION 9 - EAP REFERRAL

- A. Employees who receive a first confirmed positive test result or who voluntarily admit illegal drug use under Section 7, will be referred to the EAP consistent with laws, rules and regulations.
- B. When it appears EAP referral is appropriate, the Union will encourage the employee to respond positively to the referral.
- C. Because of its special relationship with bargaining unit members, the Union will guide, support, represent and otherwise influence an employee to effect the most positive outcome possible.

SECTION 10 - CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

- A. Records, files, and information pertaining to employee drug tests and test results will be handled confidentially in accordance with applicable laws, rules and regulations.
- B. Information will be released only to those officials of the Agency who have a need to know and are authorized by applicable law, rule or regulation to receive such information.
- C. Regardless of the test results, any employee who is the subject of a drug test will, upon written request to the DPC, have access to any records relating to his or her drug test.

SECTION 11 - UNION REPRESENTATION

- A. An employee who believes his or her position was improperly designated a TDP may grieve the matter under the negotiated grievance procedure.

- B. A grievance concerning an alleged impropriety in the drug testing process will be handled by the parties in the same manner as any other grievance. The parties will cooperate in attempts to resolve any dispute according to the negotiated grievance procedure.

- C. The Union will be provided information concerning the general drug testing process and the chain of custody consistent with the provisions of 7114(b)(4) of the Statute.

- D. Employees, at their election, may have Union representation as an observer during the collection process, in discussion with the Medical Review Officer and in discussion with supervisors concerning the test results. Unavailability of a Union representative will not delay collection of the sample.

SECTION 12 - DISCLOSURE OF INFORMATION TO THE DCMA COUNCIL

Upon request, the Agency agrees to provide the DCMA Council an annual report that documents statistical information regarding the DFWP. The report will include the total number of bargaining unit employees tested, the total number of bargaining unit employees who tested positive, total number and types of disciplinary actions taken. The Agency also agrees to provide the DCMA Council an annual list by office of all bargaining unit positions designated as TDP and the reason for such designation. Following receipt of such information, the DCMA Council may submit documentation to the Agency requesting a review of positions designated as TDP. The documentation will include the specific rationale for disputing the TDP designation. Either party may include discussion of issues regarding the Drug Free Workplace Program as it relates to bargaining unit personnel as an agenda item for quarterly labor management meetings.

SECTION 13 - TRAINING

When the Agency provides training on DFWP, the Union may be invited.

ARTICLE 14

SAFETY AND HEALTH

SECTION 1 - POLICY

The Agency will, to the extent of its authority, provide and maintain safe and healthful working conditions for all employees. Safe and healthful working conditions will be determined in accordance with the definitions and standards contained in Section 19 of the Occupational Safety and Health Act (OSHA), in Executive Order 12196, DCMA Instruction "Safety and Occupational Health Program" and other implementing regulations and directives.

SECTION 2 - SAFETY AND OCCUPATIONAL HEALTH PROGRAM (SOHP)

The DCMA Safety and Occupational Health Program shall establish and implement DCMA policy regarding safety and occupational health. The program is designed to provide DCMA personnel a safe and healthful workplace and work operations, whether working at DCMA facilities or at other locations.

SECTION 3 - ACCESS TO INFORMATION, DATA AND REPORTS

A. The Agency will provide employees electronic access to the DCMA plan, references, forms and other related information.

B. The Agency will allow the DCMA Council an opportunity to comment on the Agency proposed SOHP before it is finalized and implemented. Any comments submitted by the DCMA Council will be considered in developing the plan. A copy of the SOHP and the annual SOH report to the Department of Labor will be provided to the DCMA Council.

SECTION 4 - UNION REPRESENTATION

It is the intent of the DCMA Council that Union representatives will be engaged in investigations of work related accidents, reports of unsafe or unhealthful working conditions, safety, and health inspections, or other safety and health related complaints as part of their representational duties.

SECTION 5 - PERSONAL PROTECTIVE EQUIPMENT (PPE)

A. The Agency will furnish PPE to employees without cost or charge when it determines that such equipment is necessary for the work to be done safely. Employees may be allowed to retain such equipment, if it is no longer needed and it is not suitable for use by other employees.

B. Employees will use the safety equipment, PPE and other devices and procedures provided or directed by the Agency. Employees will take reasonable care of safety and protective equipment. The Agency will provide storage space for protective clothing and equipment assigned to employees.

C. Requests for PPE shall be considered as high priority action items by the Agency.

D. Prior to the entry by employees into contractor facilities, they shall be given all information on PPE required at the particular facility. If an employee is unsure of the working conditions and/or PPE requirements at a specific location, the employee is encouraged to contact his/her supervisor. PPE shall be provided prior to their entry into these facilities, if same is not provided by the contractor. Qualified safety and health personnel shall perform these evaluations and recommend appropriate PPE.

SECTION 6 - SAFETY INSPECTIONS

A. The Agency shall ensure that each workplace is inspected annually by qualified SOH personnel (29 CFR 1060.25(a)). The Agency SOH personnel may eliminate the annual inspection requirement in contractor installations where DCMA personnel are duty stationed and where previous inspections have shown no significant hazards. The need for an inspection shall be reviewed annually to ensure that DCMA personnel are not placed at risk due to deteriorating conditions at the contractor site. Collateral Duty Safety Monitors (CDSMs) may be used to perform inspections of low risk areas, e.g. administrative work areas.

B. The DCMA Council Local President or designee will be notified when a federal health officer, Agency SOH personnel or a private contractor visits the facility for the purpose of a safety inspection of spaces used by bargaining unit employees. A representative designated by the DCMA Council Local will be invited to participate in these inspections. The Agency will provide the DCMA Council Local with a copy of the inspection report.

SECTION 7 - FIRST AID

At activities where local health services are not available, the Agency will furnish one industrial first-aid kit for every 50 employees and will ensure that at least two employees are qualified to administer first aid. The Agency will provide Automated Electronic Defibrillators (AED) at DCMA offices where deemed necessary and/or appropriate.

SECTION 8 - HEALTH SERVICES AND MEDICAL EVALUATION

A. The Agency will provide the necessary occupational health medical surveillance for employees whose exposure in the performance of official duties

requires medical surveillance. At a minimum, this will include all bargaining unit employees who are covered by a Medical Surveillance Program (MSP). Such employees will be notified in writing of the reasons for inclusion in the MSP. Such employees will be provided appropriate baseline, periodic and exit medical surveillance evaluations as determined by the occupational health physician.

B. The Agency maintains the right to require medical examinations in accordance with 5 CFR 339.301 at no cost to the employee, for employees covered by an MSP. However, employees maintain the right to submit additional medical documentation from sources of their choice at no cost to the Agency.

C. The Agency will provide employees whose positions are not covered by an MSP with a diagnostic examination if they have been exposed to hazardous material or prolonged exposure to unhealthful working conditions and such examination is determined by competent medical authority to be necessary. In addition, employees have the option of seeking medical examinations from sources of their own choice at no cost to the Agency. Employees have the right to decline medical examinations that are not a condition of employment. If employees indicate exposure to workplace hazards on data collection forms (DCF) that would not normally trigger medical surveillance, the employees will indicate their intention of declination at the time they complete or update their DCFs to facilitate budget planning.

D. Employees will be provided with copies of the results of their medical monitoring tests within a reasonable time.

SECTION 9 - UNSAFE WORK AREAS

A. The DCMA Council will support the Agency efforts to acquaint every employee with his or her safety and health rights and responsibilities. Any bargaining unit member who is performing duties, which he or she believes endangers his or her health or safety, will promptly notify the nearest available supervisor. If the supervisor agrees with the employee and cannot solve the problem by providing immediate adequate protection, the supervisor shall remove the employee from the situation and refer the problem through appropriate channels for action.

B. An employee has the right to decline to perform an assigned task because of a reasonable belief that under the circumstances the task poses imminent risk of death or serious bodily harm, coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures (29 CFR 1960.46).

C. The DCMA Council Local will be promptly notified of all work areas used by bargaining unit employees that are determined to be unsafe or unhealthful.

Copies of safety or health inspections of such spaces will be provided to DCMA Council Local.

D. If an employee alleges that an unsafe work condition exists, the employee will inform the supervisor and may notify the DCMA Council Local and the organization's safety officer.

E. The provisions of DCMA safety instructions, E.O. 12196, and 29 CFR § 1960 in effect at the time will be followed so that employees who are involved in occupations with identified safety/health hazards are made aware of the hazards, informed of safe work practices, and educated in the use of appropriate PPE.

F. Appropriate abatement procedures in accordance with DCMA safety instructions, E.O. 12196, and 29 CFR § 1960 in effect at the time will be followed to correct a work area which has been determined by a competent authority to be unsafe or unhealthful.

G. Employees shall report accidents immediately as required by DCMA instruction.

SECTION 10 - SAFETY AND HEALTH COMMITTEES

Where the Agency establishes a Safety and Health Committee to ensure compliance with OSHA requirements, the appropriate DCMA Council Local will have a representative on that committee. The Safety and Health Committee shall have access to appropriate Agency information relevant to their duties, including information on the hazardous nature of substances in the Agency workplace.

SECTION 11 - FIRE SAFETY

The Agency will provide fire evacuation routes and post evacuation plans in all work areas and will ensure all work areas meet applicable fire codes.

SECTION 12 - OFFICE WORK ENVIRONMENT

A. Should temperatures fall below 65 degrees Fahrenheit or exceed 85 degrees Fahrenheit in office spaces, the Agency will place employees in a more suitable environment until temperatures are within the specified range. If such accommodation cannot be made, employees may be released from the worksite without charge to leave.

B. Management will consult with the appropriate facility management to correct adverse work environment conditions.

C. The employee has the right to request the Agency perform an evaluation of air quality. The Agency will respond to the employee's request commensurate with the level of risk but no later than 6 months.

SECTION 13 - TRAINING

A. The Agency will provide appropriate job-related safety and health training for employees, including specialized job safety training appropriate to the work performed by the employee. Employees who are assigned to positions that are covered by a MSP or who are required to certify hazardous material will be provided the necessary training (necessary training may include the identification and classification of hazardous materials, proper packing and shipping methods, emergency procedures, etc.).

B. The Agency will train and certify volunteers in CPR, first aid and the use of AEDs.

SECTION 14 - ERGONOMIC PROGRAM

A. The Agency will establish an ergonomic program in accordance with DODI 6055.1, Enclosure 6.

B. The Agency will ensure that office furniture and equipment will adjust to a sufficiently broad range of body types. Upon request of an employee, the Agency will consider specific physical characteristics in providing special chairs and furnishings.

ARTICLE 15

WELLNESS

SECTION 1 - POLICY

A. It is the goal of this Agency to provide employees with an environment which enhances the development of healthful lifestyles and high productivity by:

1. encouraging and assisting employees to establish and maintain dietary habits contributing to good health, disease prevention and weight control;
2. reducing job related stress and encouraging the development of positive methods of stress management;
3. discouraging the abuse of alcohol and drugs and assisting employees with alcohol or drug-related problems in obtaining needed treatment and rehabilitation;
4. assisting and supporting employees with controllable diseases in the management of their illness; and
5. discouraging the use of tobacco products.

B. The Agency and the DCMA Council recognize that employees are responsible for their own health and fitness. While the Agency encourages all employees to adopt healthy lifestyles and actively pursue fitness in coordination with their physician's advice and guidance, participation in any Agency-sponsored health promotion or activity must be purely voluntary.

C. The Agency will publicize the availability of medical programs (such as flu shots, blood pressure screening, education programs relating to health such as smoking cessation and diet and nutrition) that may be offered to employees as part of a Wellness Program. Participation in such programs is voluntary, is subject to availability of Agency funds, and may be done on duty time if the program is offered during the employee's duty hours.

SECTION 2 - HEALTH PROMOTIONS

A. Smoking

1. It is the policy of the executive branch to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The smoking of tobacco products is prohibited in all interior space owned, rented or leased by the executive branch of the Federal

Government, and in any outdoor areas under executive branch control in front of air intake ducts.

2. When possible, an outdoor area which provides a measure of protection from the elements will be designated. The area will be reasonably accessible to employees. Outdoor smoking policies may be developed and negotiated locally and will be consistent with current regulations.

3. Smoking reduction and cessation programs will be conducted in accordance with applicable law and regulations and subject to available funding.

B. Nutrition

Where feasible, dining facilities will provide caloric information and meals with reduced amounts of fat, salt and calories. Information shall be made available to employees on the importance of good nutrition to overall health, weight control and the prevention and management of disease.

C. Stress Management

The Agency shall provide the employees with access to information on scientifically supported stress management techniques when requested.

D. Alcohol and Drug Abuse

The Agency shall make alcohol and drug abuse counseling and referral services available to all employees through the Agency EAP in accordance with Agency and DOD policy and the DCMA Drug-Free Federal Workplace Plan.

E. Serious Illnesses

The Agency shall provide the employees with information regarding serious illnesses and medical conditions when requested.

SECTION 3 - COMMERCIAL FITNESS MEMBERSHIPS

Funding supplements for commercial fitness memberships will be provided in accordance with the DCMA instruction governing fitness memberships.

SECTION 4 - AUTHORIZED TIME FOR PHYSICAL FITNESS

A. The Agency and the Union agree that the fitness program goal is to promote the health and wellness of the workforce. Full time employees will be authorized two hours per week to voluntarily participate in physical fitness activities during their tour of duty. This does not include Agency sponsored activities.

B. Fitness activities must address cardiovascular/aerobic endurance, muscular strength, endurance, flexibility and/or body conditioning. Employees will be authorized a minimum of 30 minutes per day up to a maximum of 1 hour per day for exercise activities, not to exceed 2 hours per week. Employees who choose the beginning or the end of their tour of duty for an authorized exercise period must use the time for actual exercise or for transportation or cleanup time, provided that it immediately precedes or follows the actual exercise. Physical fitness periods can be taken in conjunction with the regularly scheduled lunch period.

C. Unused periods cannot be banked and carried over to the next week. Two (2) hours per week includes time for changing clothes, showering and travel to/from the exercise location. On base facilities should be utilized, where available.

D. The employee must initiate a written request to the first level supervisor, including the employee's projected times, location and nature of the fitness activity. Specific times for participation will be dictated by mission requirements and approved in advance. Management may suspend participation privileges if mission requirements warrant. Management may revoke participation if abuse is identified. Additionally, the employee must provide a doctor's certificate from his/her primary care provider/physician certifying which physical fitness activities are permitted and there exists no limiting physical conditions unless otherwise noted on the doctor's certificate. Individuals with performance and/or conduct issues may be ineligible to participate in the program.

E. The employee will report physical fitness activities time using the appropriate labor and accounting system. Employees must maintain an informal diary of all activities, goals and progress.

ARTICLE 16

EMPLOYEE DISABILITY COMPENSATION

SECTION 1 - GENERAL

It is acknowledged that the Office of Workers' Compensation Programs (OWCP), U.S. Department of Labor, will administer benefits to employees under the Federal Employees Compensation Act. The DCMA HR services provider will administer the OWCP program for the Agency. The Agency will publish information about the program and its benefits, points of contact at the DCMA HR services provider and telephone numbers for employees needing information concerning processing of OWCP claims. The Agency will provide a toll free number for CONUS employees to contact the DCMA HR services provider.

SECTION 2 - RESPONSIBILITIES

A. Employees are responsible for reporting all job-related injuries and illnesses to the appropriate supervisor. If an employee requires medical treatment for the injury, the Agency should complete the front of Form CA-16, Authorization for Examination and /or Treatment. When there is no time to complete a Form CA-16, the Agency may authorize medical treatment by telephone and send the completed form to the medical facility. Unless precluded by medical emergency, employees have the right to treatment by the health care provider of their choice. When an employee is injured on the job and is unable to transport himself/herself to a medical facility, the Agency will make transportation arrangements to and from the facility, unless the employee requests otherwise. Transportation from the medical facility will not be the responsibility of the Agency if the employee is admitted to the hospital.

B. When the Agency becomes aware that an employee has suffered illness or injury in the performance of duties, the supervisor and/or the HR services provider will counsel the employee in such matters as their right to file for compensation benefits, the appropriate compensation forms to be filed, the types of benefits available, the procedure for filing claims and the option to use compensation benefits in lieu of sick leave.

C. The injured employee will be furnished a Form CA-1 (Federal Employees Notice of Traumatic Injury and Claim of Continuation of Pay/Compensation) normally within 48 hours after report of injury for completion. If the employee is unable to complete the Form CA-1, the Agency will promptly complete as much as the form as practicable and forward the form through the appropriate channels. An employee who incurs a traumatic injury may be entitled to continuation of pay (COP) of up to 45 calendar days for wages lost or treatment due to the injury. If the employee, supervisor or someone acting on the

employee's behalf does not file a CA-1 within 30 days of the injury, entitlement to COP is lost, in which case, the employee may file for compensation for wages lost on a CA-7. COP must be supported by medical documentation.

D. An employee may file a CA-2 for an occupational illness which resulted from a condition produced in the work environment over a period longer than one workday or shift. An occupational illness does not entitle an employee to COP.

E. The Agency will not prevent an employee from filing a claim and will process the claim that has been submitted. However, it is understood the Agency will document its knowledge of the circumstances surrounding the injury, which may be different from the information provided by the employee. If the Agency controverts the OWCP claim, the employee will be provided a copy of all information pertaining to the claim which is retained by the Agency.

F. The HR services provider will assist the employee in contacting appropriate OWCP authorities in an effort to expedite payment of claims. Assistance will also be given to the employee in pursuit of resolution of claims.

G. If an employee is re-injured or aggravates a compensable injury during the period ending not later than 90 days after the employee returns to duty and the Agency authorizes a medical examination in connection therewith, the absence for such examination shall not be charged to personal leave.

H. Employees receiving COP may be ordered to report for medical examination for the purpose of enabling the Agency to determine medical limitations, which may affect placement decisions.

I. A link will be included on the Agency website which provides pertinent OWCP information on the current DCMA claim procedures and frequently raised questions and answers forwarded by the Department of Labor regarding the benefits of the Federal Employees Compensation Act.

J. Employees filing worker's compensation claims are expected to keep their supervisor informed of his/her status.

ARTICLE 17

PREVENTION OF WORKPLACE VIOLENCE

SECTION 1 - POLICY

A. It is the Agency's policy to promote a safe working environment for its employees. The Agency and the Union are committed to working with employees to maintain a work environment free from violence, threats of violence, harassment, intimidation and other disruptive behavior.

B. Violence, threats, harassment, intimidation and other disruptive behavior in the workplace will not be tolerated. Such behavior could include oral or written statements, gestures or expressions that communicate a direct threat of physical harm. Reports of incidents will be dealt with appropriately. Individuals who commit such acts may be removed from the premises, subjected to disciplinary action and/or subjected to criminal penalties.

SECTION 2 - PREVENTION

The Agency may employ various methods of alternate dispute resolution, including but not limited to an ombuds program, Employee Assistance Program, mediation, interest-based problem solving and facilitation as strategies to prevent workplace violence.

SECTION 3 - INDICATORS OF POTENTIAL VIOLENCE

Indicators of potential violence include but are not limited to:

1. direct or veiled threats;
2. intimidating, belligerent, harassing, bullying or other inappropriate and aggressive behavior;
3. confrontation with supervisors or other employees;
4. bringing a weapon to the workplace;
5. statements indicating desperation to the point of contemplating suicide or other violent behavior;
6. drug/alcohol abuse; or
7. extreme change in behavior.

SECTION 4 - RESPONSE PROCEDURE

A. If any of the indicators listed above or other indicators of potential violence are reported to a supervisor, the supervisor will immediately evaluate the situation for appropriate action.

B. If the supervisor determines there is potential for immediate violence, the supervisor will contact the appropriate security and/or law enforcement personnel. If the supervisor determines there is no immediate threat, the supervisor may employ any of the preventive strategies identified in Section 2.

ARTICLE 18

EMPLOYEE DEBT

SECTION 1 - GENERAL

- A. Information on employee debt can be found in 5 CFR Parts 582, 835 and 1210.
- B. The Agency and DCMA Council agree that employees are responsible for their debts and repayment of such.
- C. The Agency agrees that no Agency personnel shall be assigned to perform the work for a collection agency for debts allegedly due by an employee to a private individual or firm.
- D. Employees that are experiencing financial difficulties are encouraged to contact EAP for assistance.

ARTICLE 19

EQUAL EMPLOYMENT OPPORTUNITY (EEO)

SECTION 1 - POLICY

The Agency and the Union agree that discrimination in employment because of race, color, religion, sex, national origin, age, disability, or sexual orientation as these terms are defined by appropriate law, regulation or Executive Order is prohibited. Sexual harassment is also a form of discrimination and the Agency and Union agree that all personnel will work toward its prevention.

SECTION 2 - THE EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

The DCMA Equal Employment Opportunity/Affirmative Employment Program (EEO/AEP) shall be designed to promote equal employment opportunity in accordance with applicable law and government-wide regulation.

SECTION 3 - INFORMATION DATA AND REPORTS

- A. The Agency will provide employees electronic access to regulations in the Agency's possession which describe the discrimination complaint process.
- B. The Agency will provide employees electronic access to the DCMA AEP.
- C. The Agency will allow the Union an opportunity to comment on the Agency's proposed AEP before the Plan is submitted to EEOC. Any comments submitted by the Union will be considered in developing the Plan. A copy of the approved AEP and any Reports of Accomplishments submitted to EEOC will be provided to the Union.

SECTION 4 - COMPLAINTS

- A. Any employee who seeks advice, wishes to file or has filed an EEO complaint shall be free from coercion, interference or reprisal due to the complaint.
- B. Complaints must be initiated within 45 days of the date of the incident. Employees seeking assistance will be advised concerning the procedures involved in processing an EEO complaint.
- C. An employee is entitled to designate a representative of her or his choice. If a Union representative is designated as the employee's representative, the Union representative is not acting in their Union capacity, but rather in their individual capacity.

D. Pursuant to the Statute, an aggrieved employee who alleges discrimination may at his or her option raise the matter under a statutory procedure (EEO complaint) or the negotiated grievance procedure, but not both. The employee shall be deemed to have exercised his or her option, when, on or after the effective date of the appealable action, the employee timely files a formal written EEO complaint or initiates a notice of MSPB appeal under the statutory procedures or files a written grievance in accordance with the negotiated grievance procedure, whichever event occurs first.

E. Selection of the negotiated grievance procedure in no manner prejudices the right of the aggrieved employee to request, as appropriate, the MSPB or EEOC to review the final decision in the case of any personnel action that could have been appealed to the MSPB or the EEOC. For the purpose of seeking review by the MSPB or EEOC, the decision of the organization head in the negotiated grievance procedure will be considered the final decision in the absence of the timely invocation of arbitration. Nothing in this agreement shall constitute a waiver of any further appeal or review rights permissible under the Statute.

F. Employees who allege discrimination or who participate in the investigation and/or presentation of such complaints will be free from restraints, interference, coercion, discrimination or reprisal.

G. Any bargaining unit employee who is a complainant or witness and is involved in the complaint process shall be in a duty status and entitled to a reasonable amount of time to fulfill her or his responsibilities, as well as travel and per diem. A bargaining unit employee who is acting as the complainant's representative shall be in a duty status and entitled to a reasonable amount of time to fulfill his or her responsibilities but is not entitled to travel and per diem.

H. The Agency shall maintain adequate staffing to process requests for assistance and EEO complaints.

SECTION 5 - EEO COUNSELORS

A. Individuals providing EEO counseling services will be properly trained in accordance with appropriate regulations. Counseling will be made available to employees during their duty time if otherwise in a duty status. The EEO Counselor will provide information on her/his role as the Counselor and the EEO Counseling process.

B. The Agency will post information in conspicuous places on how to obtain EEO counseling along with appropriate telephone numbers. This information shall be kept current.

SECTION 6 - MEDIATION OF AN INFORMAL OR FORMAL COMPLAINT

The Union will be given the opportunity to review any settlement agreement reached as a result of a mediation of an EEO complaint filed by a bargaining unit employee at either the informal or formal stage, prior to implementation. The purpose of this review will be to determine the impact on the bargaining unit.

SECTION 7 - SOFTWARE

Future software applications developed or purchased by the Agency shall be consistent with the requirements of Section 508 of the Rehabilitation Act of 1973, as amended, and its implementing regulations.

ARTICLE 20

ABSENCE AND LEAVE

SECTION 1 - GENERAL POLICIES

A. Employees will be entitled to accrue and use leave in accordance with law, Government-wide rule and regulation and the provisions of this article. Any reference to leave approving official in this article includes both the leave approving official and his/her designee.

B. Employees are expected to apply in advance for approval of all anticipated leave. Leave requests and approval or denial will be made in writing or electronically. The leave approving official agrees to respond to all leave requests in a timely manner.

C. When an employee has not received advance approval for leave and does not report to work, the employee must, by the latest allowable arrival time depending on the employee's official duty station and work schedule, speak directly to his/her leave approving official or leave a phone message with the leave approving official. The leave approving official or designee will contact the employee and approve or deny the leave requested. Where individual circumstances are determined warranted by the manager, the leave approving official may ask the employee to speak to them directly or to leave a message which includes where the employee can be reached.

D. Leave may be taken in the smallest increment permitted by the timekeeping system.

SECTION 2 - ANNUAL LEAVE

A. Annual leave is provided and used to allow employees an annual vacation or extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes. The use of accrued annual leave is the right of the employee, subject to the right of the Agency to approve the time at which leave may be taken. Employees must apply in advance for approval of all anticipated leave to permit the orderly scheduling of leave and to avoid leave forfeiture. The Agency shall make reasonable attempts to approve leave requests such that employees may have an annual vacation period of at least 2 consecutive weeks. Reasonable efforts will be made to accommodate employees who desire leave for special occasions such as religious and other holidays, birthdays and attendance at funerals. Employees are not required to give reasons for requesting annual leave. All annual leave requests, submitted in advance, will be approved/ disapproved within a reasonable time after submission (normally within 24 hours).

B. The Agency may cancel approved leave to meet situations of immediate or pressing operational need or work requirements. Leave must not be canceled for arbitrary or capricious reasons. Cancellation of leave is not disciplinary in character and must not be used as a punitive measure. When previously approved leave must be rescheduled, the employee will be advised of the reason for the change as soon as practicable after the need for the change has been determined. Reasonable efforts shall be made to accommodate the employee's request to reschedule his/her leave.

C. When "use or lose" leave is requested in writing before the start of the third biweekly pay period prior to the end of the leave year and cannot be approved or used prior to the end of the leave year, the excess annual leave will be restored in accordance with law or Government wide rule and regulation and carried over into the next leave year.

D. The leave approving official should request an advance schedule for leave for periods of high annual leave usage. Leave approval/denial should be provided by the leave approving official or designee within 14 calendar days after the suspense date. Initial attempts to resolve scheduling conflicts will occur between the employees. If scheduling conflicts remain, the leave approving official will make the final decision.

E. In the case of voluntary or involuntary reassignment from one supervisor to another, every reasonable attempt will be made to honor previously approved leave to the extent that it does not adversely affect the choice of another employee or hamper the mission of the organization.

SECTION 3 - UNSCHEDULED ANNUAL LEAVE

A. Leave may be granted when it is not requested in advance unless an immediate or pressing operational need or work requirement would preclude the granting of leave for the time requested.

B. The employee must contact their supervisor or designee, as soon as possible to request annual leave. Unscheduled annual leave will be approved on a case-by-case basis. The Agency will identify those individuals with the authority to approve/disapprove requests for unscheduled leave. This request will be made to the leave approving official via direct conversation, in writing, e-mail or phone message. In event of an emergency, approval may be given after the fact.

C. To the extent practicable, the supervisor will provide written disapproval with justification to the employee, upon request of the employee.

SECTION 4 - ADVANCED ANNUAL LEAVE

Employees are not automatically entitled to advanced annual leave. The maximum amount of advanced annual leave which may be granted is the number of hours which will be accrued by the employee before the end of the leave year, or for those employees serving under temporary appointments, that amount they will earn by the scheduled expiration date of their appointments.

SECTION 5 - LEAVE FOR RELIGIOUS OBSERVANCES

Employees may utilize annual leave, credit hours, comp time or religious comp time when their personal religious beliefs require the abstention from work during certain periods of the work day or work week.

SECTION 6 - SICK LEAVE

A. The use of sick leave is an employee benefit. In accordance with applicable regulation, the Agency will grant sick leave to an employee when the employee meets one of the following conditions:

1. the employee receives medical, dental or optical treatment;
2. the employee is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy or childbirth;
3. the employee provides care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, childbirth, or who receives medical, dental or optical examination or treatment;
4. the employee makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
5. the employee would, as determined by the health authorities having jurisdiction or by a health care provider/practitioner, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or
6. the employee must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys, court proceedings, required travel, and any other activities necessary to allow the adoption to proceed.

B. Medical/Practitioner Certificates

1. A certificate in support of an application for sick leave of five consecutive workdays or less will not be required unless the supervisor has

reason to believe the employee has abused sick leave. Supervisors may consider employee self certification as acceptable evidence for absences of any length.

2. An approval from an attending physician/practitioner may be required prior to the employee's return to duty after an absence to ensure they are able to resume work without endangering themselves or other employees.

C. When requested, an employee will provide written medical certification to the Agency, along with the request for leave in a timely manner, but not later than 15 days of the request. If the employee fails to provide the required medical documentation within the 15 day time period, the employee's sick leave request may be denied. Extensions of the 15 day time period may be granted where the manager determines the particular situation warrants an extension. Medical certification for sick leave will include all of the requirements contained in regulation or other relevant requirements as determined necessary by the Agency.

D. An employee who expects to be absent more than one day will inform the leave approving official of the expected date of return to duty. In such cases, daily contacts with the leave approving official may not be required. In case of an extended illness (including use of sick leave for family care and bereavement purposes and family and medical leave under the FMLA), the employee will inform the leave approving official as soon as he/she becomes aware of an expected return to duty date.

E. Employees, upon request, and with the approval of the leave approving official, may change previously-authorized annual leave, credit hours or leave without pay to sick leave if the requirements for usage of sick leave are met. Additionally, an employee may use annual leave, credit hours or comp time in lieu of sick leave.

F. Advanced Sick Leave

1. Advanced sick leave may be granted in cases of serious disability or illness. Such requests must be supported by medical certification. Employees should also consider the Leave Transfer and Donation Program for additional leave. Employees are not automatically entitled to advanced annual/sick leave. Denials of requests for advanced sick leave should be conveyed to the employee promptly and contain a specific explanation for the reasons of the denial.

2. When there is reasonable expectation that an employee will return to duty in cases of serious illness or disability, an employee may be advanced sick leave up to the maximum of 240 hours provided that:

a. the employee submits a written request to the supervisor prior to the desired effective date of the advanced leave unless precluded or prevented from doing so by the disability or illness and it is supported by a physician's/practitioner's statement;

b. there is reasonable assurance that the employee will return to duty for a sufficient period of time to earn the sick leave that is advanced; and

c. all earned sick leave is used before the date the advanced leave is to begin.

3. The Agency may grant an employee's request for advanced sick leave of 24 hours or more for other than a major illness or long-term incapacitation, when there is a reasonable expectation that the employee will return to duty and sick leave abuse is not evident.

G. Job-Related Medical Examinations

Employees obtaining job related medical examination or treatment at the appropriate health unit will be in a duty status.

H. Leave and Earnings Statement

The Agency and the DCMA Council recognize the privacy of the information, including sick leave, contained on individual leave and earnings statements. They agree that these statements will be handled in a practical but discreet manner.

I. Request for Leave

1. Sick leave for illness, injury or other circumstances which cannot be anticipated in advance will be requested as soon as possible. This request can be made via direct conversation, in writing, e-mail or phone message. In event of a medical emergency, approval may be given after the fact.

2. The supervisor will provide written disapproval with justification to the employee, upon the employee's request.

SECTION 7 - COURT LEAVE (CL)

A. In accordance with federal law, an employee with a regular scheduled tour of duty is entitled to CL. The employee should present a court order, subpoena or summons to his/her leave approving official when they request CL for appearing as a witness or a juror. CL will be approved if the employee is summoned:

1. for jury duty; or
 2. to court to serve in an unofficial capacity as a witness for any party when the Federal, District of Columbia, state or local government is a party.
- B. Upon return to duty, the employee must submit written proof of attendance from the court to the leave approving official.
- C. Compensation will not be received for serving on jury duty in a Federal court. However, employees may keep expense money received for mileage, parking or required overnight stay. Monies received for performing jury duty in state or local courts are indicated on the pay voucher or check as either “fees for services rendered” or “expense money”. “Expense money” may be retained by the employee. “Fees for services rendered” must be submitted to the Agency’s finance office.
- D. CL is not granted to an employee who appears in court on matters of a personal nature.
- E. An employee serving in an official capacity as a Government witness will be compensated by the Agency through overtime pay or compensatory time for time spent in excess of the employee’s normal work schedule.

SECTION 8 - FAMILY AND MEDICAL LEAVE ACT

- A. In accordance with applicable regulations, an employee who has completed at least 12 months of Federal service is entitled to a total of 12 weeks of leave without pay (LWOP) during any 12 month period under the Family Medical and Leave Act (FMLA) for one or more of the following reasons:
1. the birth of a son or daughter of the employee and the care of such son or daughter;
 2. the placement of a son or daughter with the employee for adoption or foster care;
 3. the care of a family member of the employee with a serious health condition. Family member is defined as:
 - a. spouse;
 - b. children, including adopted children; or
 - c. parents or those who stand, or stood, in loco parentis to an employee, but not parents-in-law; or

4. a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

B. In accordance with applicable regulations, a “serious health condition” is defined as an illness, injury, impairment or physical or mental condition which includes, but is not limited to, the following:

1. any period of incapacity or treatment in connection with, or consequent to, inpatient care (i.e. an overnight stay) in a hospital, hospice or residential medical care facility; or

2. continuing treatment by a health care provider that includes (but is not limited to) examination to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists.

C. Substitution of Paid Leave

1. The employee may elect to substitute paid leave in accordance with applicable regulation for any part of the applicable period. An employee may not retroactively substitute paid leave for unpaid family and medical leave. An employee may continue to use earned compensatory time and credit hours, subject to supervisory approval, in addition to his/her entitlement to leave under the FMLA.

2. An employee may request leave on an intermittent basis or under a reduced leave schedule. The employee must consult with the leave approving official and make a reasonable effort to schedule intermittent LWOP and/or paid leave so as not to disrupt the operations of the Agency.

D. Notice of Leave

1. Requests for the use of family and medical and unpaid leave under the FMLA will be made in writing on an authorized form. The employee must indicate on that they are invoking their entitlement to family and medical leave for: birth/adoption/foster care, serious health condition of a spouse, son, daughter or parent, or the serious health condition of oneself as appropriate.

2. When the need for unpaid family and medical leave is foreseeable, the employee will provide such notice as is practicable. If the need is foreseeable and the employee fails to give 30 days notice with no reasonable excuse for the delay of notification, the Agency may delay the taking of family and medical unpaid leave until at least 30 days after the date the employee provides notice of his or her need for family and medical leave.

E. Medical Certification

1. The written medical certification under FMLA for the employee's illness shall include:

a. the date the serious health condition commenced;

b. the probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity;

c. the appropriate medical facts within the knowledge of the health care provider regarding the serious health condition including a general statement as to the incapacitation, examination or treatment that may be required by a health care provider; and

d. a statement that the employee is unable to perform one or more of the essential functions of the position or requires medical treatment for a serious health condition based on written information provided by the Agency on the essential functions of the employee's position, or if not provided, discussion with the employee about the essential functions of the position.

2. In the case of medical certification under the FMLA for a family member of the employee, in addition to a. through d. in 1 above, it shall include:

a. a statement from the health care provider that the spouse, son, daughter or parent of the employee requires psychological comfort and/or physical care, needs assistance for basic medical, hygienic, nutritional, safety or transportation needs or in making arrangements to meet such needs and would benefit from the employee's care of presence; and

b. a statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son, daughter or parent.

3. In the case of medical certification for intermittent leave or leave on a reduced schedule for either the employee's own illness or a family member's illness, it shall also include the dates (actual or estimates) on which such planned medical treatment is expected to be given, the duration of the treatment and the period of recovery if any, or specify that the serious health condition is a chronic or continuing condition with an unknown duration, whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

4. If the Agency doubts the validity of the original certification, the Agency may require at the Agency's expense that the employee obtain the opinion of a second health care provider designated by the Agency concerning the information certified.

5. The definition of "health care provider" will be consistent with the provisions of applicable law.

6. To remain entitled to family and medical leave, an employee or the employee's spouse, son, daughter or parent must comply with any requirement from the Agency that he or she submit to examination (not treatment) to obtain a second medical certification from a health care provider other than the individual's health care provider.

7. An employee must provide the written medical certification signed by a health care provider no later than 15 calendar days after the date the Agency request such medical certification. If it is not practicable under the particular circumstances to provide the requested medical certification no later than 15 calendar days after the date requested by the Agency, despite the employee's diligent good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but not later than 30 calendar days after the date the Agency requests such medical certification.

8. If the employee fails to provide the requested medical certification, the Agency may:

- a. charge the employee as AWOL or
- b. allow the employee to request that the provisional leave be charged as LWOP or charged to the employee's annual and/or sick leave account, as appropriate.

F. Medical Recertification

While an employee is on family and medical leave, the Agency may require subsequent medical recertification from the health care provider if the circumstances described in the original medical certification are subject to change significantly, if the Agency receives bona fide information that casts doubt upon the continuing validity of the medical certification or for any reason that the Agency determines to be necessary. Such requests for medical recertification will not occur more frequently than every six weeks except as determined necessary by the Agency.

G. Protection of Employment and Benefits

Upon return from family and medical leave, the employee will be returned to the same position as he/she occupied before the leave or to an equivalent position with equivalent benefits, pay status and to the extent possible, other terms and conditions of employment.

H. When an employee requests leave under FMLA, the Agency will provide guidance concerning the employees rights and obligations under FLMA.

I. An employee who meets the criteria for leave and has complied with the requirements under this section will be granted leave, consistent with all applicable rules governing FMLA.

SECTION 9 - FAMILY FRIENDLY LEAVE POLICIES

A. The Agency agrees to follow a liberal leave policy in granting requests for leave in connection with family care needs. To provide care for a family member, the employee will be allowed the maximum amount of time under law and government-wide rule and/or regulation if leave is available.

B. In accordance with applicable regulations, a full time employee may use up to 40 hours of his/her accrued sick leave in a leave year for general family care purposes, including making arrangements for or attending the funeral of the following family members:

1. spouse and parents thereof;
2. children, including adopted children, and spouses thereof;
3. parents, brothers and sisters, and spouses thereof; or
4. any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

C. In addition to the 40 hour basic entitlement, full-time employees who have a sick leave balance of 80 hours (after the use of the 40 hours) may use an additional 64 hours of sick leave for general family care purposes, bringing the maximum yearly allowance to 104 hours, or in the case of a part time employee, the number of sick leave hours accrued during a leave year. Part time employees may use sick leave according to the average number of hours worked per week. For example, an employee who works 20 hours per week would be allowed to use 20 sick leave hours per year (basic entitlement) and an additional 32 hours of sick leave provided that he/she has a sick leave balance equal to twice the average number of hours in the weekly tour of duty (40 hours).

D. An employee who is caring for a family member with a serious health condition may use a total of up to 12 weeks (480 hours) of sick leave during a leave year provided the employee maintains a sick leave balance of at least 80 hours.

1. For part-time employees, the amount of sick leave available to care for a family member with a serious health condition is equal to 12 times the average number of hours in the employee's regularly-scheduled tour of duty. For example, an employee who works 20 hours a week would be allowed to use up to 240 hours of sick leave per year for a seriously ill family member provided the employee maintains a minimum sick leave balance at all times of 40 hours (twice the number of hours in the weekly part-time tour of duty).

2. If, at the time an employee uses sick leave for a family member's serious health condition, the employee has used any portion of the 104 hours of sick leave allowable for general family care purposes during that leave year, that amount must be subtracted from the maximum number of allowable sick leave hours (480). This will determine the total number of sick leave hours that may be used during the remainder of the leave year for a family member with a serious health condition.

3. An employee may not use more than 12 weeks (480) hours of sick leave each leave year for all family care purposes. Consequently, if an employee previously used 12 weeks of sick leave to care for a family member with a serious health condition, he/she cannot use any additional sick leave under the general family care provisions as noted above.

E. For a family member's serious health condition, an employee will provide written medical certification to the Agency along with a leave request within 15 days of the Agency's request for such documentation. If the employee fails to provide the required documentation within the specified time period, the employee will not be entitled to sick leave. Medical certification for this leave will include all of the requirements contained in applicable regulations as determined necessary by the Agency. The Agency may require an employee to provide an additional written statement certifying that the family member requires psychological comfort and/or physical care, the family member would benefit from the employee's care or presence and the employee is needed to care for the family member for a specified period of time.

SECTION 10 - ADMINISTRATIVE LEAVE

A. General

For the purpose of this Article, administrative leave is defined as an excused absence from duty without loss of pay and without charge to leave.

B. Registration and Voting

With the exception of those instances when the polls are open for 2 hours before or after the employee's scheduled tour of duty, an employee who desires to vote shall be authorized administrative leave for that purpose.

C. Inclement Weather or Emergency Conditions

1. When it becomes necessary to close any duty station because of inclement weather or any other emergency condition as determined by the local Commander/Director or their designee, the following procedures apply:

a. Notification procedures shall be negotiated and established to address each local situation.

b. When a facility is officially closed for an entire day, nonemergency employees, including those on preapproved leave will be granted excused absence for the number of hours they were scheduled to work. This does not apply to employees on leave without pay, worker's compensation, suspension or in another nonpay status. Employees on alternative work schedules (AWS) are not entitled to another AWS day off in lieu of the workday on which the Agency is closed.

2. When it becomes necessary to close any duty station because of inclement weather or any other emergency condition developing during working hours, whether an employee should or should not be charged leave for an absence depends upon the employee's duty or leave status at the time of dismissal:

a. If the employee was in a duty status and was excused, there is no charge to leave for the remaining hours of the work shift following excusal.

b. If the employee was in a duty status and departed on leave after official word was received but before the time set for dismissal, leave is charged only for the time the employee departed until the time set for dismissal.

c. If the employee was scheduled to report for duty after a leave period and dismissal is given before the employee can report, leave is charged until the time set for dismissal.

3. When a duty station or an assigned site away from the duty station is open, but inclement weather or other emergency conditions affecting travel to the duty station or an assigned site away from the duty station prevents an employee from getting to work on time or not at all, the employee may be granted

administrative leave on a case-by-case basis, provided that the employee presents a reasonably acceptable explanation and/or documentation related to the inclement weather or other emergency conditions to the supervisor.

4. In those individual instances where an employee needs to advise management of inclement weather conditions existing in their area, employees will contact their offices utilizing local procedures. The Commander/Director or designee will make the decision as to whether the employee is providing a reasonably acceptable explanation for the purpose of granting administrative leave.

5. If an employee is an Emergency Responder (definition of Emergency Responder will be negotiated locally), in cases of local or national emergency, the employee will be granted administrative leave in accordance with law, regulation and/or Executive Order.

6. The Commander/Director or designee may excuse, on an individual basis, employee tardiness of less than two (2) hours when emergency conditions exist.

D. Veterans Participating in Military Funeral Ceremonies

Employees who are veterans may be granted administrative leave to enable them to participate as active pallbearers or as members of an honor guard in funeral ceremonies for members of the Armed Forces, subject to applicable law and regulation.

E. Blood Donation

DCMA employees are encouraged to serve as blood and or blood platelet donors. When approved by management, employees should be excused from work for up to 4 hours without charge to leave for the time necessary to donate blood and platelets, for recuperation following such donations, and for necessary travel to and from the donation site. When unusual circumstances exist, additional time may be authorized on a case-by-case basis.

F. Leave for Bone Marrow or Organ Donation

1. Employees shall be entitled to take up to seven (7) days of paid leave in a calendar year (in addition to sick or annual leave) to serve as a bone marrow donor.

2. Employees shall be entitled to take up to 30 days of paid leave in a calendar year (in addition to sick or annual leave) to serve as an organ donor.

G. Labor Disputes in Contractor's Facility

When employees are prevented from working because of temporary shutdowns or safety issues due to labor disputes at a contractor's facility to which they are assigned, every effort will be made to assign them to other work. If that is not possible, such employees may be dismissed without charge to leave for a maximum of 5 days or until management determines alternate work arrangements.

H. Absences for Emergency Conditions or Other Management Reasons

1. When bargaining unit employees are prevented from working at the location to which they are assigned due to emergency conditions or alerts and they do not choose to take leave, every effort will be made to assign them to another work site within a reasonable commuting distance to include telework if appropriate. If this is not possible, employees will be excused without charge to leave or loss of pay.

2. When bargaining unit employees are prevented from working at the location to which they are assigned due to scheduled or unscheduled plant closure or other reasons, and they do not choose to take leave, every effort will be made to assign them to other work within a reasonable commuting distance, to include Telework if appropriate. If this is not possible, employees will be excused without charge to leave or loss of pay.

3. Management will ensure the maximum use of alternate work sites.

4. The DCMA Council Local shall be notified as far in advance as possible that a no work situation will exist.

SECTION 11 - LEAVE OF ABSENCE WITHOUT PAY TO SERVE AS A NATIONAL OFFICIAL

LWOP will be granted to a bargaining unit employee who is elected to a position of National Officer of the American Federation of Government Employees, AFL-CIO for the purpose of serving full-time in the elected position or who is selected as an AFGE National Union Representative. The Agency shall be given not less than 30 days advance notice. Any LWOP granted or approved in accordance with this article is subject to appropriate Government-wide regulations. To the extent of its authority, the Agency shall place the employee in the position the employee left, or one of like, status, grade, location and pay upon their return to duty.

SECTION 12 - HOLIDAY LEAVE

See Article 37, Hours of Duty, Section 7 - Holidays.

ARTICLE 21

POSITION CLASSIFICATION

SECTION 1 - BASIC POLICY

A. The Agency and the DCMA Council endorse the principle of equal pay for substantially equal work.

B. The Agency supports the policy of properly classifying positions consistent with the assigned duties. Supervisors will review all position descriptions annually with their employees in conjunction with the annual performance appraisal to assure that positions accurately reflect the assigned duties.

SECTION 2 - POSITION DESCRIPTIONS

A. The Agency will maintain an accurate position description for each position that will reflect the significant duties to be performed. Position descriptions containing "and other duties as assigned" or similar phrases will not be used as a basis for assigning duties to an employee on a recurring basis which are unrelated to their principal duties.

B. Employees will be furnished a current copy of his/her position description normally within 30 days of assignment. When major changes are made to an employee's position description, they will be fully explained to the employee in advance of the employee undertaking the new duties. When major changes are anticipated in a position description, the affected employee(s) will have input to those changes. New or revised position descriptions will be provided to the employee normally within thirty (30) days.

C. Duties of a physical nature which exceed the normal physical demands of the job will be brought to the attention of the supervisor by the employee. The supervisor will ensure that the safety and health of the employee are protected.

SECTION 3 - POSITION DESCRIPTION ACCURACY

When differences concerning the accuracy of the contents of a position description cannot be resolved between the supervisor and the employee, the employee/DCMA Council Local representative may file a grievance under the negotiated grievance procedure. Such grievances will not include issues concerning the appropriate classification of the title, grade and/or series of the position. The matter concerning content accuracy must be resolved before an employee may file a position classification appeal.

SECTION 4 - CLASSIFICATION ACCURACY

A. An employee who feels his/her position description is improperly classified will meet and discuss this matter with his/her supervisor for clarification. Should the supervisor be unable to answer the employee's questions, the supervisor will arrange for a teleconference with the appropriate position classifier, the supervisor and the employee. The Union shall be afforded an opportunity to participate if requested by the employee. Should this teleconference fail to resolve the employee's classification issues, a face-to-face meeting with all parties involved may be held. This will be jointly determined by the parties. Should the issue remain unresolved to the employee's satisfaction, the employee may file a position classification appeal. Upon written request by the employee or Union in connection with the appeal, the Agency will provide the requestor with an analysis which shall cite the standards used to classify the position being appealed. Position classification standards are available on the OPM website.

B. Upon request, the employee and the Union will be provided copies of documentation and/or status information regarding any classification action affecting the employee's position.

C. If the position description appealed is identical to other encumbered positions in the Agency which may be impacted, the Union will be provided information regarding the results of any review conducted upon request.

D. If requested by the employee who files a classification appeal, the Union may observe any onsite classification audit.

SECTION 5 - SURVEYS

The Agency shall provide the DCMA Council with information on occupational surveys to be conducted or being conducted as a result of OPM direction, OPM issuance of a proposed Government-wide classification standard or development by the Agency of a supplemental classification guideline in accordance with the OPM position classification standards.

SECTION 6 - HAZARDOUS DUTY PAY

Hazardous duty pay for General Schedule employees shall be paid in accordance with governing laws and regulations.

ARTICLE 22

CAREER DEVELOPMENT AND TRAINING

SECTION 1 - GENERAL

A. The Agency will provide training, education and development opportunities in accordance with 5 CFR, Part 410 and subject to the availability of space and funds. The DCMA Council and the Agency shall encourage employees to take advantage of training and educational opportunities. Such training shall add to the skills and qualifications needed to increase their efficiency in the performance of their duties, meet future Agency requirements and qualify for advancement.

B. Where non-job related courses are available only during duty hours at an area institution, the Agency will give appropriate consideration to an employee's request for a special tour of duty to permit the employee to take the course.

C. To the extent practicable, training directed by the Agency will be scheduled within employees' work hours. When it is not possible to do so, the employee's shift may be adjusted to encompass the hours of the training. Overtime pay for training is generally prohibited for FLSA Exempt positions, except as specifically addressed in exceptions described in 5 CFR 410. Overtime pay for training or attending lectures, meetings or conferences for employees covered by FLSA is described in 5 CFR 551.423, which provides for payment of overtime only when the training is directed (rather than permitted) by the Agency and the purpose of the training is to improve the employee's performance of the duties and responsibilities of his/her current position.

D Training classes normally should consist of a combined total of classroom training and outside assignments not to exceed 8 hours per day. For all training classes requiring assignments beyond the 8 hour classroom day, the employee will be compensated in accordance with applicable laws and regulations. On those days when the class is dismissed prior to completion of the 8 hours of training, the employee is required to return to regular duty or take leave for the balance of the day.

E. The Agency agrees to provide appropriate job related training to employees without regard to disability, race, religion, sex, age, national origin or Union affiliation or non-affiliation.

SECTION 2 - INDIVIDUAL DEVELOPMENT

An Individual Development Plan (IDP) will be prepared and/or updated annually and discussed in conjunction with performance evaluation discussions. The Agency will provide access to appropriate sources of formal training (e.g. web

sites, catalogs). Upon an employee's assignment to a new or different position, the Agency will inform him or her of the purpose of an IDP and develop an IDP that outlines the skills or knowledge required for performance in the position and recognizes the employee's development interests. Additionally, the Agency shall make every reasonable effort to provide training and developmental activities identified on each employee's approved IDP when such training is related to the employee's official job duties, subject to the availability of space and funds.

SECTION 3 - EXPENSES

Subject to the availability of funds, the Agency will pay approved job related training and/or formal education expenses. Employees who are interested in pursuing courses of training or higher education at their own expense are encouraged to do so. Employees may document such training in their resumes/job applications and will be given credit for such if appropriate.

SECTION 4 - VOLUNTARY PARTICIPATION/SELECTIONS

Participation in career development programs will be completely voluntary. DCMA Council participation will not be considered when selecting career development program participants.

SECTION 5 - ANNUAL TRAINING REQUIREMENTS

A. The Agency will conduct an annual review of training requirements. The Agency will consider the DCMA Council's views in evaluating training needs, formulating programs to meet those needs and the training program content.

B. The Agency will put the DCMA Council on distribution of all training coordinator guidance related to bargaining unit employee training.

SECTION 6 - TRAINING PROGRAMS

Agency's training programs may include but are not limited to the following:

1. classroom training;
2. on-the-job training;
3. technology-based training, e.g. computer-based, satellite, e-learning;
4. coaching and mentoring;
5. cross-training and rotational assignments;

6. upward mobility programs (including OPM approved waivers of qualification requirements);
7. internship and other career ladder positions; or
8. retirement planning (the parties encourage employees to participate in retirement planning training early in their careers to facilitate proper retirement planning).

SECTION 7 - ACCREDITATION

When an institution of higher learning provides for accreditation of on-the-job training or experience, the Agency will, upon request of the institution, seek to have the institution accredit the Agency program. The Agency will assist employees in obtaining the appropriate credit based on their participation.

SECTION 8 - EMPLOYEE ORIENTATION

- A. The Union will be given the opportunity to make a presentation at new employee orientation briefings attended by bargaining unit employees. The Union will be provided reasonable advance notice of the orientation sessions so that a representative can be made available.
- B. The Agency will provide DCMA Council with a quarterly listing of all newly hired employees. This listing will include the organization, name, title, series and grade of the employees gained during the previous quarter.

SECTION 9 - ADVANCE NOTICE

Normally, employees will be given at least two weeks advance notice of training courses that require TDY. When scheduling training that will require TDY, the Agency will upon request, take into consideration personal hardship or other job related training courses a candidate is enrolled in that would conflict.

SECTION 10 - USE OF FACILITIES AND EQUIPMENT

Supervisors may permit employees the use of Government equipment (i.e., computers, copy machines) if the use serves a legitimate public interest such as enhancing professional skills, or job searching in response to downsizing efforts provided: the use does not adversely affect the performance of official duties by the employee or the employee's organization; the use is of reasonable duration and frequency, and accomplished during the employee's personal time, i.e., before or after duty hours or during lunch periods; the use does not put Federal Government resources to uses that would reflect adversely on DoD; and the use creates no significant additional cost to the Agency.

ARTICLE 23

**MEMBERSHIP AND PARTICIPATION
IN
PROFESSIONAL ASSOCIATIONS**

Consistent with ethics laws and regulations, employees are encouraged to join and participate in professional organizations and their functions. Expenses for such membership and/or participation in these meetings, including travel and per diem, will be borne by the employee. At the discretion of the Agency, employees may be authorized duty time and/or travel expenses to participate in such meetings when workload permits and participation in the meeting is in the interest of the Agency. When an employee is directed by the Agency to join and participate in professional organizations and their functions, the expenses, including travel and per diem, will be borne by the Agency.

ARTICLE 24

UPWARD MOBILITY

SECTION 1 - GENERAL

The Agency and the DCMA Council agree to the importance of providing lower-graded employees with opportunities to satisfy their career aspirations through competition for positions in career fields in the general schedule (GS-1-12) or at equivalent wage grade full performance levels.

SECTION 2 - UPWARD MOBILITY OPPORTUNITY

A. Upward mobility must support Agency mission and organizational objectives. The Agency and the DCMA Council agree that opportunity for upward mobility is in the best interest of the Agency and the employee. The Agency agrees to provide employees with opportunities to reach their maximum level of job achievement through establishing upward mobility positions whenever reasonable and possible.

B. Upward mobility provides new career opportunities to permanent DCMA employees who occupy positions with limited grade levels by enabling them to compete for positions which offer growth to targeted grade levels.

SECTION 3 - AVAILABILITY

A. Upward mobility is open to all career fields and shall not be limited to any one geographical area.

B. Determination of reasonableness will be based upon: mission requirements, fiscal responsibility, position criticality, overall workforce experience, downsizing, availability of training, etc. The establishment of any position is at the discretion of management.

SECTION 4 - IDENTIFICATION AND SELECTION OF CANDIDATES

Selection procedures will be in accordance with Article 25, Merit Promotion.

SECTION 5 - TRAINING

Training for Upward Mobility positions will be in accordance with Article 22, Career Development and Training.

ARTICLE 25

MERIT PROMOTION

SECTION 1 - GENERAL

A. The purpose of this Article is to enable the Agency to meet the challenges it faces and to respond quickly and effectively to changes in its mission and priorities through the promotion, reassignment and detail of its employees. Merit system principles will apply to all competitive promotion actions taken under this Article.

B. Promotions will be carried out in accordance with applicable law, Government-wide rule or regulation and this Article.

C. Merit promotion procedures will apply to actions effecting the competitive placement (for over 120 days) of employees to positions at grade levels higher than those of their current positions. They will also apply to placement into positions which offer promotion to grades which are higher than the specific full performance level of any position previously held on a permanent basis. Any and all references to "position" in this Article mean a bargaining unit position. This Article does not apply to promotions, reassignments or details for non-bargaining unit positions or bargaining unit positions filled via special hiring authorities.

D. The Agency retains the right to use any lawful means to fill positions either concurrently with or in lieu of competitive procedures. Toward this end, and in order to meet the total objectives of the organization, the Agency has the right in filling positions, to use means other than the competitive promotion process and to select from appropriate sources such as eligibles for reinstatement, transfer, reassignment, excepted appointment or those within reach on an appropriate OPM or delegated examining unit certificate.

SECTION 2 - POLICY

A. The Agency and the Union share an interest in a fair and open merit promotion process that provides employees with the opportunity to advance in their careers based on merit.

B. Violations of the promotion program can have serious impact on personnel management that goes beyond the particular cases involved. Proper promotion actions are essential to assure that the Agency is being staffed by the best persons available and employees are receiving fair consideration. Thus, the Agency agrees to take appropriate and timely measures to correct deficiencies discovered.

SECTION 3 - PRIORITY CONSIDERATION AND PLACEMENT

A. Definition

For the purpose of this Article, a priority consideration is the consideration for non-competitive selection given to an employee as the result of a previous failure to properly consider the employee for selection because of procedural, regulatory or program violation. Normally, employees will receive priority consideration for each instance of improper consideration. When circumstances warrant, the Agency and DCMA Council agree to consider additional instances of priority consideration. Priority consideration does not give the employee a right or guarantee to be selected for any vacancy.

B. Procedure

An employee will receive bona fide consideration by the selecting official before any other candidate is referred for consideration. The employee will not be considered in competition with other candidates and will not be compared with them.

C. Mandatory Placement Actions

If an employee in any of the categories below is available and qualified when a vacancy occurs, that employee must be given appropriate placement entitlement:

1. persons with statutory, regulatory, or administrative reemployment or restoration rights. These include employees returning from military service, employees returning from overseas assignments under the terms of a return rights agreement or persons whose names appear on a Reemployment Priority List;
2. placement actions required in connection with Reduction in Force (RIF);
3. placement, reassignment or promotion that is directed by the OPM, the MSPB or other authority to effect a corrective action resulting from an appeal, grievance, EEO complaint decision or to correct a violation of law or regulation;
4. placement of employees entitled to mandatory placement under provisions of the DoD Priority Placement Program. Refer to the DoD Priority Placement Program Operations Manual; or
5. placement of qualified recovered disability annuitants and former employees receiving workers compensation.

D. Employees entitled to priority consideration will be notified when they are considered for placement under priority consideration procedures.

SECTION 4 - PERSONNEL ACTIONS COVERED BY THE MERIT PROMOTION PROGRAM (COMPETITIVE ACTIONS)

A. Competitive actions are a result of competition among applicants and that are based on job related factors, OPM or OPM-approved minimum qualification standards and basic statutory/regulatory eligibility requirements for promotional opportunities. Competitive procedures apply to the following actions:

1. temporary promotion of more than 120 days;
2. selection for detail for more than 120 days to either a higher graded position or to a position with known promotion potential;
3. reassignment or change to lower grade to a position with higher potential than the employee's current position (except as permitted by RIF regulations);
4. transfer to a higher graded position or one with more promotion potential than previously held permanently in the competitive service; or
5. reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than the highest grade previously held on a permanent basis in the competitive service.

SECTION 5 - EXCEPTIONS TO THE MERIT PROMOTION PROGRAM

A. Competitive procedures may not be required for:

1. a promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to the issuance of a new classification standard or the correction of a prior classification error;
2. a position change permitted by RIF procedures;
3. promotion resulting from upgrading of a position due to the accretion of duties;
4. career promotion of an employee without further competition when at an earlier stage the employee was selected from an OPM certificate of eligibles under competitive promotion procedures for an assignment intended to prepare the employee for the position being filled. This includes any promotion up to and including the full performance level of the position;

5. temporary promotions of 120 days or less;
6. details of not more than 120 days to higher graded positions or to positions with known promotion potential;
7. repromotion of an employee who was demoted without personal cause and not at his or her request. Except for good cause, employees involuntarily downgraded without personal cause will be repromoted at the first opportunity. Good cause includes but is not limited to management's decision not to fill or to abolish the position or to select a better qualified candidate from any appropriate source. In the event of non-selection for repromotion, the employee will be provided written reasons for non-selection;
8. selection of a permanent government employee from OPM delegation of authority registers for higher graded positions or positions with known promotion potential;
9. promotion of an employee to any position and/or grade level which he or she formerly held on a permanent basis. Since employees already competed at a previous time, they must only meet the basic qualification requirements of the position;
10. transfer of a current Federal employee or reinstatement of a former Federal employee to a position that is no higher than a position previously held on a permanent basis under a career or career conditional appointment, provided the employee was not demoted or separated from that previous position for cause or for performance deficiencies;
11. position change (either reassignment, demotion, or promotion) of any permanent employee from a position having known promotion potential to a position having no higher potential; or
12. selection of an individual accorded priority consideration.

SECTION 6 - RESPONSIBILITIES

A. The Agency will:

1. administer the Merit Promotion Program and assure adequate advice and assistance is provided to supervisors and employees to enable them to discharge their responsibilities in connection with the program;
2. ensure each employee on a promotion certificate may ascertain whether they were selected through the Automated Notification System Web Enabled Response (ANSWER) or equivalent; and

3. publish job opportunity announcements on USA Jobs or equivalent and provide information to employees with respect to the filing of applications and the regulatory aspects of the promotion program.

B. The DCMA Council will bring matters of concern regarding the promotion program to the attention of the Agency as early as possible in an effort to reach informal resolutions. The Parties shall address and attempt to resolve the concern prior to commitment of the position. In addition the Agency and the Union will:

1. encourage and assist employees to improve their potential for promotion through self help activities;
2. assist employees in identifying appropriate positions for which they are qualified; and
3. assist employees to overcome weaknesses which have been identified as reasons they have not been promoted.

C. Employees are expected to:

1. apply only for those positions for which they consider themselves qualified and in which there is a genuine interest and willingness to accept, if selected;
2. assure the applications filed for consideration are completed accurately and in the detail required to permit a valid evaluation of their qualifications;
3. cooperate in the resolution of questions concerning their qualifications and eligibility for a specific job vacancy or job category by providing pertinent information as may be requested or required;
4. familiarize themselves with the merit promotion program and seek desired clarification from supervisors and/or their servicing Human Resources Office;
5. respond to the requirements of JOAs;
6. maintain awareness of the status of their application for a position through the ANSWER system or equivalent; and
7. request a discussion with the selecting official, if so desired, upon notification of non-selection. The selecting official may suggest improvements/changes that may enhance future promotion possibility.

SECTION 7 - AREA OF CONSIDERATION

A. The area of consideration for positions to be filled through competitive promotion procedures must be broad enough to obtain a sufficient number of highly qualified candidates from which to select and to provide adequate promotion opportunities for employees.

B. The area of consideration in announcing vacancies will be no less than:

1. Agency-wide and Acquisition Technology, and Logistics (AT&L) Workforce in the Department of Defense (DoD) Components outside the military departments for permanent acquisition workforce positions (i.e. Defense Acquisition Workforce Improvement Act (DAWIA)); and

2. Agency-wide for all other permanent bargaining unit positions.

SECTION 8 - JOB OPPORTUNITY ANNOUNCEMENTS

A. Positions to be filled through the competitive promotion process will be publicized by means of a JOA and posted on the Agency's web site.

B. As a minimum, JOAs shall include the following information:

1. the JOA number;

2. the position title(s), occupational series, and grades(s);

3. opening and closing dates;

4. a brief summary of the representative duties of the position(s);

5. area(s) of consideration;

6. qualification requirements, including a description of any modification of established qualifications requirements;

7. selective placement factors, if any;

8. evaluation factors and the due consideration of weights they will receive in arriving at composite or total scores for ranking purposes;

9. a statement that the position(s) covered has (have) known promotion potential which can result in subsequent career promotion(s), if applicable;

10. any test(s) required;

11. any unusual conditions of employment which it might be advisable to publicize, such as tour of duty, temporary duty (TDY) travel, driver's license, financial statement filing requirement, security requirements, etc.;

12. a statement that applications will be accepted from VRA eligibles and 30 percent or more disabled veterans if appropriate;

13. the statement: "The Defense Contract Management Agency is an equal employment opportunity Agency";

14. statement that basic eligibility requirements such as time in grade, minimum qualifications and other regulatory requirements must be met by the date the referral is issued;

15. length of temporary promotion or detail (if appropriate);

16. how and where to apply, including any special forms required;

17. statement concerning authorization of Permanent Change of Station (PCS) payment;

18. statement as to whether the position is a drug testing designated position;

19. statement as to whether the position is subject to mobility or rotation;

20. statement as to Security Clearance requirement;

21. statement as to whether the position is Emergency Essential (EE). (Deployable); and

22. statement as to whether the position is a bargaining unit position.

C. JOAs will be posted electronically during the time limits within which applications will be accepted.

1. Employees are expected to keep applications submitted for open continuous and continuing promotion registers current by submitting updated resumes.

2. Multi-location JOAs/Registers: JOAs may be issued to establish registers for similar positions located throughout the Agency. Applicants are required to specify their geographical/organizational preference(s) when requested or they will only be considered for positions within their assigned organization.

D. For vacancies announced on an open continuous basis cut off dates for any and all vacancies will be defined in the JOA.

E. JOAs for positions for which there is an anticipated frequent, repetitive or continuous need may either be announced on an open continuous basis or may be announced for a limited period and used to establish a register of candidates to be referred as appropriate vacancies arise.

F. To be accepted, applications must be received by the date specified.

G. Amendments, cancellations or extensions will be made available in the same manner as the JOA.

SECTION 9 - EVALUATION, CERTIFICATION AND SELECTION OF APPLICANTS UNDER COMPETITIVE PROCEDURES

A. The Agency and DCMA Council recognize their shared interest in a consistent and efficient merit promotion system that provides for prompt filing of vacancies with high quality applicants.

B. The Agency will use an automated system for evaluation of candidates. The Agency agrees to provide training to employees and Union representatives regarding the operations of the automated system. For each position or group of positions, which will be filled through competitive promotion procedures, the method of rating must be documented. This job analysis will address:

1. the skills identified through job analysis as necessary for successful job performance and the relative weight assigned to each;

2. the measurement methods to be used; and

3. evaluation procedures to be followed and measuring information to be used based solely on job related criteria.

C. Skills to be used for evaluation purposes must be derived from the official position description for the position being filled.

D. Candidates who have a current rating of record of Unacceptable will not be certified for promotion consideration. They will be notified that they are ineligible for further consideration.

E. Applicants for promotion will be evaluated based upon relative skills, education and awards. The relative importance of skills may be weighted. Skills to be used and the weights of skills will be determined prior to issuance of the JOA.

SECTION 10 - USE OF PANELS IN THE PROMOTION PROCESS

- A. Panels may be used to evaluate, rank and/or interview candidates for selection consideration.
- B. Panels may not function in a way which preempts the selecting official's authority.

SECTION 11 - REFERRAL OF CANDIDATES FOR SELECTION

- A. A list of the top ten best qualified candidates will be referred to the selecting official for consideration (unless there are less than ten qualified applicants). The number to be referred will not exceed ten promotion candidates for each vacancy being filled, unless there are tie scores. Ties will not be broken. When there is more than one vacancy, one additional applicant will be referred for each additional vacancy.
- B. When a promotion certificate contains at least three qualified promotion candidates the selecting supervisor may not reject the certificate as inadequate solely on the basis that it contains an insufficient number of eligibles.
- C. If the promotion certificate contains fewer than three qualified promotion candidates or if declinations reduce the number to fewer than three, the selecting official may request that recruitment effort be renewed or he/she may proceed with the selection process. If recruitment is renewed, previous applicants need not apply to receive consideration.
- D. In cases where the position was announced at more than one grade level, the selecting official will be provided a list for each grade level.

SECTION 12 - CANDIDATE INTERVIEWS

- A. The selecting official has the option to interview or not interview the candidates referred. If one bargaining unit candidate is interviewed, all bargaining unit candidates will be interviewed. Interviews will be conducted in essentially the same manner in regard to questions asked and the information being sought so that all candidates are given an equitable opportunity to present themselves and their qualifications.
- B. Employees will be released, after making appropriate arrangements with their supervisor, for the time necessary for the interview to be conducted.

SECTION 13 - SELECTION

A. Selecting officials may select any of the candidates referred on the promotion certificates, or any candidate eligible for noncompetitive consideration.

B. If the vacancy is one for which an under-representation exists and is a targeted occupation as identified in the Affirmative Employment Plan and there are well qualified candidates whose selection would reduce the under-representation, then the selecting official will give the appropriate consideration consistent with the Affirmative Employment Plans.

C. The employee's promotion will not be affected by the Agency's inability to release the employee to their new position in a timely manner.

D. Management shall select by seniority when: (1) it has determined to fill a vacancy and (2) it has narrowed its choice to two employees equally capable and equally qualified under management's criteria.

SECTION 14 - RECORDS

Promotion actions will be documented and records maintained in accordance with requirements established by OPM. The DCMA Council Local representative shall have the right to review pertinent promotion records, upon request, subject to the limitations of the Privacy Act.

SECTION 15 - EXPEDITED GRIEVANCE PROCEDURE FOR MERIT PROMOTION

A. The Agency and the DCMA Council share an interest in fair consideration of applicants for promotion. This expedited grievance procedure provides a means for rapid review of employee or Union grievances regarding qualifications or rating decisions. This procedure may be used by an employee or by the Union within five (5) workdays after issuance of the Web Based Referral List or equivalent.

B. In the event a grievance is filed using this procedure, the Agency will stay the selection process for five (5) workdays or until the grievance decision is rendered, whichever occurs first. If multiple grievances are filed, the Agency will suspend the selection process for five (5) workdays from receipt of the first grievance.

C. A representative of the Agency will communicate telephonically or in person with the Union/employee(s) to discuss the grievance within three (3) workdays from receipt of the grievance. The Agency will provide a written decision within two (2) workdays of the communication.

D. A grievance not resolved by this procedure may be advanced to the second step of the negotiated grievance procedure.

ARTICLE 26

PERFORMANCE MANAGEMENT

SECTION 1- GENERAL

Performance management is the process of creating a work environment or setting in which people are enabled to develop their full potential and perform to the best of their ability. Performance management supports the desire to create a customer serving, motivated, accountable, reliable and dedicated workforce. It provides enough guidance so employees understand what is expected of them. It provides enough flexibility so that individual creativity and strengths are nurtured but enough control so that employees understand organizational missions/goals. A performance management plan contains clear expectations and robust measures that make meaningful distinctions across levels of performance and reinforces accountability. The performance management plan will support human capital decisions such as training and development, succession planning, recognizing top performers, reduction-in-force, etc. Performance plans will be applied so that each employee has the opportunity to excel.

SECTION 2 - ESTABLISHING WRITTEN PERFORMANCE PLANS

- A. A written performance plan provides the employee with clear expectations/goals based on position requirements and a method for the supervisor/manager to rate his/her progress objectively. The plan consists of a set of rating elements and performance standards used to evaluate such elements.
- B. Performance plans must be current and derived from the duties and responsibilities of the position and be attainable.
- C. Upon request, the Agency will provide the DCMA Council with a copy of the guidance provided to management for the purpose of developing written performance plans.

SECTION 3 - CRITICAL ELEMENTS

- A. Rating elements must address the critical functions of an employee's position. A performance plan normally consists of four to six critical elements. A critical element is a work assignment or responsibility of such importance that unacceptable performance of the element would result in a determination that an employee's overall performance is Unacceptable. When developing critical elements, consideration should be given to work quality, productivity, customer support, teamwork and cooperation for employee performance plans and

management, coaching and leadership for supervisory and managerial plans. The critical elements are to be tied to the core competencies of each occupational group and related customer outcomes/expectations. DCMA managers and supervisors are to develop critical elements for all employees that link to the Agency's Performance Plan.

B. Performance plans containing critical elements should identify and measure work outcomes and achievements rather than the work processes employed to produce the results. When organizational goals and metrics are used in employees' performance plans, they should be directly linked to an individual's critical elements, be reasonably attainable and be clearly stated in terms of quality, quantity, timeliness and manners of performance. Critical elements for bargaining unit employees shall address individual performance only.

SECTION 4 - NON-CRITICAL ELEMENTS

A non-critical element is a dimension or aspect of individual, team or organizational performance, exclusive of a critical element, that is used in assigning a summary level. Such elements may include, but are not limited to, objectives, goals, program plans, work plans and other means of expressing expected performance.

SECTION 5 - PERFORMANCE STANDARDS

Supervisors/managers will develop standards of performance on the critical elements that are credible and reliable measures of performance. Employees are to participate in the development of the performance standards for Contribution to Mission Accomplishment. The standards are to delineate the supervisor's expectation of performance at the Fully Successful and Outstanding levels. They should be expressed in results-oriented terms. Supervisors must communicate with employees regarding their performance elements and standards. Employees are to receive a copy of their performance plan during initial entry into their position, at the beginning of each rating period and whenever the plan is revised. Employees will be given the opportunity to participate in the initial development and any revision of performance plans for their positions. Employees may suggest changes to their performance plans during the rating cycle. The employee will be allowed a reasonable amount of time to review and comment on any new or revised standards. The employee may discuss the standards with a Union representative, if desired.

SECTION 6 - MANAGING PERFORMANCE AND PROGRESS REVIEW

A. Performance plans cover the appraisal period which runs from 1 January to 31 December. The rating official and the employee meet at the beginning of the appraisal period to discuss performance requirements and expectations. A copy

of the plan shall be provided to the employee. Periodic reviews and discussions provide ongoing, consistent feedback that addresses both employee strengths and the weaker areas of their performance.

B. Rating officials should determine whether training or other developmental opportunities would help an employee perform better on the job. Managing performance should help identify remedial or developmental training necessary for an employee to meet a specific performance standard or expectation. Rating officials are to include training requirements or assignments focused on improving future performance on the employee's IDP.

SECTION 7 - EVALUATING AND RATING PERFORMANCE AT THE END OF THE RATING PERIOD

A. The rating period begins January 1 and ends December 31 of each year.

B. Sufficient time shall be scheduled for the employee to discuss their performance appraisal.

C. Supervisors must provide ratings based on a minimum of 90 consecutive calendar days when employees have worked for the same supervisor under the same performance plan.

D. A supervisor must provide an employee with summary ratings when an employee leaves their position during the last 90 consecutive calendar days of the rating period and has served a minimum of 90 consecutive calendar days or more in his/her former position working for that supervisor under the same performance plans. This also applies if the supervisor leaves his/her position during this same period and the employee has served 90 consecutive calendar days or more working for that supervisor under the same performance plan. This rating is considered the rating of record for the employee for the entire rating period.

E. In those situations where the employee and/or supervisor do not meet the minimum 90 consecutive calendar day requirement, the supervisor must delay the rating until such time as the employee works for the gaining supervisor at least 90 consecutive calendar days. When the 90 day period ends, the rating must be prepared within 15 days of the end of the extended rating period.

SECTION 8 - APPRAISING TEMPORARY DUTY PERFORMANCE

A. When an employee is temporarily assigned for 120 days or more, the temporary rating official gives the employee a written performance plan reflecting the temporary assignment as soon as possible, but no later than 30 days of entering the position. When the temporary assignment ends, the temporary rating official will complete an evaluation and provide it to the permanent rating

official for consideration in completing the employee's annual performance evaluation.

B. When an employee is on a temporary assignment for a period of 90 days and an annual evaluation is due, the temporary rating official shall complete the evaluation.

C. If the evaluation is due and the employee has been on the temporary assignment for less than 90 days, the permanent rating official shall assign the rating.

D. Employees who fail to meet expectations while on detail or other temporary assignment shall be returned to their regular positions.

SECTION 9 - APPRAISING PERFORMANCE UNDER OTHER CIRCUMSTANCES

A. Employees who are on long-term training, leave without pay for uniformed service or other lengthy absence from duty and have not completed the minimum 90 consecutive days of work necessary for a rating are not eligible for a rating at the end of the rating period. Supervisors will annotate "Not Rated" and provide the reason on the performance appraisal form and forward to the HR services provider. Employees who receive such a rating will be assigned a presumptive rating of Fully Successful for reduction in force (RIF) purposes only.

B. An employee's use of official time to carry out representational functions shall not influence his or her performance appraisal. Employee representatives having spent insufficient time in their official duties to be rated thereon will not be provided an annual performance rating of record until such time as they shall have spent sufficient time in the performance of their official duties as to permit management to provide, consistent with applicable regulations, an annual performance appraisal. When in the above circumstances, the employee representatives have not been given an annual performance appraisal, such employees, as necessary for RIF purposes only, will be given a modal rating in accordance with applicable RIF regulations.

SECTION 10 - COMPLETING THE PERFORMANCE EVALUATION

A. Supervisors must evaluate employees on each rating element in the performance plan unless they determine that the employees have not had 90 consecutive days to demonstrate performance on the element. In this event, supervisors must annotate the rating element as "Not Rated" and must not consider it in determining employees' summary rating.

B. Supervisors must annotate the rating level for each critical element in accordance with the Agency's chosen performance appraisal system.

C. Supervisors must consider the employee's actual performance in determining the rating level. Once each performance element is rated, the supervisor must determine the summary rating in accordance with the Agency's chosen performance appraisal system.

D. Supervisors must discuss the performance evaluations with employees. The performance discussions will incorporate how the employee's position and performance supported the Agency's goals. The supervisor is to obtain the employee's signature on the applicable appraisal form and provide a copy of the completed form to the employee. If the employee refuses to sign the form, the supervisor should annotate the form to that effect.

E. The employee's signature on the completed form does not imply that the employee agrees with the evaluation. It only verifies that the supervisor has discussed the rating with the employee and that they have received a copy of the evaluation. An employee may add comments to the form.

SECTION 11 - DETERMINATION OF PERFORMANCE AWARD

Employees evaluated as Fully Successful or above are eligible for consideration for performance awards. Employees rated Outstanding may be considered for Quality Step Increases (See Article 27).

SECTION 12 - PROBATIONARY AND TRIAL PERIOD EVALUATIONS

A. Employees given a career or career-conditional appointment from an OPM certificate of eligibles must serve a one-year probationary period. This applies to any competitive appointment from a certificate of eligibles regardless of whether the employees have previously completed a probationary period after competitive appointment. During this probationary period, supervisors must observe the employee's conduct and performance. Supervisors must evaluate the employee's performance against the requirements of the employee's performance plan. Supervisors may separate employees during the probationary period in accordance with applicable regulations.

B. Employees who receive an excepted service appointment are required to serve a trial period. Preference eligibles receiving such appointments must serve a trial period. This trial period has the same purpose as a probationary period for competitive service employees.

SECTION 13 - TAKING ACTIONS BASED UPON UNACCEPTABLE PERFORMANCE

Supervisors must warn employees of serious performance deficiencies when they occur. The following course of action must be taken regardless of whether the employee's performance rating is due:

1. Counseling sessions will be conducted with the employee concerning their performance deficiencies and specifically identify areas of performance that are in danger of failing to meet expectations, explain the required improvements, and identify means to successfully attain the improvements to include remedial training and development. These counseling sessions will be conducted on an as-needed basis.

2. If the employee's performance does not improve as a result of the counseling sessions, the supervisor must notify the employee in writing of an opportunity period to meet expectations. This written notification is a formal warning to the employee that their performance is Unacceptable in one or more critical elements. It should establish a period of reasonable length, normally 90 days, during which the employee is required to improve performance so as to meet expectations. The written notice must contain:

a. identification of each critical element in which performance is unacceptable, along with specific examples of deficient performance;

b. a statement identifying what the expected performance is on each of those specific critical elements;

c. identification of the assistance which will be provided to the employee to enable the employee to meet expectations;

d. identification of the programs and services available to the employee under the EAP, as appropriate; and

e. a statement regarding the performance based action management may take to reassign, demote or remove from Federal service if the employee's performance does not improve to meet expectations and remains at that level throughout the remainder of the rating period;

3. During the opportunity period, the supervisor must periodically counsel the employee. These discussions note improvements and/or continued deficiencies. The supervisor must keep a record of these counseling sessions and provide the employee with a copy, if requested; and

4. If the annual performance evaluation is due during the opportunity period, the supervisor must extend the rating period until after the opportunity period and notify the employee of such. The supervisor should initiate the opportunity period early in the rating period so as to avoid this type of extension.

SECTION 14 - ACTIONS AT THE END OF THE OPPORTUNITY PERIOD

A. If the employee's performance has improved to the Fully Successful level during or at the end of the opportunity period, the supervisor must cancel the opportunity period and inform the employee. The employee must sustain the Fully Successful level of performance for one year from the beginning of the opportunity period. If he/she does not sustain performance at this level for the one year period, the supervisor may propose a performance-based action without granting a new opportunity period.

B. If an employee's performance remains Unacceptable at the end of the opportunity period, the supervisor must initiate a performance-based action to reassign, demote to a position where it is considered that they will meet expectations or remove the employee from Federal service.

SECTION 15 - ADVERSE ACTIONS BASED UPON UNACCEPTABLE PERFORMANCE

A. Supervisors must use the following procedures to take a performance-based action:

1. Provide a minimum 30 calendar day advance notice. The notice must contain:

a. identification of the critical elements and performance standards found unacceptable. A description of the facts concerning specific performance deficiencies that developed during the opportunity period;

b. identification of the specific records or documents used in support of the action; and

c. a statement that the employee is entitled to representation by an attorney or other representative of their choice, to include Union representation, when making a reply. If otherwise in a duty status, the employee and his/her representative are entitled to a reasonable amount of official time to prepare and present a reply to the proposed action.

B. The deciding official must be at least one level higher than the supervisor who proposed the action and must make the final decision regarding the proposed action. The deciding official must consider the employee's reply before making a final decision on the proposed action. If the employee makes only an oral reply, the deciding official must make a written summary of the reply for the record.

- C. The deciding official must notify the employee in writing of his/her decision.
- D. The written decision must contain the applicable grievance and/or appeal rights.

ARTICLE 27

AWARDS AND RECOGNITION

SECTION 1- AWARDS PROGRAM

A. The Incentive Awards Program will be administered in accordance with Agency policy. The parties recognize the importance of teamwork in reaching organizational and Agency goals. The Agency agrees to give due consideration to using group and team awards to foster teamwork and promote overall organizational achievement in recognition of the efforts of groups, organizations, and teams which have enhanced organizational excellence. The Agency has the discretion to use a wide variety of awards to recognize its employees for performance in support of the Agency's mission. The Agency is encouraged to give out awards throughout the year and not be limited to the annual performance rating cycle.

B. An effective awards program recognizes the contribution of the employee in a timely manner. Efforts by authorized approving officials should be directed toward equality of award consideration for employees within their respective organizations.

SECTION 2 - INCENTIVE AWARDS COMMITTEES

Organizations may have incentive awards committees. Incentive awards committees may be used to advise approving officials regarding awards programs and proposed awards. When more than one organization is represented on an incentive awards committee each cognizant DCMA Council Local will be afforded an opportunity to have a representative participate on that incentive awards committee. However, the DCMA Council Local representative may vote only with respect to nominations from the organization he/she represents. Procedures for the organization's incentive awards committee may be negotiated locally.

SECTION 3 - AWARDS PROCESS

A. The following awards may be awarded by the Agency to bargaining unit employees: performance based cash awards, on-the-spot awards, time-off awards, quality step increases, honorary awards, special act or service awards, suggestion/invention award and non-monetary awards.

1. Any employee considered deserving of an award by his/her supervisor will be nominated in a timely manner.

2. Employees evaluated as Fully Successful or above are eligible for consideration for performance based cash awards. However, an appraisal that

meets the eligibility requirement for an award does not automatically entitle an employee to an award. The decision whether to approve an award remains a management right and, as such, is not a grievable matter.

3. Performance awards will be approved based on written recommendations that describe objective, verifiable, job-related performance contributions and/or accomplishments. General statements concerning an employee exceeding one or more performance standards will not be considered to be an objective, verifiable statement.

4. Award consideration will be based on performance based criteria. With the exception of exclusions provided for in law and regulation, employees will not be excluded from award consideration solely because the employee was recently promoted, in training, detailed or loaned during the rating cycle, or is a Union official or any other non-merit reasons.

B. In addition to the organization directly awarding the awards listed above, an employee may nominate another employee for an on-the spot award, time-off award or special act or service award. Nominations must be submitted to the nominee's immediate supervisor. In the case of group awards, the nomination must be submitted to the supervisor with overall responsibility for the project, assignment, or initiative. Once a nomination is received, the supervisor will act on the nomination by approving an award (determining the type of award and dollar amount), denying the nomination or forwarding the nomination to the Incentive Awards Committee for consideration. A supervisor is not restricted by the nominator's recommended award type or monetary value in deciding upon the nomination. Timely feedback concerning the outcome of the award recommendation will be given to the individual(s) submitting the recommendation when a recommendation is disapproved.

SECTION 4 - AWARDS REPORT

The Agency will provide the Union with a report showing names, titles, series and grades of bargaining and non-bargaining unit employees, the type of awards received and dollar amount for each organization.

ARTICLE 28

EMPLOYEE RECORDS

SECTION 1 - GENERAL

The Agency will maintain systems of personnel records authorized by the OPM and those Agency systems published in the Federal Register in compliance with the provisions of the Privacy Act of 1974. Personnel records referred to in this Article will be maintained in such a manner so as to prevent disclosure to individuals who do not have an official need for the information.

SECTION 2 - OFFICIAL PERSONNEL FOLDER (OPF)

A. The OPF is the official repository for records affecting an employee's status and Federal service. The folder provides the basic source of factual data about the employee's Federal employment history and this is used primarily by the HR services provider in screening qualifications, determining status, computing length of service and other information needed in providing personnel services.

B. The Agency shall provide for the maintenance of an OPF for every employee. Upon request, employees will be informed as to the location of their OPF.

C. Material will be filed in the OPF in compliance with applicable rules and regulations of the OPM and 5 CFR Part 293

D. Each employee and/or their designated representative shall be permitted to review any document appearing in the employee's OPF upon request. If the representative seeks to review the OPF without the employee present, the employee must provide written authorization to the Agency.

E. Upon request, an employee will be entitled to a copy of any document in his/her OPF.

F. Authorized personnel not employed by the Agency may inspect an employee's OPF only after producing appropriate credentials. As required by the Privacy Act of 1974, an accurate accounting will be made for disclosure of information from the OPF and the information from this accounting will be made available to the employee.

G. Upon request, employees shall be advised of the length of time the Agency intends to maintain unfavorable material in the OPF.

H. Records of charges placed in the OPF determined to be unfounded will be removed. Such charges will not be considered a factor in connection with any future personnel actions.

I. Any adverse material removed from the employee's OPF will be returned to the employee for final disposition by the employee.

SECTION 3 - SUPERVISOR RECORDS

Derogatory material of any nature shall not be placed in the supervisor's files (the now obsolete SF-7B card, memoranda for record, etc) without the employee's knowledge. When a notation concerning counseling, oral admonishment, disciplinary action, adverse action, etc., is entered into the supervisor's files, the entry will be discussed and the employee shall be advised of their right to make written comments to the file. Upon request, employees shall be furnished copies of any data the supervisor is maintaining concerning their employment. Comments regarding any counseling or oral admonishments and supporting information, may be retained beyond one year provided the supervisor notifies the employee. Should the employee's conduct improve, such notations may be removed from the supervisor's file at any time.

SECTION 4 - SUBMISSION OF MEDICAL INFORMATION/ PRIVACY OF RECORDS

The information collected pursuant to any request for medical information shall go directly and without interception to the Medical Review Officer of the Agency or to such other similarly qualified physician identified by the Agency in advance.

ARTICLE 29

MAINTAINING DISCIPLINE

SECTION 1- DEFINITIONS

A. Disciplinary Action: Written reprimand or a suspension for 14 calendar days or less. Oral admonishments are not considered disciplinary actions.

B. Adverse Action: Removal, a suspension for more than 14 calendar days, or a reduction in grade and/or pay taken for cause. For purposes of this Article, the term "adverse action" does not apply to the separation of an employee serving a probationary or trial period under an initial appointment pursuant to 5 U.S.C. § 7511(a)(1)(A), a suspension or removal taken in the interest of national security, an action taken under reduction-in-force procedures, return to the grade formerly held by a supervisor or manager who has not satisfactorily completed his/her supervisory/managerial probationary period, or the reduction-in-grade or removal of employees based on unacceptable performance pursuant to 5 U.S.C. § 4303.

C. Progressive Discipline: Procedure for evaluation by a management official to decide what the penalty shall be as part of a disciplinary action. Progressive discipline is an element of just cause and provides guidelines in assessing penalties. It does not require any rigid application of a progression of penalties but, rather requires an evaluation of whether the application of the progression of lesser penalties to more harsh penalties is appropriate. More severe, or the harshest of penalties may be appropriate for even a first offense. Under this concept of progressive discipline, a manager may select any penalty considered appropriate, subject to the overall principle of just cause.

SECTION 2 - GENERAL

A. Employees will not be subject to disciplinary or adverse action except for just and sufficient cause. In keeping with the concept of progressive discipline, actions imposed should be the minimum, in the judgment of the disciplining official, which can reasonably be expected to correct and improve employee behavior and maintain discipline and morale among other employees. All circumstances being the same in an organization disciplinary or adverse action case, the concept of like remedies for like offenses will be applied. This provision shall not prevent the Agency from taking any other appropriate action.

B. Disciplinary and adverse actions will be taken in a reasonable period of time, considering the circumstances of the individual case.

C. Weingarten rights will be posted on the DCMA website and will be sent to employees via e-mail annually. An employee will be advised of his/her right to

Union representation prior to the taking of any investigative statement. The parties acknowledge that failure to give the employee such notification will not preclude the use of that statement. An employee may request Union representation at any meeting that he/she reasonably believes may result in disciplinary action. If the employee requests representation, the interview will be discontinued for a reasonable amount of time until the employee's representative is present.

D. If the employee elects DCMA Council Local representation, copies of all correspondence addressed to the employee on the action will be furnished to the representative.

E. The Agency will notify the DCMA Council prior to changing the table of penalties.

SECTION 3 - ORAL ADMONISHMENT

An oral admonishment is used for minor infractions of rules and/or policies. It is intended for those situations that do not merit formal action. Management will inform the employee that he/she is being orally admonished. Oral admonishments will normally be a matter between the employee and their supervisor. Within a reasonable time after discovering an infraction believed to warrant an admonishment, the supervisor will discuss the matter and any necessary corrective action with the employee. Oral admonishments will be done in private.

SECTION 4 - REPRIMAND

A reprimand is a written statement given to an employee for misconduct.

1. The Agency will give the employee at least 7 calendar days written notice of the proposed action.
2. Notices will state the nature and specific reason(s) for the proposed action.
3. The Agency will give the employee at least 7 calendar days to respond orally and/or in writing and to furnish materials to support the reply.
4. Notices will inform the employee of his/her right to consult with a member of the servicing human resources staff regarding procedural adequacy of the proposed action and of the employee's right to reply.
5. Notices will inform the employee of his/her right to representation.

6. Notices will inform the employee that any request for extension of time for reply must be submitted in writing prior to the expiration of the time period that he/she was given to reply.

7. The decision notice will indicate whether the proposed action will be effected, modified, withdrawn or held in abeyance. In no case will the action taken be more severe than that proposed in the advance notice.

8. The notice will inform the employee of his/her grievance rights in accordance with Article 30 of this Agreement.

9. A letter of reprimand will be placed in the employee's OPF for not more than 12 months unless the employee receives another disciplinary or adverse action for a similar or related offense within the 12 month period. If this occurs it will serve to extend the retention of the former reprimand(s) for another 12 months. In no case, however, will a reprimand remain in an employee's OPF for more than 24 months.

SECTION 5 - SUSPENSIONS FOR 14 CALENDAR DAYS OR LESS

A. The Agency will give the employee at least 14 calendar days written notice of the proposed action.

B. Notices will state the nature and specific reason(s) for the proposed action.

C. The Agency will give the employee at least 10 calendar days to respond orally and/or in writing and to furnish materials to support the reply.

D. Notices will inform the employee of his/her right to consult with a member of the servicing Human Resources staff regarding the procedural adequacy of the proposed action and of the employee's right to reply.

E. Notices will inform the employee of his/her right to representation.

F. Notices will inform the employee that any request for extension of time for reply must be submitted in writing prior to the expiration of the time period that he/she was given to reply.

G. The Agency will provide the employee copies of documentation used to support the action. Any material/evidence that is not disclosed to the employee may not be used in support of an action against the employee.

H. The decision notice will indicate whether the proposed action will be effected, modified, withdrawn or held in abeyance. In no case will the action taken be more severe than that proposed in the advance notice.

I. The decision will state the findings with respect to each reason stated in the notice of proposed action.

J. The notice will inform the employee of his/her grievance rights in accordance with Article 30 of this Agreement.

SECTION 6 - REMOVAL, SUSPENSION FOR MORE THAN 14 CALENDAR DAYS AND REDUCTION IN GRADE AND/OR PAY

A. All of the procedural requirements in Section 5 apply except that the advance period will be not less than 30 calendar days, and the employee will be given at least 20 calendar days to respond orally and/or in writing and furnish materials in support of the reply to the proposed action. The response may include written statements of persons having relevant information and/or supportive documents.

B. The 30 calendar day advance written notice period is not required for a removal or an indefinite suspension when there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. In such cases, the advance notice period will be not less than 10 calendar days and the reply period will be not less than 7 calendar days. When circumstances require, the employee may be placed in a non-duty status with pay not to exceed 10 calendar days during the notice period. Such actions under this provision are taken pursuant to 5 U.S.C. § 7513(b).

SECTION 7 - LETTERS OF DISCIPLINE (LOD)

A. LODs may be used in lieu of regular, formal disciplinary actions for suspensions of 14 calendar days or less. Management may elect to use a letter of discipline in lieu of an actual suspension for a particular incident of misconduct. Otherwise, a regular disciplinary action must be used. The use of an LOD for one employee or one incident of misconduct does not obligate management to use them for all such incidents or employees. The Agency has full discretion to decide when it would be appropriate to use an LOD in lieu of a regular disciplinary action. An LOD carries the same weight as an actual suspension of 14 calendar days or less in determining penalties for future offenses.

B. Employees have the right to formally question an LOD using the regular grievance process. Employees must be informed of this right in the letters.

C. Employees have the right to be represented in preparing and filing a grievance concerning an LOD. Information on this right will be included in letters of discipline.

SECTION 8 - LETTER OF WARNING AND INSTRUCTION

A. A letter of warning and instruction is not a disciplinary action, but may be used to clarify procedure, issue specific instruction, or impose certain requirements in an attempt to correct a deficiency in performance or conduct before a disciplinary action becomes necessary.

B. When the Agency issues such a letter, it will fully explain what is required of the employee to correct the noted deficiency. The letter will not be placed in the Official Personnel Folder. A copy will be placed in the supervisor's file and the employee so notified. Information concerning the letter of warning shall not remain in the employee's file for more than 12 months. At anytime after the issuance of the letter, the employee's conduct and/or performance will be reviewed to determine whether there has been sufficient improvement to warrant destruction of the letter.

SECTION 9 - GRIEVANCE/APPEAL RIGHTS

A. An employee who is dissatisfied with the Agency's decision to effect an adverse action may elect to either appeal the decision in accordance with 5 U.S.C. § 7701 or 7702 as applicable or grieve the decision in accordance with the negotiated grievance procedure (Article 30) but not both.

B. An employee who is dissatisfied with the Agency's decision to effect a disciplinary action may elect to grieve the decision in accordance with the negotiated grievance procedure (Article 30).

SECTION 10 - STAYS OF CERTAIN PERSONNEL ACTIONS

An employee has 10 working days after receipt of the notice of decision to file a timely grievance in order to be granted a stay of all personnel actions. In the event the employee requests a stay and has filed a timely grievance, formal disciplinary suspensions and/or adverse actions may be stayed by mutual consent of the parties.

SECTION 11 - LAST CHANCE AGREEMENTS

When an employee elects Union representation, the Union will be allowed full participation in all discussions and meetings involving the Last Chance Agreement.

ARTICLE 30

GRIEVANCE PROCEDURES

SECTION 1 - GENERAL

This shall be the exclusive procedure available to the parties and employees to resolve grievances.

SECTION 2 - EXCLUSIONS

Complaints concerning the following matters may not be used under the negotiated grievance procedure:

1. any claimed violation of Subchapter III of Chapter 73 of Title 5, U.S.C. (relating to prohibited political activities);
2. retirement, life insurance or health insurance;
3. a suspension or removal under Section 7532 of Title 5 U.S.C., concerning national security;
4. any examination, certification or appointment;
5. the classification of any position which does not result in the reduction in grade or pay of an employee;
6. nonselection for promotion from a properly ranked and certified list of candidates. This does not apply to the right to grieve over improper procedures used during the selection process;
7. the decision to adopt or grant or the decision not to adopt or grant a suggestion, performance, honorary or other discretionary award;
8. notice of a proposed disciplinary or adverse action under 5 U.S.C § 4303, 5 U.S.C. § 7502, or 5 U.S.C. § 7512;
9. management's decision whether to issue a LOD;
10. any matter decided by the Office of Workers Compensation Programs (OWCP), Department of Labor (DOL);
11. mid-term performance reviews; and

12. notice or implementation of a RIF which adversely affects any employee.

SECTION 3 - APPEAL OR GRIEVANCE OPTION

A. An aggrieved bargaining unit employee affected by a prohibited personnel practice under section 2302 (b) (1) of Title 5, United States Code, may raise the matter under the appropriate statutory appeal procedure or this Agreement, but not both. A bargaining unit employee shall be deemed to have exercised his/her option under this provision at such time as the bargaining unit employee either initiates an action under the applicable statutory appeal procedure or files a grievance in writing under this Agreement, whichever comes first.

B. An aggrieved bargaining unit employee affected by matters covered under section 4303 and 7512 of Title 5, United States Code, may raise the matter under the appropriate statutory appeal procedure or this Agreement, but not both. A bargaining unit employee shall be deemed to have exercised his/her option under this provision at such time as the bargaining unit employee either initiates an action under the applicable statutory appeal procedure or files a grievance in writing under this Agreement, whichever comes first.

SECTION 4 - ISSUES RAISED IN GRIEVANCE

Issues (other than grievability/arbitrability issues) must be raised at Step 1. Any new issue must be directly and integrally related to the particular action/incident underlying the grievance.

SECTION 5 - EXCLUSIVE PROCEDURE

A. The Union has the right to act on its own behalf or on the behalf of any employee(s) to present and process grievances.

B. An employee who files a grievance under this procedure may only be represented by an individual designated by the Union. The provisions of Article 1, Section 3 apply as appropriate.

C. An employee or group of employee(s) may present a grievance under this procedure without representation as long as the resolution is not inconsistent with the terms of this Agreement and the Union is given an opportunity to be present at the grievance proceeding.

D. A Union representative will be on official time when performing representational functions under this Article if otherwise in a duty status.

SECTION 6 - EMPLOYEE GRIEVANCES

A. It is recognized that the grievance process should be a quick and efficient resolution of the issue. Before filing a grievance, employees are encouraged to discuss issues of concern to them with their supervisor. If management cannot resolve this issue immediately and needs additional time, management will extend the timelines for filing of a grievance. The employee has the right to have a Union representative present at any such discussions.

B. Grievances at each step will be presented in writing and provide, at a minimum:

1. the aggrieved employee(s), name, position, title, grade and organization;
2. a description of the basis for the grievance including appropriate facts such as times, dates, names and other pertinent data;
3. a brief statement of the step(s) taken to informally resolve the grievance;
4. the relief being sought;
5. a statement whether discrimination based on race, color, religion, age, sex or national origin is an issue in the grievance; and
6. identification of the grievant's representative.

C. Steps

Step 1. Grievances are to be presented in writing to the employee's immediate supervisor and second level supervisor within 21 days after the event which gave rise to the grievance or within 21 days after the date the employee became aware of the event. The written notice must clearly apprise the supervisors of the fact that a grievance is being presented. Both supervisors will meet with the grievant and his/her representative. Within 10 days after receiving the grievance, the second level supervisor shall render a written decision and provide a copy to the grievant and his/her representative. Nothing in this step precludes the supervisors and the grievant from resolving the grievance within a shorter timeframe than the time limits set.

Step 2. If the matter is still not resolved after receipt of the Step 1 response, the grievance may be presented within 7 days by the grievant or his/her representative in writing to the Commander/Director of the organization or his/her designee. After receiving the grievance, the Commander/Director of the organization or his/her designee shall meet with the grievant and the Union

representative. Within 7 days of receiving the grievance, the Commander/Director or his/her designee shall render a decision in writing to the grievant and his/her representative. If the grievance is not resolved at Step 2, the Union may refer the grievance to arbitration as provided in Article 31.

SECTION 7 - LOCAL UNION GRIEVANCES

A. A grievance may be classified as a local Union grievance if the issue is within the authority of the organization to resolve and the resolution requested has no impact beyond the local organization.

B. Resolution of any local Union grievance will have no binding or precedential effect on any other organization.

SECTION 8 - DISPUTES BETWEEN THE AGENCY AND THE DCMA COUNCIL

A. This procedure covers disputes over actions taken (or alleged failure to take appropriate actions) by the DCMA Council or Agency that involve the interpretation and application of this Agreement.

B. The DCMA Council and the Agency agree to exert every effort to resolve matters raised under this procedure informally and as timely as possible. To facilitate informal resolution.

1. the DCMA Council or the Agency shall fully inform the other party of the matter of concern at the earliest opportunity.

2. informal resolutions shall not be construed as establishing binding precedent on a particular practice or on the interpretation of this Agreement.

C. If the matter is not resolved informally:

1. the DCMA Council President or Director, DCMA or their respective designees; whomever is the grieving party, shall communicate in writing to the other party as in Section 6 B1-6 as above;

2. the responding party shall provide a final written response to the grievance to the grievant within twenty-one (21) days following receipt of the grievance; and

3. the grieving party will notify the respondent in writing of its acceptance of the final response or its intent to advance the matter to arbitration in accordance with Article 31 of this Agreement within thirty (30) days following receipt of the written response.

SECTION 9 - TIME LIMITS AND NOTICE

A. The time limits at any step of the negotiated grievance procedures, including initial filing, may be extended by the mutual consent of the parties.

B. Failure on the part of the respondent to meet any of the time limits of this procedure without mutual consent will serve to permit the grievant to immediately escalate the grievance to the next step of the process.

C. Any notice or filing required under this Article is considered effective when received by the DCMA Council President/DCMA Director or their designee via:

1. certified mail, return receipt requested when signed for by the other party;
2. hand delivery when received by the other party in person; or
3. E-mail when email is opened by the other party.

SECTION 10 - WITNESSES

All DCMA employee(s) called to testify on matters regarding a grievance being processed under this Article shall be in a duty status and paid travel and per diem expenses in accordance with appropriate regulations.

SECTION 11 - RECORDS AND DOCUMENTATION

The Agency shall, upon request, furnish the grievant(s) and their Union representative with pertinent records regarding a grievance under this Article, subject to limitations of the Privacy Act.

ARTICLE 31

ARBITRATION

SECTION 1 - GENERAL

A. If a grievance remains unresolved after the grievance procedure has been exhausted, arbitration may be invoked as follows:

1. The Union may invoke arbitration on employee grievances by serving a written notice upon the Agency. To be timely, such notice must be served not later than 30 days after the decision at Step 2 was delivered to the employee and the employee's representative or no later than 30 days after the date the Step 2 decision should have been rendered. Only the Agency and the Union may invoke arbitration. The Union will process the notice invoking arbitration on behalf of employees.

2. On other than employee grievances, the Union or the Agency may invoke arbitration by serving written notice within 30 days after the decision was delivered or should have been rendered.

B. Any notice or filing required under this Article is considered effective when received by the Union President/DCMA Director or their designees via:

1. certified mail, return receipt requested when signed for by the other party;
2. hand delivery when received by the other party in person; or
3. E-mail when email is opened by the other party.

SECTION 2 - OPTIONAL ADR PROCEDURES

The following Sections of this Article must be adhered to in the settlement of grievances to be resolved through arbitration unless the parties agree to process the grievance(s) in accordance with Article 32 of this Agreement.

SECTION 3 - CREATION AND USE OF THE ARBITRATION PANEL

A. The parties shall jointly create a panel of eight (8) arbitrators annually.

1. Selection Criteria - The arbitrator shall:
 - a. have decided a minimum of 20 federal sector cases;

b. have relative balance in the decisions rendered (no more than 25% variance between the percent decided in favor of a Union or the Government); and

c. have no more than 5% of decisions overturned by a higher authority.

B. Both parties shall determine which arbitrators meet the above criteria. If the parties agree on fewer than eight (8), the remaining slots will be divided equally between the parties to select. The order of the arbitrators on the list will be determined by random selection.

C. The parties will contact the first arbitrator on the list for a hearing date no later than seven (7) days after arbitration is invoked.

D. The hearing will be scheduled no sooner than thirty (30) days but not more than ninety (90) days after the date arbitration is invoked.

E. If the arbitrator is not available within this time period, the parties shall contact the next arbitrator on the panel.

F. In subsequent arbitrations the next arbitrator on the panel shall be contacted.

G. Arbitrators selected will hold and maintain a current certification from FMCS and/or the American Arbitration Association (AAA).

H. By mutual consent, the parties can remove an arbitrator from the list for any improper activity.

I. The Agency will fund travel expenses for the arbitrators under this section.

J. The parties agree that this process will be implemented as a one year test program. At the end of the test period, the parties further agree to reopen this section for re-evaluation and renegotiation as necessary.

SECTION 4 - ADMINISTRATION

The Agency shall provide facilities at no cost for the arbitration which will normally be at the site of the organization where the grievance arose. Arbitration hearings shall be conducted during duty hours unless otherwise agreed to by the parties.

SECTION 5 - THRESHOLD ISSUES

A. Disputes over the grievability or arbitrability of a grievance shall be submitted to the arbitrator as a threshold issue in the dispute. Grievability and arbitrability

are preliminary questions that must be resolved at the earliest stage of the process. Arbitrators must attempt to resolve this issue at the earliest possible date so that the parties do not waste resources preparing for their entire case before knowing whether the case is indeed arbitrable. Therefore, when there is a dispute over grievability or arbitrability of any issue, the arbitrator:

1. may request written briefs on the matter in dispute from all parties;
2. may arrange the taking of evidence as part of a pre-hearing session, (telephonic testimony via conference call is acceptable for this purpose) in the event of factual disputes which must be resolved to decide the request;
3. shall issue a written decision before setting the date for the arbitration hearing; and
4. shall not hold the arbitration hearing if the arbitrator decides that the grievance is not arbitrable or grievable.

B. All costs associated with resolution of the threshold issue will be borne by the party raising the issue.

SECTION 6 - HEARING PROCEDURES

A. The procedures to conduct an arbitration hearing shall be determined by the arbitrator.

B. When an employee grievance is being arbitrated, the grieving employee shall be in a pay status for the duration of the hearing if otherwise in a duty status. At least fourteen (14) days prior to the arbitration hearing the parties will exchange:

1. lists of witnesses whom they expect to testify along with a listing of facts and/or evidence that may be stipulated in advance of the hearing; and
2. copies of documents, with an index, proposed to be offered into evidence.

C. The grievant, their representative, and the individual(s) who are called as witnesses will be excused from duty to participate in the arbitration hearing. All participants, including Union representatives, shall be in a duty status and will be entitled to per diem and travel in accordance with the JTR. Witnesses and representatives will be allowed a reasonable amount of duty time to prepare for the arbitration.

D. Once an arbitration hearing has been scheduled, there shall be no postponement or rescheduling of the hearing except by the written mutual agreement of the parties.

E. By mutual consent, arbitration may be conducted as oral proceedings with no verbatim transcript and no filing of briefs. They may also mutually agree to such other arrangements as waiving post hearing briefs, requesting an award without opinion or requesting a bench decision.

F. No arbitrator has the authority to compel the taking of a transcript. If the parties mutually agree to the need for an official transcript, the cost will be equally shared by the parties. If only one party wants an official transcript or recording, the requesting party will pay for the cost of the transcript or recording and no copy will be made available to the other party. However, the Union may request a copy of any transcript in the possession of the U.S. Government consistent with the provisions of the Freedom of Information Act (FOIA).

G. The arbitrator shall be requested to render and serve the written decision within 30 calendar days after the conclusion of the hearing. The arbitrator's award shall be limited solely to answering the question(s) put to them by the parties' submission. In the event the parties are unable to agree to a submission statement, the arbitrator shall be empowered to formulate their own statement of the issue(s) to be resolved.

H. In arbitrating a grievance, no arbitrator has the authority to render an award that would add to, subtract from, modify or violate the Agreement.

SECTION 7 - COSTS

The arbitrator's fees and expenses shall be shared equally by the parties unless otherwise specified in this Article.

SECTION 8 - ISSUES

The parties concerned shall attempt to jointly frame the issues for the arbitrator. If they cannot agree on the framing of the issues, each party shall separately frame the issues and the arbitrator shall determine the issues to be heard. Once an arbitrator has been selected there will be no ex parte communications with the arbitrator, unless agreed to by the parties.

SECTION 9 - EFFECT OF AWARD

The arbitrator's award shall be binding on the parties. However, either party may file exceptions to an award with the Federal Labor Relations Authority (FLRA) under regulations prescribed by the Authority.

SECTION 10 - CLARIFICATION

Disputes between the parties over the application of an arbitrator's award may be returned for clarification. The party seeking clarification shall bear the full cost of such clarification.

ARTICLE 32

ALTERNATIVE DISPUTE RESOLUTION (ADR)

SECTION 1 - INTERPRETATION OF HIGHER LEVEL REGULATION OR POLICY

The parties may attempt to resolve disputes of Agency or higher level regulation or policy by mutually developing a request for a non-binding interpretation, which will be forwarded by the Agency to the office responsible for issuing the regulation or policy in dispute. If agreement cannot be reached on a mutually developed request, the parties may develop separate statements, which will be forwarded simultaneously by the Agency to the office responsible for the interpretation.

SECTION 2 - MEDIATION

Should the parties determine that mediation by a neutral third party would be of benefit, they will jointly contact the FMCS or other selected source. No transcript will be made nor will there be any persons in attendance other than the designated representatives of the parties.

SECTION 3 - EXPEDITED ARBITRATION

A. Both parties support the resolution of disputes where accommodation of concerns can be accomplished most expeditiously. Consequently, the parties agree that expedited third-party resolution processes may provide swift and economical methods for settling disputes and are authorized on a case-by-case basis in lieu of the more formal procedures in Article 31.

B. In those situations where both parties agree to pursue an expedited arbitration process, they may utilize the following procedures. Select an arbitrator from the approved list and advise him or her that an expedited process is being used. Request a bench decision immediately after a hearing or request a decision on the record without a hearing with or without the submission of briefs. The parties may also agree to use any other ADR process that would result in a more expeditious resolution of the dispute.

SECTION 4 - DISPUTE RESOLUTION AGREEMENTS

Any negotiated dispute resolution that impacts the bargaining unit shall be provided to the Union for review and negotiation of appropriate arrangements prior to final approval, if necessary.

ARTICLE 33

OFFICIAL TRAVEL

SECTION 1 - GENERAL

A. The Agency and the DCMA Council recognize that employees may be required to travel from their official duty station on official government business and that employees will be compensated for such travel expenses in accordance with law and existing regulations.

B. An employee who is authorized official travel shall exercise the same care in the incurrence of expenses and accomplishing a mission that a prudent person would use if traveling on personal business. In this connection, excess costs, circuitous routes, delays or luxury accommodations which are unnecessary or unjustified in the performance of a mission, are not considered acceptable as the application of prudence by the employee.

SECTION 2 - TRAVEL TIME

A. Travel shall be scheduled so that the employee shall perform travel during their regularly scheduled work hours. Should this not be possible and the resultant travel meets the criteria of 5 U.S.C. § 5542 or the Fair Labor Standards Act, the employee shall be compensated accordingly. When governing laws and/or Government-wide regulations precludes the payment of overtime, the Agency shall inform the employee of the rationale.

B. When travel on official government business results from an event that cannot be scheduled or controlled administratively, such travel shall be considered hours of work for pay purposes in accordance with law and existing regulations.

SECTION 3 - AUTOMATED TRAVEL SYSTEM

A. Employees will arrange travel and transportation using the automated travel system in effect for the DoD. The Agency will provide training on the use of the system as well as any subsequent updates.

B. Except for emergency situations, as determined by the approving official, temporary duty (TDY) travel orders shall be issued in sufficient time prior to the departure on TDY so as to permit the employee to make orderly arrangements for transportation and obtain an authorized advance for travel expenses.

C. Local travel authorizations that approve the use of a privately owned conveyance (POC) by the employee as being more advantageous to the Government or for the convenience of the Government shall be issued in advance.

SECTION 4 - TRAVEL ADVANCES

Employees will be advanced travel expenses as follows:

1. employees who have a Government Travel Charge Card (GTCC) will follow the requirements of the GTCC program; or
2. for those employees who do not have a GTCC, travel advances will be provided by DFAS at the standard rate (normally 80% of the estimated per diem and miscellaneous expenses and 100% of the estimated transportation costs) provided that the request for the advance is made in sufficient time to permit the advance to be processed. Travel advances will be deposited directly to the employee's designated account by electronic funds transfer (EFT). Normally, travel advances will not be made for travel expenses of less than fifty (50) dollars unless a specific request with supporting justification is made.

SECTION 5 - REIMBURSEMENT FOR OFFICIAL TRAVEL EXPENSES

- A. Upon completion of official travel, the employee shall promptly submit vouchers for reimbursement to the appropriate authorizing official for processing.
- B. If more than one TDY occurs back-to-back, the travel voucher may be submitted within 5 workdays at the end of the TDY assignments. TDY in excess of thirty (30) days will have travel vouchers submitted at the end of each 30-day cycle as well as at the end of the TDY assignment. The employee should notify the credit card company of any anticipated delays in reimbursement from the Agency.
- C. The resolution of financial computations shall be a matter solely between the employee and the Defense Finance and Accounting Service (DFAS). The employee shall be permitted to resolve this matter during their regularly scheduled work hours without loss of pay or charge to leave.
- D. An employee on TDY in excess of 12 hours is entitled to per diem in accordance with the JTR.
- E. Organizations shall define the local commuting area within which the commuting public travels during normal business hours and will be negotiated locally.

SECTION 6 - GOVERNMENT TRAVEL CREDIT CARD PROGRAM (GTCC)

- A. The Travel and Transportation Reform Act of 1998, "TTRA" (Public Law 105-264) imposes the mandatory requirement that most official travel expenses will be charged on the GTCC and that the Agency must have certain procedures in place regarding travel.

B. The GTCC is a Government-issued card for official business only and is not a personal credit card of the employee.

C. Employees will not be required to use their personal credit cards or advance their personal funds for Government business.

D. Credit card debts will be paid by split disbursement with the Government forwarding the amount indicated by the employee on the claim form directly to the vendor. At a minimum, the amount forwarded to the vendor will include the cost of lodging and transportation. Any amount of reimbursement due in excess of that paid to the vendor will be remitted to the employee via electronic funds transfer. Employees will be responsible for paying all travel card charges not covered by the Government's remittance to the vendor under the split disbursement process.

E. In the event of a billing dispute or other disagreement with the terms and conditions governing use of the card, the employee is responsible for notifying the vendor of the nature of the dispute. The employee may request the assistance of the Agency's local travel card program coordinator in filing a dispute. Employees are obligated to cooperate fully in pursuing resolution to disputes.

F. The employee will not be personally bound by the terms and conditions of any vendor agreement between the Agency and the vendor. The employee is responsible for, and bound by, the terms and conditions of his or her agreement with the credit card company with respect to the use of the GTCC.

G. Employees are subject to discipline or other appropriate measures to ensure compliance with the proper use of the credit card.

H. Employees will be assigned an account either as a restricted or standard account. Restricted accounts generally have lower credit limits and are subject to more restrictions on their use. Circumstances wherein a restricted account may be established include, but are not limited to:

1. cases where the cardholder has instructed the vendor not to obtain credit reports; and

2. cases where the program coordinator has requested or approved a restricted card.

I. Employees who are expected to travel on official temporary duty more than twice a year must apply for a GTCC. Employees who secure this card are eligible for travel advances in accordance with the policies of the GTCC program and the JTR. Employees who are not eligible for a GTCC or whose use of the

card has been revoked, may be authorized travel advances when requested in accordance with applicable regulations.

J. There will be no adverse action against any employee who is not eligible to obtain a GTCC.

K. All information related to the employee government travel card shall be subject to requirements of the Privacy Act.

L. The Agency will provide training to all employees on the use of the GTCC as well as on any subsequent updates to the program. This training will include the potential impact on a cardholder's credit rating.

M. The Agency shall inform each employee considering applying for a GTCC that a credit check will be performed. Employees have the option to decline the credit check. If the employee declines the credit check, only a restricted card will be issued. Restricted travel cards are limited to \$2,000 but may have the value raised with appropriate Agency approval to meet specific mission requirements. Should the employee opt to receive the restricted credit card, he/she will self certify to their creditworthiness.

N. When TDY expenses are anticipated to exceed the employee's credit card limit, the employee may request that the Agency make appropriate arrangements to increase the credit card limit as necessary to meet mission requirements.

O. Upon request of the employee to the supervisor, the travel card issuing agent or Agency Program Coordinator (APC) may authorize increases in ATM cash withdrawal limits as needed to meet mission requirements.

P. Any fees incurred by the employee as a result of a cancellation/change of TDY, either by the direction of the Agency or as the result of an approved request from the employee, will be reimbursed to the employee. Employees are required to notify the approving official as soon as possible of any circumstance that may warrant the cancellation/change of TDY.

Q. The employee may pay his or her balance by mail, by phone or via the internet. Regular payment fees are not reimbursable.

R. Employees who file timely travel claims upon completion of travel (defined by the Financial Management Regulation Vol. 9, Chapter 8, Section 080501 to be within 5 working days of return to the Permanent Duty Station) but fail to receive the allowable reimbursement in a timely manner (after 30 days of receipt of the travel claim) and who incur late fees in such cases from the card issuer will be authorized to submit a supplemental travel voucher to the servicing travel pay office for the reimbursement of the late fees assessed. Employees will also be entitled to the appropriate amount of interest authorized by the Prompt Payment

Act. This reimbursement provision also applies when an employee cannot file a timely claim due to actions of the Agency (e.g., delays in processing vouchers or issuing travel orders.)

S. Outstanding Indebtedness and Delinquency Management

1. In the event an employee's account becomes 60 days delinquent, the Agency will contact the employee upon receipt of the 60 day notice. Employees will be contacted by the Agency Program Coordinator (APC) via email (when available) and advised that the employee should contact the APC as soon as possible to discuss an urgent matter related to their travel card. When email is not available, the Agency will advise the employee, via telephone or in writing of the delinquency. Written notices or emails will provide the name and phone number of the APC or other official the employee should contact to discuss the matter.

2. Prior to an employee becoming subject to salary offset, the employee will be notified in writing, of his/her due process rights under the Debt Collection Act of 1982. The Agency will provide such employees with the procedures used for salary offset and will respond to questions from the employee regarding the process. In the event of an erroneous salary offset, the Agency will provide assistance to the employee to resolve the matter, including speaking with and writing to the servicing travel pay office on the employee's behalf. For purposes of this paragraph, e-mail is a suitable means of communicating in writing. The employee will be provided a copy of the written communication.

3. When mission-critical travel precludes filing of travel vouchers, including interim vouchers, and thereby precludes prompt payment of travel charge card bills, the APC is authorized, with the approval of the cardholder's supervisor, to advise the card contractor and ensure that the cardholder's account is designated by the card contractor as mission critical status. Mission-critical travel is defined as travel performed by DOD personnel under competent orders and performing duties that, through no fault of their own, prevents the traveler from filing travel vouchers and paying the travel card bills. Mission critical status must be reflected on the travel orders in order for the traveler to be reimbursed for any late charges incurred while in this status. An individual charge card account must have been placed in mission critical status before the account was suspended. Should there be outstanding bills, the bills shall be settled within 45 days of removal from this status. The APC should work with the traveler and supervisor to ensure interim vouchers can be processed. Expenses incurred prior to a deployment should be processed for payment through split disbursement before the individual departs for his/her assignment.

4. While in a long-term travel status, the traveler shall file interim vouchers every 30 days, with split disbursement as the preferred means of settlement.

T. In the event of the death of the cardholder, the Agency will notify the cardholder's family of any possible death benefits associated with the card.

SECTION 7 - TEMPORARY DUTY ASSIGNMENTS

In accordance with the JTR, when the TDY assignment requires the employee to be away from their permanent duty station for more than 30 days and the assignment does not require the employee to remain at the place of TDY on non-workdays:

1. the approving official may direct, in the TDY orders, that the employee return to their permanent duty station for the non-workdays provided that the cost to the Government for round trip transportation and per diem or actual expense allowance is less than the per diem or actual expense allowance that would have been payable had the employee remained at the place of TDY and the employee's availability for duty on the scheduled TDY workdays is not affected adversely; or

2. the employee may voluntarily return to their permanent duty station provided that their availability for duty on the scheduled TDY workdays is not affected adversely. In the instances of voluntary return, the maximum reimbursement to the employee for the round trip shall not exceed the per diem or actual expense allowance to which the employee would have been entitled had they remained at the place of TDY.

SECTION 8 - MODES OF TRANSPORTATION

A. In accordance with the JTR, the approving official shall determine the mode of transportation which is most advantageous to the Government. In selecting the particular method of transportation to be used, the approving official shall consider the nature and duties of the employee requiring travel, the total cost to the Government, the total distance of travel, the number of points to be visited and energy conservation.

B. If an approving official determines that a vehicle is required for travel, a Government-owned or leased vehicle shall be used whenever it is reasonably available. The use of POC may be authorized only if it is more advantageous to the Government or for the convenience of the Government. The Agency will not direct the use of a POC by an employee as either a driver or as a passenger.

C. When an employee elects to travel by a method of transportation other than that officially approved, reimbursement to the employee shall be limited to the cost on a constructive basis that would have been incurred by the Government for the officially approved mode of transportation or the actual cost incurred by the employee, whichever is less.

SECTION 9 - AUTHORIZED CALLS WHILE ON TDY

Employees traveling for more than one night on Government business in CONUS may request a Government telephone calling card to be utilized for official business calls and authorized personal calls. Employees may use the Government telephone calling card for authorized personal calls not to exceed 20 minutes per day. The Government telephone calling card is the only approved means for authorized personal calls.

SECTION 10 - PERSONAL ACCOMMODATIONS

Employees on TDY travel in CONUS will be authorized private sleeping and bathroom facilities. In circumstances beyond the Agency's control, employees may be required to utilize shared accommodations and/or facilities.

SECTION 11 - TRANSPORTATION

The Agency will authorize appropriate transportation to employees when on TDY in accordance with the JTR.

SECTION 12 - TRAVEL RELATED SAFETY AND HEALTH

A. Employees will report any problems associated with Government vehicles for further investigation. The Agency will investigate and take appropriate action. If an employee reasonably believes a vehicle is unsafe for operation, the employee may elect to not utilize that vehicle.

B. Government vehicles reported and verified as unsafe for operation shall not be issued for further use until repaired.

C. Employees are required to report accidents and mishaps that occur while TDY as soon as possible.

D. In cases of unanticipated absences, the employee is responsible for contacting the TDY location point of contact and the employee's supervisor. If the employee fails to report for duty, the Agency TDY location point of contact will contact the employee's supervisor who will then attempt to account for the missing employee.

E. Employees using GOVs or POCs to perform official travel may request a cell phone or other communication device if available. This cell phone or other communication device will be used for official business and to notify management and family of an emergency condition or situation.

F. When an employee is officially authorized to use their privately owned vehicle for the convenience of the Government and that vehicle breaks down or is

otherwise inoperative, the employee shall be in a duty status in connection with emergency repairs to the vehicle if the breakdown occurs while the employee is in an official travel status. In such situations, the employee will, as soon as practicable, provide the supervisor with an estimate of the situation and obtain appropriate instructions.

ARTICLE 34

TRAVEL GAIN-SHARING AWARDS

SECTION 1 - GENERAL

A. The Government Employees Incentive Awards Act, 5 U.S.C. § 4501-4507, authorizes an Agency to pay a cash award for efficiency or economy. The Agency will begin a program that rewards employees who save the Agency money from the use of less expensive lodging while on TDY.

B. Employee participation in this program is voluntary.

SECTION 2 - TYPES OF COSTS COVERED

Only lodging expenses associated with TDY will be covered under this program.

SECTION 3 - LODGING SAVINGS

A. The amount of the award for the employee will be 50 percent of the savings on lodging expenses. Taxes will be withheld (Federal, State, local, FICA) on the award amount.

B. In most cases, the cumulative savings to the Agency must be at least \$400 before the employee is eligible to receive an award. Awards will be processed prior to reaching the minimum dollar limit when:

1. the employee leaves the Agency; or
2. it is the end of the fiscal year.

C. Lodging savings may occur:

1. when employees stay with relatives or friends while on official travel and avoid lodging expenses. These employees will receive one-half of the lodging rate for the locality toward the travel savings award;

2. when savings result from shared accommodations; or

3. when savings result from staying at a hotel with rates less than the government contract rates for the per diem.

D. Lodging savings will not occur:

1. when an employee is on travel where lodging was prepaid or prearranged through contractual arrangements with the hotel except if savings result from shared accommodations;
2. for lodging savings at hotels identified under the General Services Administration Federal Premier Lodging Program, unless accommodations are shared with another employee on travel;
3. for lodging costs incurred on personal time such as annual leave during official travel or any other type of personal preference travel used in conjunction with official travel; or
4. when lodging for extended TDY has been contracted by the employee's organization through a lease or purchase order.

E. Employees should not incur additional expenses in transportation or other miscellaneous costs in effort to reduce lodging expenses. Employees who incur additional transportation expenses must have those expenses deducted from their lodging savings. Examples of excess transportation costs include, but are not limited to, renting a vehicle (when one would not normally be rented) at a TDY site to travel to a place of free or reduced lodging; when driving a privately owned vehicle (POV) more miles than would normally be traveled to/from the TDY site to obtain free or reduced lodging; or where a taxi fare is incurred which would not normally have been incurred to obtain free or reduced lodging. Additional duty time for travel is considered an additional expense. The approving official must determine if other transportation expenses incurred were excessive.

F. All employees must utilize hotels/motels that meet the requirements of the Hotel and Motel Fire Safety Act of 1990. The list may be accessed through the Internet at <http://www.usfa.fema.gov/hotel/index/htm>.

G. All TDY travel with lodging expenses, foreign and domestic, will be covered under this program. PCS travel is excluded from the gainsharing program.

H. The first 30 days of extended TDY travel (e.g., a detail of more than 30 days where a reduced per diem amount is required) qualify for gainsharing, except when lodging has been contracted by an employee's organization through a lease or purchase order.

SECTION 4 - PILOT PROGRAM

The Agency will conduct a one year pilot study to evaluate the efficacy of the gainsharing program. At that time, the program may be expanded to include additional areas should further cost saving potential be identified. Prior to any implementation, the Agency, in coordination with the Union, will publish guidance

and instructions. The pilot will begin not later than 6 months after signing of the Agreement.

ARTICLE 35

TRANSPORTATION SUBSIDY

SECTION 1 - POLICY

The Agency will administer the Transportation Incentive Program in accordance with Executive Order 13150 of April 21, 2000 and DoD Memorandum dated 13 October 2000 and any subsequent amendments thereto.

SECTION 2 - PROGRAM

A. National Capital Region (NCR) - The Agency must provide personnel vouchers or similar items that may be exchanged only for transit passes that do not exceed commuting costs up to the maximum allowed by the Internal Revenue Code (IRC).

B. Outside the National Capital Region - The Agency must offer personnel a transportation incentive program identical to the program offered to personnel inside the NCR except where vouchers are not readily available. If vouchers are not readily available, the Agency shall implement a cash reimbursement program to reimburse its employees for expenses incurred or paid by them for transportation via mass transit or van pools.

SECTION 3 - UNUSED VOUCHERS

If an employee purchases their pass/voucher in good faith to use for work but is unable to use the pass/voucher due to events that were unforeseen at the time of purchase, i.e., illness, TDY assignments, weather, etc., the employee will turn in the unused pass/voucher and the authorizing official will approve the request in the same good faith and allow for reimbursement.

SECTION 4 - REIMBURSEMENT

Reimbursement will be claimed in quarterly increments for actual costs incurred up to the maximum allowable amount via SF 1164, Claim for Reimbursement for Expenditures On Official Business. If the request for reimbursement is denied the employee may file a grievance in accordance with Article 30.

ARTICLE 36

**DEPLOYABLE EMPLOYEES
CONTINGENCY CAS AND EMERGENCY ESSENTIAL (EE) POSITIONS**

The Union supports and encourages the Agency's use of volunteers for deployments.

SECTION 1 - PAY AND ALLOWANCES DURING DEPLOYMENTS

Employees shall receive pay and allowances in accordance with law and regulation.

SECTION 2 - TRAVEL

A. Employees shall be given appropriate quarters while at a Contingency Remote Site (CRS)/ Basic Contingency Operations Training (BCOT) in accordance with the host component's regulations and /or policy prior to and after deployment. If government quarters are not available, commercial lodging and per diem shall be authorized.

B. Employees shall travel on conveyances in accordance with applicable laws and travel regulations.

C. Employees may be authorized to take leave or layover a weekend during their return at the end of their deployment.

D. Employees shall not be required to travel outside of normal duty hours or on weekends whenever possible. If travel outside of normal duty hours or on weekends is required, the employee shall be compensated in accordance with governing law or regulation. Rest stops will be provided in accordance with applicable laws and regulations.

E. Employees shall be provided government transportation, but in those special circumstances when the government transportation is inappropriate, the employee shall be reimbursed for in-and-around transportation (taxi, bus, or rail) in accordance with the travel regulation during pre and post deployment.

SECTION 3 - HOUSING WHILE DEPLOYED

Employees shall be authorized lodging appropriate to their grade, per diem and other entitlements, as appropriate to the threat level and location to which they are deployed.

SECTION 4 - EQUIPMENT AND TRAINING

All deployed individuals will be entitled to protective equipment and training commensurate with the anticipated threat and theater policy.

SECTION 5 - AWARDS

A. Employees shall be eligible to earn awards in accordance with the DCMA Employee Awards and Recognition Program.

B. Civilian employees may be granted up to a 40 hour time-off award after deployment.

SECTION 6 - IMMUNIZATIONS/MEDICATIONS

Employees shall be informed of the immunizations/medications to be required in the theater(s) to which they may be deployed. This information will be posted on the Agency's web page for review at any time. This web site will also provide links to current information available on the potential side effects of any mandatory immunizations/medications.

SECTION 7 - REPRESENTATION

A. In accordance with Article 1, bargaining unit employees will continue to be represented by AFGE while deployed. The Agency will provide the DCMA Council with a copy of the BCOT briefing when updates are made.

B. Changes in employment conditions of bargaining unit employees deployed require notification to the Union and an opportunity to bargain. During a contingency or emergency, management officials may take actions requiring an immediate response even if conditions of employment of bargaining unit members are affected. In such cases, the Union should be advised of the immediate changes being made and offered an opportunity for post-implementation bargaining at the earliest possible date. Any agreement reached during this bargaining should be applied retroactively, if practical.

SECTION 8 - REOPENER

Should the Agency find it necessary to designate all acquisition positions as Emergency Essential, the Union shall have the right to renegotiate this article.

SECTION 9 - INVOLUNTARY DEPLOYMENT

A. Should the Agency determine it is necessary to deploy bargaining unit employees involuntarily, TDY in the employee's current position will be considered before reassignments or details to EE positions.

B. Involuntary TDY assignments will be rotated among equally qualified (based on knowledge, skills, and abilities) and available employees with requisite skills in inverse order of seniority, based on SCD.

C. Reassignments and details for involuntary deployments will be implemented in accordance with the criteria in Article 40.

D. Management will consider personal hardships when deploying bargaining unit employees.

ARTICLE 37

HOURS OF DUTY

SECTION 1 - GENERAL

The Agency and the Union agree that within the parameters stipulated in Section 2 and 3, the establishment of work schedules and the administration of this Article are matters for negotiation at the Agency level.

SECTION 2 - DEFINITIONS

- A. Administrative Work Week: Normally Monday through Friday.
- B. Alternative Work Schedules: Both flexible work schedules and compressed work schedules.
- C. Basic Work Requirement (BWR): The number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off or time off as an award.
- D. Compressed Work Schedule:
 - 1. In the case of a full-time employee, an 80-hour biweekly BWR which is scheduled for less than 10 workdays and, in the case of a part-time employee, a biweekly BWR of less than 80 hours that is scheduled for less than 10 workdays and that may require the employee to work more than 8 hours in a day. (See 5 U.S.C. § 6121(5)).
 - 2. Compressed work schedules are always fixed schedules. Examples are:
 - a. 4/10: Employees work four (4) ten-hour days and schedule one (1) day per week off.
 - b. 5/4/9: The schedule covers a two-week period where the employee works eight (8) nine-hour days and one (1) eight-hour day with one day off scheduled during that biweekly pay period.
- E. Core Hours: Hours of duty between 0830 -1100 and 1300 -1430 when the employee must be available for duty. Core hours are only applicable to the flexible schedule.

F. Credit Hours: The hours within a flexible work schedule that an employee elects to work in excess of an employee's BWR so as to vary the length of a workweek or workday.

G. Duty Hours: Hours that employees must work between 0600-1800 with a mandatory lunch period of no less than 30 minutes.

H. Flexible Hours: The times during the workday, workweek or pay period within the tour of duty during which an employee covered by a flexible work schedule may choose to vary his or her times of arrival to and departure from the work-site consistent with the duties and requirements of the position.

I. Flexible Work Schedules: Consists of a flexible band of hours during which an employee may vary his or her arrival and departure time on a daily basis, during which the employee must be present for work in accordance with 5 U.S.C. 6122, that:

1. in the case of a full-time employee, has an 80-hour biweekly BWR that allows an employee to determine his or her own schedule within the limits set by the Agency; and

2. in the case of a part-time employee, has a biweekly basic work requirement of less than 80 hours that allows an employee to determine his or her own schedule within the limits set by the Agency.

J. Maxi-Flex Work Schedule: A type of flexible work schedule that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization.

K. Standard Work Schedules: Eight hours a day, five days a week, with a set arrival and departure time.

L. Tour of Duty: The limits set by the Agency within which an employee must complete his or her BWR under a flexible work schedule. Under a compressed work schedule or other fixed schedule, tour of duty is synonymous with BWR.

M. Time Accounting Method: The Agency-wide method for employees recording and reporting their time will be via the PLAS system or any subsequent advance in technology. No other time accounting method is authorized. All employees are required to record and report all leave used as well as all compensatory time and overtime earned and used. Additionally, employees on flexible schedules will record all earned and used credit hours per pay cycle.

N. Full-Time Work Schedule: A schedule that requires employees to work a prearranged scheduled tour of duty that is usually 40 hours per week.

O. Part-Time Work Schedule: A schedule that requires employees to work a prearranged scheduled tour of duty for a specific number of hours, usually between 16 and 32 hours per week.

P. Intermittent Employee: One who works on an irregular basis for which there is no prearranged tour of duty.

Q. Rotating Tour of Duty: A regularly scheduled tour that periodically requires service on a different shift.

R. Seasonal Employee: An employee works on an annual recurring basis for a period of less than 12 months each year. He/she may have full-time, part time or intermittent work schedules during his or her work season.

S. On-Call Employee: One who works when needed during periods of heavy workload with expected cumulative service of at least 6 months in a pay status each year. He/she may have either a full time or a part time schedule when in a pay status.

SECTION 3 - PROCEDURES FOR ESTABLISHING STANDARD WORK SCHEDULES

A. Initially, employees will submit their proposed work schedule to their supervisor or designee. The supervisor or designee will review and approve/disapprove the proposed schedule in writing within a reasonable amount of time.

B. Supervisors may adjust a standard work schedule to meet mission needs or for performance or conduct problems. The employee will receive a reasonable amount of notice of the change and the reason for it.

C. Any unresolved issues can be pursued through normal grievance procedures.

D. Consistent with regulations, unless a manager finds that it would adversely impact his/her organization in carrying out its function or would substantially increase operating costs, the following rules apply in initially establishing or changing standard work schedules within an organization:

1. assign tours of duty at least one week in advance;
2. schedule work on 5 days, Monday through Friday, when possible, with 2 consecutive days off;

3. set consistent working hours when possible, anywhere between the hours of 6 am and 6 pm;
4. workday may not exceed 8 hours (without incurring overtime entitlements) unless the employee is covered by an alternative work schedule;
5. scheduled lunch breaks under a standard work schedule may not exceed 1 hour. During this period, an employee is off duty and in a nonpay status. If he/she is required to perform duties (that is work) during a lunch break, the employee is entitled to pay for that period; and
6. basic workweek cannot be rescheduled to avoid paying holiday pay.

SECTION 4 - PROCEDURES FOR ESTABLISHING ALTERNATIVE WORK SCHEDULES

- A. Initially, employees will submit their proposed work schedule to their supervisor or designee. Election of a flexible or compressed work schedule is contingent upon the ability to ensure mission operations. The supervisor or designee will review and approve/disapprove the proposed schedule in writing within a reasonable amount of time.
- B. Supervisors may take an employee off a flexible or compressed work schedule to meet mission needs or for performance or conduct problems. The employee will receive a reasonable amount of notice of the change and the reason for it.
- C. If more employees request the same work schedule or day(s) off than can be accommodated, application of seniority based on SCD will determine which employees will have the work schedules and/or day off.
- D. Scheduled lunch breaks under a flexible work schedule may not exceed 2 hours, and under a compressed work schedule may not exceed 1 hour. During this period an employee is off duty and in a nonpay status. If he/she is required to perform duties (that is work) during a lunch break, the employee is entitled to pay for that period.
- E. Any unresolved issues can be pursued through normal grievance procedures.
- F. The basic workweek cannot be rescheduled to avoid paying holiday pay.

SECTION 5 - PROCEDURES FOR ESTABLISHING SPECIAL TEMPORARY WORK SCHEDULES

A. Special Tour of Duty for Educational Purposes: Managers may establish work schedules that allow an employee to take courses at a college, university or educational institution. The courses taken need not be directly related to the work of DCMA nor be considered training under law, but they should contribute to making the employee a more effective worker in DCMA. Under these circumstances, rescheduling the customary workweek is permitted when it does not significantly interfere with the employee completing work assignments. The employee is still responsible for a full 40 hour work week. Premium pay may not be paid for those duty hours that are rescheduled.

B. Time on Official Travel: To the maximum extent possible, managers should schedule travel within an employee's regularly scheduled workweek. In scheduling temporary duty travel for employees, managers and supervisors should comply with this guideline. Compensatory time for travel will be earned in accordance with governing laws and regulations.

C. Temporary Duty: When an employee covered by a FWS is assigned to a temporary duty station using another schedule, either traditional or AWS, the Agency may allow the employee to continue to use the schedule used at his or her permanent work site if suitable or require the employee to change the schedule to conform to operations at the temporary work site.

SECTION 6 - CREDIT HOURS

Credit hours may be worked only by employees covered by a FWS. Employees may request to work credit hours subject to supervisory approval. When employees use accrued credit hours, such hours are counted as a part of the basic work requirement for the pay period to which they are applied. Employees are entitled to their rate of basic pay for credit hours, and credit hours may not be used by employees to create or increase entitlement to overtime pay.

Employees may earn no more than 4 credit hours daily during the administrative work week. In accordance with applicable law, a full-time employee may only carry up to 24 hours from a biweekly pay period to a succeeding biweekly pay period. When an employee is no longer covered by a flexible work schedule, he/she must be paid for accumulated credit hours at his/her current rate of pay. An employee may not be compensated for credit hours for any other reason. Payment for accumulated credit hours is limited to a maximum of 24 hours for a full-time employee.

SECTION 7 - HOLIDAYS

A. General

Under 5 U.S.C. Chapter 61 and 5 CFR Part 610, the number of hours an employee is entitled to for holiday leave is treated differently for employees on flexible schedules and compressed schedules.

1. Flexible Work Schedules – An employee on a flexible schedule who is relieved or prevented from working on a day designated as a holiday:

a. is entitled to eight hours of basic pay for that day regardless of the individual tour (or in the case of a part-time employee, the number of hours designated on their Notification of Personnel Action [SF-50] and in accordance with applicable laws and regulations);

b. may take leave for the additional hour or hours necessary to complete 80 hours BWR for the pay period; or

c. with supervisory approval, may work the additional hour(s) to make up the difference.

2. Compressed Work Schedules

a. an employee on a compressed work schedule who is relieved or prevented from working on a day designated as a holiday is entitled to basic pay for the number of hours that they were scheduled to work on that day, not to exceed 10 hours.

b. when a holiday falls on a day that an employee is regularly scheduled to work, the scheduled workday is the employee's holiday. When a holiday falls on a non-workday, the following applies:

(1) if the holiday falls on a Sunday, the first regularly scheduled workday following the Sunday holiday is the employee's "in lieu of" holiday; or

(2) if the holiday is not a Sunday, the last regularly scheduled workday preceding the holiday is the employee's "in lieu of" holiday.

B. Part Time Employees

1. Part-time employees are not entitled to an "in lieu of" day for a holiday that falls on an employee's day off. [5 CFR 610.405(i)]

2. Part-time employees receive their regular pay for holidays falling on their regularly scheduled workdays. When an installation is closed for an "in lieu of" holiday that falls on a part-time employee's regularly scheduled workday and the employee is prevented from working on that day, the Agency will grant the employee administrative leave for the hours scheduled to be worked on that day.

An employee who is in a pay status either immediately preceding or succeeding a holiday is entitled to pay for the holiday.

ARTICLE 38

OVERTIME ASSIGNMENTS

SECTION 1 - GENERAL

A. As a general rule, overtime work means each hour of work in excess of the employee's normal tour of duty in an administrative work week that is officially ordered and approved by management and performed by an employee. It is work that is not part of an employee's regularly scheduled administrative workweek and for which an employee must be compensated.

B. Payment for overtime worked or earning compensatory time in lieu thereof, shall be in accordance with applicable laws and Government-wide regulations.

SECTION 2 - SCHEDULING AND APPROVAL OF OVERTIME

A. Whenever possible and as determined by the approving official, overtime work shall be scheduled in advance of and approved in writing (email is acceptable) prior to the date on which the overtime is to be worked. Where circumstances preclude the advance scheduling, overtime work may be approved orally and the oral approval reduced to writing prior to the submission of the Time and Attendance Report.

B. To the maximum extent possible, overtime work shall be scheduled and approved in time periods of 15 minutes or multiples thereof.

C. In assignment of overtime, the Agency agrees to provide the employee with advance notice whenever possible. Any employee designated to work overtime on Saturday or Sunday normally will be notified by noon Thursday. When overtime is to be performed on a holiday, normally two (2) workdays advance notice will be given to the employee.

SECTION 3 - OVERTIME ROSTERS

When necessary, overtime rosters may be established at the level of the immediate supervisor prior to overtime being worked as follows:

1. if a roster is established, all employees performing the same or similar duties on a regular basis are to be included on the same overtime roster, and are to be listed in order of their service computation date (unadjusted, from most to least senior). The overtime rosters will be made available to the employees on the roster;

2. rosters for each job category will be maintained and labeled "voluntary overtime" and another for each job category will be maintained and labeled "mandatory overtime". If needed, another will be maintained and labeled "call- back overtime;

3. employees assigned (either on a permanent or a temporary basis) to a supervisor's work unit after the rosters are established will be placed at the bottom of the roster; and

4. if an employee is detailed or otherwise temporarily reassigned out of a supervisor's work unit, the employee shall not be considered available for overtime assignment under the losing supervisor's overtime roster for the duration of such temporary assignment.

SECTION 4 - DISTRIBUTION

A. To the maximum extent possible, overtime assignments to employees within an organizational element shall be on a fair and equitable basis. A rotational system will be established whereby every fully qualified employee, including detailed-in personnel within a team, will be given the opportunity to work overtime assignments.

1. Overtime assignments shall not be made as a reward or punishment.

2. The use of official time during a pay period shall not be sufficient cause to exclude an employee from working overtime.

3. Refusal to work voluntary overtime shall not reflect unfavorably on an employee's performance appraisal or the option to work future overtime.

B. When overtime is required and familiarity with the project or particular expertise are required for continuity or efficiency, employees normally assigned to the duties will perform the overtime work.

C. When particular expertise or familiarity with the project are not required for the performance of an overtime assignment, supervisors will solicit volunteers for such overtime assignments by announcing the particulars of the overtime assignment to the employees in the needed job category who are on duty at the time.

1. If more employees volunteer than are needed, the supervisor shall go to the voluntary overtime roster, as provided in Section 3 above, and assign the overtime to the volunteer (or volunteers if more than one employee is needed) beginning with the name immediately below the last person on the roster to have worked a voluntary overtime assignment.

2. If there are insufficient volunteers and employees have to be directed to work overtime assignments, the supervisor shall go to the “mandatory overtime roster”, as provided in Section 3 above, and assign the overtime to the employee (or employees) beginning with the employee immediately below the last person on the “mandatory overtime roster” to have worked a mandatory overtime assignment. The supervisor will notify the Union as soon as possible when using a “mandatory overtime roster”.

D. Trainees may be considered for overtime assignments provided they are fully qualified to perform the necessary duties. Those employees on detail will be considered for overtime assignments in their detailed section/unit/work area provided they are fully qualified to perform the necessary duties.

SECTION 5 - CALL-BACK

A. "Call-back overtime" is defined as irregular or occasional overtime work performed by an employee for which they are required to return to the place of employment to perform the work or on a day when work was not scheduled for them.

B. Employees shall be provided advance notice, whenever possible of the requirement to perform callback overtime work.

C. An employee who is called back to work at a time outside of and unconnected with his or her scheduled hours of work within the basic work week will receive a minimum of 2 hours of overtime pay.

D. Unless a “call-back overtime” assignment requires special skill, familiarity with the work or quick responses, call-back overtime will be rotated among employees pursuant to Section 4 C.

E. When it is first determined that call-back assignments are necessary, the official responsible for call-back will use the call-back roster and make the assignment starting with the first name on the roster that he or she is able to contact. As successive call-back assignments are necessary, the official responsible for call-back will commence calling or making assignments with the name immediately below that person who last worked a call-back assignment and make the assignment to the first employee or employees that he or she is able to contact.

SECTION 6 - TIME SPENT ON STANDBY DUTY AND OR IN AN ON-CALL STATUS

A. On-call status is defined as those occasional situations when an employee is notified that they are subject to call during a specified period of time outside their normal tour of duty. Overtime shall be approved only for the specified period of

the on-call condition which qualifies as “hours of work” as defined by the governing laws and regulations.

B. An employee will be considered off duty and time spent in an on-call status shall not be considered hours of work if:

1. the employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or

2. the employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

C. Standby Duty - an employee is on duty, and time spent on standby duty is hours of work if, for work-related reasons, the employee is restricted by official order to a designated post of duty and is assigned to be in a state of readiness to perform work with limitations on the employee’s activities so substantial that the employee cannot use the time effectively for his or her own purposes. A finding that an employee’s activities are substantially limited may not be based on the fact that an employee is subject to restrictions necessary to ensure that the employee will be able to perform his or her duties and responsibilities, such as restrictions on alcohol consumption or use of certain medications. An employee is not considered restricted for work-related reasons if, for example, the employee remains at the post of duty voluntarily or if the restriction is a natural result of geographic isolation or the fact that the employee resides on the Agency’s premises.

D. Compensation for time spent in On-Call Status and Standby Duty will be determined in accordance with applicable laws and regulations.

SECTION 7 - CHANGES TO EMPLOYEE’S WORK SCHEDULES

An employee’s work schedule may be changed to meet mission/operational needs. An employee’s regularly scheduled workday or workweek shall not be changed solely to avoid payment of overtime or earning of compensatory time.

SECTION 8 - COMPENSATORY TIME

A. FLSA Non-Exempt employees may elect to earn compensatory time in lieu of being paid overtime.

B. The employee may request that accrued compensatory time be charged in lieu of annual leave, sick leave, or leave without pay.

C. Compensatory time earned by employees must be used within 26 pay periods. At the end of twenty-six (26) pay periods, compensatory time not used will be paid to the employee at the overtime rate in effect at the time it was earned.

SECTION 9 - UNCOMPENSATED WORK

A. The Agency will not permit performance of work without compensation.

B. Supervisors shall not direct, request, suggest, authorize or take any action which implies approval for employees to perform gratuitous services.

ARTICLE 39

TELEWORK

SECTION 1 - PURPOSE

A. The Agency and the DCMA Council jointly recognize the mutual benefits of a flexible workplace program to the Agency and its employees.

B. The parties also agree that balancing work and family responsibilities, assistance to disabled employees, and meeting environmental, financial, and commuting concerns are among its advantages. The DCMA Telework Program will:

1. promote the Agency as an employer of choice;
2. improve the recruitment and retention of high-quality employees through enhancements to employees' quality of life assisting the Agency in achieving its Human Capital Goals;
3. demonstrate support of "family-friendly" initiatives;
4. enhance Agency's efforts to employ and accommodate people with disabilities;
5. accommodate employee needs for convalescing from short term injuries or illnesses;
6. reduce traffic congestion and decrease energy consumption and pollution emissions;
7. reduce office space, parking facilities and transportation costs, including costs associated with payment of the transportation subsidy; and
8. complement Continuity of Operations Program (COOP) plans.

C. Time otherwise spent commuting may be spent with family or in other activities, thus giving employees more options to balance work and personal demands, resulting in improved morale. It also improves the quality of work life by providing a distraction-free and stress-free environment.

D. In recognizing these benefits, successful implementation of this program requires leadership and support from both parties. The parties also acknowledge the needs of the Agency to accomplish its mission.

E. Applicable law, government wide rules and regulations and this Article will govern the DCMA telework program. Any telework program established will be a voluntary program that permits employees to work at home or at other approved sites.

SECTION 2 - DEFINITIONS

Ad hoc telework: approved telework performed on an occasional or irregular basis.

Alternative worksite: a place away from the traditional worksite that has been approved for the performance of officially assigned duties and as appropriately negotiated in accordance with this agreement. It may be an employee's home, a telework center, or other approved worksite including a facility established by state, local, or county governments or private sector organizations for use by teleworkers. It also includes designated space in another organization, Agency work site or contractor facility that is closer to the employee's residence.

Designated Approving Authority (DAA): responsible management official who approves use of personal computers and equipment for telework purposes. Within DCMA, the DAA is the Executive Director, Information Technology (IT) and Chief Information Officer or designee.

Regular and recurring telework: an approved work schedule where eligible employees regularly work at least one day per biweekly pay period at an alternative worksite.

Telework: any arrangement in which an employee performs officially assigned duties at an alternative worksite on either a regular and recurring, or on an ad hoc basis (not including while on official travel).

Telework agreement: a written agreement, completed and signed by an employee and authorized official(s) in their organization, that outlines the terms and conditions of the telework arrangement.

Traditional worksite: the location where an employee would work absent a telework arrangement.

Work-at-home telework: an approved arrangement whereby an employee performs official duties in a specified work or office area(s) of his or her home.

SECTION 3 - PROCEDURE

Employee participation in the telework program is strictly voluntary.

A. Eligibility Requirements

1. The parties recognize that some tasks and functions are generally suited for telework and include, but are not limited to;

- a. thinking and writing;
- b. policy development;
- c. research;
- d. analysis;
- e. report writing;
- f. telephone-intensive tasks;
- g. computer-oriented tasks; or
- h. data processing

2. Employee characteristics indicating suitability for telework:

- a. dependability and the ability to handle responsibility;
- b. proven record of high personal motivation;
- c. ability to prioritize work effectively and utilize good time management skills;
- d. proven or expected performance rating of Fully Successful;
- e. is not in a probationary status, not to exceed the first year of service in the event the employee serves a probationary period longer than that;
- f. does not have a disciplinary action in their OPF during the prior 12 month period from the date they requested to telework. This provision may be waived by the telework approving official; and
- g. is not under a letter of leave restriction. This provision may be waived by the telework approving official.

3. The parties recognize that some positions are not generally eligible for telework. These positions:

- a. require the employee to have daily face-to-face contact with the supervisor, colleagues, clients or the general public in order to perform his or her job effectively, which cannot otherwise be achieved via email, telephone, fax or similar electronic means;
- b. require daily access to classified information; or

c. are trainee or entry-level positions.

B. Approval

1. Prior to commencement of regular and recurring telework arrangements, the supervisor and the employee must complete and sign a Telework Agreement that outlines the terms and conditions of the arrangements. The purpose of the Telework Agreement is to prescribe the approved alternative worksite, telework scheduling and to address personnel and security issues. If the agreement is for work from home, the employee must designate one area of the home as the official workstation and must sign a safety checklist that proclaims the home safe. If the agreement is for a telecenter or other commercial location, the supervisor and the employee must complete the appropriate Telecommuting Facility Reimbursement Information Sheet, or other form required by the telecenter.

2. Prior to initiating ad hoc teleworking, the employee must complete and sign the safety checklist. The employee must obtain approval from his or her supervisor prior to each ad hoc telework.

C. Disapproval

1. If the supervisor disapproves the request, he or she will provide written notification to the employee specifying the reason(s) for disapproval within a reasonable period of time. Supervisory disapprovals are justifiable when the employee's job performance is below Fully Successful, the specific duties can only be performed at the official duty station or the full eligibility criteria of the telework program have not been met.

2. An employee's Union representative status or participation in Union activity will not be utilized in denying employees participation in telework or in terminating their participation from such. However, for purposes of telework, Union representational duties are not considered official agency duties and cannot be performed while the employee is in a telework status. See 68 FLRA No. 68 (October 8, 2004).

D. Changes

1. Permanent changes to regular and recurring telework require a revised application and supervisor approval.

2. Employees who telework must be available to work at the traditional worksite on telework days on an occasional basis if necessitated by work requirements. Conversely, requests by employees to change scheduled telework days in a particular week or biweekly pay period should be

accommodated by the supervisor wherever practicable consistent with mission requirements.

E. Emergency Closing/Late Openings/Early Dismissals

1. Emergency dismissal or closure procedures for employees (including employees teleworking from an alternative worksite) in Federal executive agencies are prescribed by OPM on an annual basis. These procedures apply not just in adverse weather conditions (snow emergencies, severe icing conditions, floods, earthquakes and hurricanes), but in all kinds of emergency situations including air pollution, disruption of power and/or water and interruption of public transportation. These dismissal and closure procedures will be applied Agency-wide.

2. If a situation arises at the employee's alternative worksite that results in the employee being unable to continue working e.g. power failure, the supervisor should determine action on a case-by-case basis. Depending on the particular circumstances, supervisors may grant the teleworker excused absence, offer the teleworker the option to take leave or use compensatory time off or credit hours, if applicable, or require the employee to report for work at the traditional worksite.

3. If the employee knows in advance of a situation that would preclude working at the alternative worksite, a change in work schedule, leave or work at the employee's traditional worksite must be scheduled.

F. Hours of Duty

The existing rules on hours of duty apply to teleworking employees. An employee in a telework status must adhere to his or her approved work schedule.

G. Employee Responsibilities

1. Employees on telework continue to be bound by the Executive Branch and DoD standards of ethical conduct while working at the alternative workplace or using government-furnished equipment.

2. Employees on a telework arrangement will protect government/Agency/contractor records from unauthorized disclosure or damage and will comply with the Privacy Act of 1974, 5 U.S.C. 552a.

3. Classified documents (hard copy or electronic) may not be taken by teleworkers to alternative worksites. Contractor proprietary data will not be taken by teleworkers to alternative worksites without approval.

4. DCMA teleworkers are responsible for all official information, protection of any government-furnished equipment and property, and carrying out the mission of DCMA at the alternative worksite. Government data and information shall only be stored on media that the Agency provides for transporting the data and information between the alternative and traditional worksites. Government data or information shall not be copied or duplicated to any computer or portable storage device or media except those provided by the Agency.

5. Use of personal computers and equipment for work on unclassified data must be consistent with Agency regulations. Employee-owned personal computers will be allowed to access DCMA systems and networks remotely in accordance with DCMA Instruction, Security – Configuration for Workstations Connected to Non-DCMA Networks.

6. Prior to each instance of telework, the employee will provide an out-of-office message on voicemail. A written message should also be posted in a conspicuous location for walk-up customers at the employee's permanent duty-station. These messages should convey that the employee is out of the office but is teleworking at another site and is available to be contacted for official business.

H. Equipment and Facilities

1. In an effort to promote telework within the Agency, up to 200 computers (CPU, monitor, keyboard, mouse and associated cables) that are replaced on a periodic basis will be made available by the DAA on a first-come/first-served basis for employee use for regular and recurring telework at the alternate work site prior to being excessed. Should this equipment fail, the employee may continue to telework using their personal computer or secure another computer if available. However, the Agency has no obligation to provide maintenance. All equipment will be returned upon either termination of the Telework Agreement or failure of the equipment.

2. The Agency will not be responsible for any operating costs e.g. ISP, phone line, home maintenance, insurance and utilities that are associated with use of the employee's home as an alternative workplace except employee entitlement to reimbursement for authorized expenses incurred while conducting business for the government, as provided for by statute and regulations. The Agency agrees to reimburse an employee for any toll calls made for official business from an alternate work site or provide employees with telephone calling or credit cards. The Agency assumes no responsibility for any operating costs associated with an employee using their personal equipment.

I. Liability

1. The Government is not liable for damages to the employee's personal or real property while the employee is working at the approved alternative worksite, except to the extent provided by the Federal Tort Claims Act or the Military and Civilian Employees Claims Act.

2. The employee must protect all government-furnished equipment and software from possible theft and environmental damage. In cases of damage to unsecured equipment by non-employees, the employee will be held liable for repair or replacement of the equipment or software in compliance with applicable regulations on negligence.

J. Equipment

The Agency will maintain a list of supplies and equipment available at each official duty station for teleworkers. Supplies will be provided at no cost to the employee.

K. IT Support

Employees will have access to the Helpdesk for assistance at all telework sites.

L. Health and Safety

1. DCMA employees continue to be covered by the Federal Employees Compensation Act (FECA) when injured or suffering from work-related illnesses while conducting official Government business regardless of the location. For work-at-home arrangements, the employee is required to designate one area in the home as the official work or office area that is suitable for the performance of official Government business. The Government's potential exposure to liability is restricted to this official work or office area for the purposes of telework.

2. Work-at-home teleworkers must complete and sign a safety checklist that proclaims the home safe for an official home worksite to ensure that all requirements to do official work are met in an environment that allows the tasks to be performed safely. The employee agrees to permit access to the home worksite by Agency representatives as required, during normal working hours for a safety-related issue. The employee may request a Union representative accompany the Agency representative to the employee's work site.

M. Performance Management

1. Teleworkers' performance should be monitored in the same manner as all employees at the traditional worksite. The performance standards should be based on a results-oriented approach and should describe the quantity and quality of expected work products and the method of evaluation.

2. Teleworkers are required to complete all assigned work consistent with the approach adopted for all other employees in the work group, and according to standards and guidelines in the employee's performance plan.

N. Termination

Telework agreements can be terminated by either the employee or the supervisor by giving advance written notice.

O. Reports

The Agency will provide the DCMA Council an annual consolidated report on participation rates in the DCMA Telework Program.

ARTICLE 40

REASSIGNMENTS AND DETAILS

SECTION 1 - GENERAL

A. A reassignment is defined as any change of an employee from one position to another without demotion or promotion within the Agency.

B. A detail is the temporary assignment of an employee without change of civil service status or pay to a different position other than his/her official position, for a specified period of time, with the employee returning to his/her regular duties at the end of the detail.

C. Normally, an employee will be notified in writing at least 15 days prior to an Agency-directed reassignment or 15 days prior to a detail that is expected to last more than 30 days. The DCMA Council Local will receive the same notification afforded the affected employee. The Agency will explain the rationale for this action upon request from the DCMA Council Local.

SECTION 2 - REASSIGNMENTS

A. The Agency reserves the right to make reassignments based upon mission requirements.

B. When the Agency finds it necessary to reassign employees due to staffing imbalances and the Agency determines there are more equally qualified individuals than the number of positions to be filled, volunteers will be solicited. Selections among those equally qualified volunteers will be based on the highest SCD. Should it become necessary to involuntarily reassign employees, the Agency will consider employee qualifications and capabilities, requirements of the position (knowledge, skills, and abilities), location of position, employee requests and commuting distance. Equally qualified candidates for reassignment will be reassigned in inverse order of seniority based on SCD. The Agency will ensure that the needs of employees with disabilities are considered in reassignment actions.

C. Employees desiring reassignment within their current organization may apply directly to the supervisor of the vacant position for consideration. If the employee is selected for the reassignment, the employee normally will be released within 30 days from the selection notification date. For employees who wish to be considered for reassignment to vacant positions in another organization, the employee may forward a resume to the organization's Deputy Commander/Director.

D. Normally, the Agency will notify the impacted employees in advance of any permanent changes in assignment of their supervisor or team leader.

SECTION 3 - DETAILS

A. Details are a way of satisfying mission requirements, future skill needs, improving job performance, broadening experience and demonstrating ability to perform at a higher level. Employees with disabilities may be considered for details.

B. The Agency shall consider temporarily assigning an employee who is temporarily disabled from performing the full range of duties of their position to duties which the employee is qualified and capable of performing.

C. The Agency has the right to direct employees to perform detail assignments as well as the obligation to make judicious use of this authority. Consideration will be given to the current performance of the employee, location of the position, the interest and availability of eligible employees, and their SCDs. The Agency shall inform the employee of the reason for the detail, including a written description of the duties, work direction, supervision and expected duration. Details will not be used as a substitute for a permanent personnel action such as promotion, reassignment, or appointment. A detail will be limited to the shortest practical time limits and will be terminated as soon as the need for the detail no longer exists.

D. If allegations or accusations are made against employees (including employees duty-stationed at contractor facilities) and management determines it is in the best interests of the Government or for the protection of the employee to do so, the employee may be detailed or reassigned. Upon completion of the investigation, the Agency will initiate the appropriate personnel action. If the Agency determines an employee must be detailed or reassigned, the Agency will consider mission requirements and employee qualifications. When appropriate, the Agency will also seek and consider the employee's personal preferences regarding their new position and duty location.

E. Details of 30 calendar days or less do not require formal documentation and may be informally arranged between supervisors. Details of more than 30 days must be processed in increments of no more than 120 days, and will be documented using a formal personnel action. Upon the detailed employee's request, a detail of less than 30 days may be documented.

F. When an employee is to be detailed to a higher graded position for more than 30 days, he/she shall be temporarily promoted. Temporary promotions will not be used for the sole purpose of qualifying or enhancing an employee's qualifications to permanently fill the position to which they are detailed.

G. Details to higher-graded positions for less than 30-days will be rotated among equally qualified employees.

H. When possible, the Agency will consider making details on a rotational basis among employees given the nature and location of the duties to be performed and the duration of the anticipated assignment. Examples where details may be appropriate include, but are not limited to, the following:

1. to meet abnormal workload situations, mission changes, when a major reorganization or reduction-in-force is expected or due to unanticipated absences such as sick leave or emergency annual leave; and

2. pending official assignments, classification of new positions and for training purposes.

ARTICLE 41

CONTRACTING OUT AND OUTSOURCING

SECTION 1 - GENERAL

For the purposes of this Article, the term contracting out refers to decisions made by the Agency subject to the A-76 process. The term outsource as defined here applies when the Agency decides to use contractor support to supplement its current workforce in addressing fluctuations in mission workload. It is understood that the Agency retains the right to contract out work in accordance with 5 U.S.C. § 7106(a)(2)(b). The decision to contract out is not subject to the negotiated grievance procedure.

SECTION 2 - NOTIFICATION OF CONTRACTING OUT

A. The Agency will notify the DCMA Council at the time a study is initiated to contract out work which is presently being performed by members of the bargaining unit.

B. The Agency will provide to the DCMA Council such information concerning the contracting out study as requested by the DCMA Council as long as the information is not restricted by Government wide law, rule, regulation or other directives and instructions.

C. Should the Agency establish a Most Efficient Organization (MEO) or Performance Work Statement (PWS) team to implement the A-76 study, the DCMA Council may appoint a representative who will be a full participant throughout the entire A-76 process and will be governed by all laws and regulations. The Union's team member must sign a non-disclosure statement.

D. Should the Agency establish a Most Efficient Organization (MEO) or Performance Work Statement (PWS) team to implement the A-76 study, the DCMA Council may nominate an observer to offer their insight into the process. If the meetings involve management deliberations, the Union observer may be required to step out of the room to preserve the deliberative process. The parties agree to safeguard information, including proprietary information, consistent with applicable regulations.

SECTION 3 - NEGOTIATIONS CONCERNING ADVERSE IMPACT OF CONTRACTING OUT

A. Upon award of a contract or implementation of a MEO that will adversely affect members of the bargaining unit, the Agency will notify the DCMA Council.

The DCMA Council may, within 15 calendar days, request negotiation with the Agency in accordance with 5 U.S.C. § 7106(b) (2) and (3) of the Civil Service Reform Act. Should Reduction in Force (RIF) procedures be required, the Agency will follow the provisions negotiated in Article 46 to attempt to minimize the adverse effects on bargaining unit employees (BUEs).

B. The Agency and DCMA Council recognize the “right to first refusal” required by Federal Acquisition Regulation (FAR) 7.305(c).

SECTION 4 - NOTIFICATION OF OUTSOURCING

The Agency will notify the DCMA Council in writing when it has decided to outsource any job function within the Agency. The Agency recognizes its duty to satisfy its bargaining obligations should conditions of employment for BUEs be affected by its decision to outsource. Upon request, the Agency will discuss the outsourcing decision with the DCMA Council and provide information, if available and release of the information is not restricted by Government wide law, rule or regulation.

ARTICLE 42

PRODUCTIVITY

It is to the mutual advantage of the Agency and DCMA Council to work together to improve and increase the productivity of DCMA and the skills and capabilities of its employees.

ARTICLE 43

**RESEARCH PROGRAMS
AND
DEMONSTRATION PROJECTS**

SECTION 1 - SCOPE

For the purpose of this Agreement, research program means a planned study of the manner in which public management policies and systems are operating, the effect of those policies and systems, the possibilities for change and comparisons among policies and systems. Demonstration project means a project conducted by the OPM, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management.

SECTION 2 - OPM SPONSORED PROJECTS

In the event that the Agency is requested to participate in an OPM sponsored research or demonstration project under Chapter 47 of Title 5, United States Code, the Agency will:

1. Not approve any project involving BUEs:
 - a. if the project will violate this Agreement unless the DCMA Council has agreed to permit its inclusion, pursuant to 5 U.S.C. § 4703(f)(1); or
 - b. until there has been consultation or negotiation, as appropriate, with the DCMA Council, if the project is not covered by this Agreement, pursuant to 5 U.S.C. § 4703(f)(2).
2. Abide by 5 U.S.C. § 4703(e) if OPM or the Agency determines the project creates a substantial hardship on or is not in the best interests of the public, the Federal Government or employees.

ARTICLE 44

FURLOUGH OF 30 DAYS OR LESS

SECTION 1- GENERAL

This Article establishes procedures and describes actions the Agency will take in the event of a furlough of 30 days or less (hereinafter furlough) in accordance with applicable law, Government-wide rule or regulation. This Article is intended to protect the interests of employees while allowing the Agency to exercise its rights and duties in carrying out the mission of the Agency. The Agency is responsible for assuring that applicable regulations and this Article are uniformly and consistently applied to any furlough. Furloughs of more than 30 days are handled under Article 46, Reduction in Force.

SECTION 2 - DEFINITION

A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other non disciplinary reasons.

SECTION 3 - NOTIFICATION

Whenever the Agency has determined a furlough is necessary, it shall notify the DCMA Council in order to negotiate appropriate arrangements. Whenever practicable, notice will be given in advance. The Agency agrees to furnish the DCMA Council all information pertinent to the cause of any furlough in accordance with laws governing public information and existing rules and regulations.

ARTICLE 45

TRANSFER OF FUNCTION

SECTION 1 - DEFINITION

A transfer of function is defined as the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected, or the movement of the competitive area in which the function is performed to another commuting area.

SECTION 2 - PROCEDURES

A. In transfers of function within DCMA, the Agency will provide notification to the DCMA Council not less than 60 calendar days prior to the effective date of any approved transfer of function. The DCMA Council may waive this notification period.

B. Where employees are being relocated to a different commuting area, the Agency will:

1. provide the appropriate DCMA Council Local with the maximum notice possible but not less than 60 calendar days notice prior to the effective date of any approved transfer of function in order to negotiate the impact and procedures for the implementation of the transfer of function;

2. assist, counsel and train the affected employees in seeking placement opportunities with other Federal agencies elsewhere in the commuting area;

3. counsel the employees on individual rights relating to retirement and severance pay and placement potential;

4. give any employees affected by a transfer of function outside the commuting area causing a physical move, not less than 60 calendar days notice in writing of the transfer of function which provides for at least 30 calendar days for the employee to respond as to whether they are willing to accompany the function. Transfers of function within competitive areas or commuting areas will require a minimum notice of 14 calendar days in writing;

5. attendant to the circumstances of a particular transfer of function, make every effort in dealing with the activity gaining the function to have that gaining activity provide affected employees with 30 calendar days to respond to a specific job offer; and

6. make every effort to place affected employees in vacant positions for which they qualify in the same commuting area and/or in the same competitive area.

C. When the Agency becomes aware that a transfer of function may result in employees being separated, it will attempt to minimize the adverse effect on BUEs through appropriate means such as reassignment, attrition, use of vacant positions for placement, filling positions at the full performance level, waiver or modification of qualification requirements and positive placement efforts. The Agency will contact and aid the appropriate state employment service concerning all affected employees for job placement re-training services.

SECTION 3 - DOCUMENTATION

Following notification of a transfer of function, the Agency shall furnish the DCMA Council, upon request, any relevant and available documentation or information concerning the transfer of function, subject to any Privacy Act limitations.

SECTION 4 - PERMANENT CHANGE OF STATION (PCS) IN CONNECTION WITH A TRANSFER OF FUNCTION

The Agency shall authorize all appropriate entitlements incident to a PCS in accordance with applicable travel regulations.

ARTICLE 46

REDUCTION IN FORCE

SECTION 1 - GENERAL

This Article establishes and describes the procedures the Agency will take in the event of a RIF in accordance with applicable law, Government-wide rule or regulation. This Article is intended to protect the interests of employees while allowing the Agency to exercise its rights and duties in carrying out the mission of the Agency. The Agency is responsible for assuring that applicable regulations and this Article are uniformly and consistently applied to any one RIF.

SECTION 2 - DEFINITION

A RIF occurs when the Agency releases an employee from his/her competitive level by separation, demotion, furlough for more than thirty (30) calendar days, or reassignment requiring displacement because of lack of work or funds, reorganization, change to lower grade based on reclassification of an employee's position due to erosion of duties when such action will take place after the Agency has formally announced a RIF in the employee's competitive area and when the RIF will take effect within 180 days or when the need to make a place for a person exercising reemployment rights requires the Agency to release the employee.

SECTION 3 - NOTIFICATION

Whenever the Agency has determined to initiate a RIF or takes any action which results in a RIF, it shall notify the DCMA Council in order to negotiate appropriate arrangements arising from unforeseen circumstances surrounding the specific RIF. Such notice shall be given at least 90 days in advance of the RIF unless the Agency has not officially determined that far in advance to conduct a RIF. Affected employees will be notified not less than 60 calendar days prior to the effective date. To the extent practicable, RIF notices will be delivered in person. The Union will be provided at least two (2) working days advance notification of distribution. The notification shall include the approximate effective date of the RIF, the approximate number of positions that will be abolished and the reason for the RIF. The Agency agrees to furnish the DCMA Council all information pertinent to the cause of any RIF or reduction in grade or pay or reorganization in accordance with laws governing public information and existing rules and regulations. In the event of a RIF, the following process will be followed by the Agency:

1. Upon receipt of the listings of excess positions and existing vacancies, if any, from the affected organizations in the competitive area, the Agency will

determine the rights and entitlements of each employee using the information available in the retention register and OPF. The Agency will then prepare a Mock RIF Listing that identifies each specific employee affected and the type of action, i.e., reassignment, change to lower grade, or separation. A copy of this listing will be provided to the DCMA Council.

2. After development of the listing, the Agency representatives will meet with the Union representatives. At that time, the Mock RIF Listing will be distributed. Each action will be explained and the representatives will have the opportunity to ask questions or raise concerns regarding employee entitlements. Retention registers and Qualification Summary Sheets will be provided for review to the Union. To the greatest extent possible, any issues will be resolved prior to the issuance of RIF notices.

3. During the conduct of the RIF, updated RIF listings will be provided to the Union.

SECTION 4 - COMPETITIVE AREAS

Competitive areas will be established in accordance with applicable law and regulations.

SECTION 5 - COMPETITIVE LEVELS

Competitive levels will be established in accordance with applicable law and regulations.

SECTION 6 - CREDIT FOR PERFORMANCE

Credit for performance will be established in accordance with 5 CFR Part 351 and any other applicable law and regulations.

SECTION 7 - RIF NOTIFICATION

The Agency shall provide notice to employees in accordance with applicable regulations. The notice will include the following information as required by 5 CFR 351.802:

1. the action to be taken, the reasons for the action and its effective date;
2. the employee's competitive area, competitive level, subgroup, service date and three most recent ratings of record received during the last 4 years;
3. the place where the employee may inspect the regulations and records pertinent to this action;

4. the reasons for retaining a lower-standing employee in the same competitive level, under Sec. 351.607 or Sec. 351.608;

5. information on reemployment rights, except as permitted by Sec 351.803(a); and

6. the employee's right, as applicable, to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations or to grieve under a negotiated grievance procedure. The Agency shall also comply with Sec. 1201.21 of 5 CFR.

SECTION 8 - OFFER OF POSITION

A. The Agency shall make a best offer of employment to each employee adversely affected by the RIF consistent with 5 CFR 351. An offer, if made, shall be to a position with either no reduction in grade or pay, or with the least reduction possible in consideration of positions available, employee qualifications and the retention standing of other competing employees.

B. Employees reassigned or demoted by RIF may, within the specified time period for reply, request in writing assignment to a vacant position at the same or lower grade with any pay retention to which they may be entitled. Any such request shall be answered in writing within 15 workdays.

C. The Agency will consider placing employees in existing vacant positions within the employee's competitive area provided the employee is qualified for the position and would otherwise be removed or reduced in grade as a result of the RIF.

D. The Agency agrees to consider the following actions to further minimize the effects of a RIF to the maximum extent possible e.g., retraining, restricting outside hiring and any other appropriate means to avoid separation/downgrade of career or career conditional employees. The Agency agrees to consider:

1. adjusting the workforce through reassignment or transfer of unit employees to vacancies for which they are qualified;

2. filling trainee and development positions under recruitment at the target level through RIF regulations;

3. offering and funding early out incentives as permitted by law; and

4. voluntary RIF.

SECTION 9 - EMPLOYEE RIGHTS

- A. The Agency will make reasonable effort to find employment in other Federal agencies within the commuting area for those employees separated in a RIF. Employees for whom no positions are found may be counseled by a representative of the Agency on the benefits to which they may be entitled, including information concerning early retirement with discontinued service annuity, where applicable. Reemployment lists as prescribed by OPM shall be established for employees who cannot be retained.
- B. As a minimum, the Agency will provide all RIF-affected employees with assistance in obtaining other employment in accordance with the Career Transition Assistance Program for Displaced Employees.
- C. The Agency will provide all RIF-affected employees with information and assistance on their unemployment rights.
- D. The Agency will authorize administrative leave for the purpose of seeking other employment.
- E. The Agency and the DCMA Council share a mutual interest in assisting employees who are adversely affected by RIF.
- F. The parties agree that placement efforts are a priority and are most effective when employees are actively involved in those efforts.
- G. To the extent practicable, the Agency will provide job education and re-training programs such as resume counseling, lectures, professional conferences and workshops, etc. during duty hours. The Agency will authorize a reasonable amount of duty time for resume preparation, job interviews, etc. for employees who are adversely affected by RIF.
- H. When the Agency becomes aware of the necessity to conduct a RIF, it will attempt to minimize the adverse effect on BUEs through appropriate means such as reassignment, attrition, use of vacant positions for placement, filling positions at the full performance level, waiver or modification of qualification requirements, and positive placement efforts.
- I. The Agency will contact and provide administrative assistance to the appropriate state employment service concerning all affected employees for job placement and re-training services.
- J. The Agency shall arrange for training for affected employees. This training shall include, but not be limited to the following:
1. rights to other positions;

2. bumping;
3. retreating;
4. grade intervals;
5. use of vacate positions;
6. RIF related benefits;
7. grade retention;
8. pay retention;
9. repromotion priority;
10. severance pay;
11. unemployment compensation;
12. unused leave;
13. life insurance;
14. health insurance;
15. discontinued service retirement;
16. early retirement;
17. deferred annuity: and
18. Priority Placement Program

SECTION 10 - RESPONSE TO OFFER

Employees shall respond to an offer of employment in another position in writing within 21 calendar days after receipt of a written offer. Failure to respond within the 21 calendar days shall be considered a rejection of the offer.

SECTION 11 - RETENTION REGISTERS AND RIF REGULATIONS

Employees in receipt of a RIF notice shall have the right to review pertinent retention registers and applicable RIF regulations. In viewing these documents, the employee shall have the right to be accompanied by a Union representative and both persons shall be in a duty status for this purpose. In addition to the retention register provided at time of RIF, the DCMA Council shall be provided a retention register at least once a year.

SECTION 12 - GRADE AND PAY RETENTION

Grade and pay retention for eligible employees will be that prescribed by applicable law and regulation.

SECTION 13 - SEVERANCE PAY

Separated employees will be paid severance pay in accordance with applicable law and regulation.

SECTION 14 - WAIVER OF QUALIFICATIONS

A. In accordance with applicable regulations, when the Agency is unable to offer an assignment, the Agency may waive qualifications of employees who will be separated due to RIF for vacant positions which do not contain selective placement factors, provided the Agency determines the employee is able to perform the work of the position without “undue interruption” to the mission of the Agency, the employee meets any OPM-established minimum education requirements and the Agency determines that the employee has the capacity, adaptability and special skills needed to satisfactorily perform the duties and responsibilities of the position. Undue interruption means a degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in the position.

B. The DCMA Council will be informed when a bargaining unit position is filled by a waiver of qualifications.

C. Vacant positions which contain selective placement factors will be reviewed jointly by the Agency and the DCMA Council to determine if these factors are required or can be waived.

SECTION 15 - RETIREMENT

Prior to and during the RIF, all retirements will be strictly voluntary. There will be no coercion, direct or indirect, intended to influence the employee's decision. The Agency will freely advise the employee of any prospective retirement rights.

SECTION 16 - DISPLACEMENT

A. The Agency will not fill a vacant bargaining unit position within the area in which the RIF is taking place until it has considered all reasonable alternatives to reduce the adverse effects on BUEs who are to be displaced as a result of the RIF. In considering these alternatives, the Agency will review the possibility and feasibility of redesigning a vacant position.

B. The DCMA Council shall be advised of any action to fill any bargaining unit position prior to the action being taken.

ARTICLE 47

REORGANIZATION

SECTION 1 - GENERAL

Reorganization is defined as the planned elimination, addition, consolidation, redistribution or realignment of significant functions or duties in an organization.

SECTION 2 - NOTICE

A. The DCMA Council shall be notified as soon as feasible of planned significant changes in the organization.

B. The Agency shall provide the appropriate Union representative with notice of reorganization not less than 30 days prior to the effective date of the action. The notice will include the rationale for the reorganization, a description of the proposed changes and affected positions.

SECTION 3 - PROCEDURES

If reorganization requires the application of adverse action, RIF or transfer of function procedures, they will be executed in accordance with applicable law, regulations and the appropriate provisions of this Agreement. If requested, either party may enter into negotiations with the other party.

SECTION 4 - SUCCESSOR POSITIONS

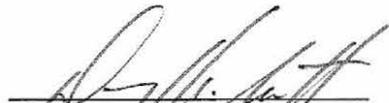
When a position in an organization is abolished as a result of a reorganization and an identical position is to be established at the same grade within 30 days in a new organization within the Agency, the incumbent of the old position will be accorded priority consideration for assignment to the newly established position, unless this would conflict with the assignment rights of another employee. The foregoing is subject to Agency's discretion to decide to fill the newly established position and also subject to the incumbent of the old position being qualified for the newly established position.

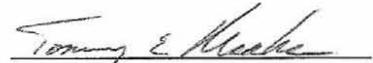
EXECUTION OF THE AGREEMENT

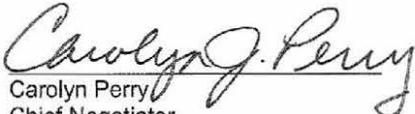
The Defense Contract Management Agency and the American Federation of Government Employees Council 170 hereby execute this Agreement on January 11, 2006.

For the Agency :

For the Union:


Darryl A. Scott, Maj Gen, USAF
Director
Defense Contract Management Agency

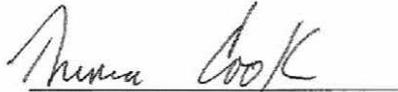

Tom Maahs
President and Chief Negotiator
American Federation of
Government Employees Council 170

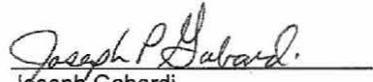

Carolyn Perry
Chief Negotiator

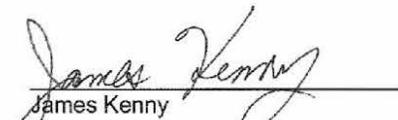

Susan Benderson
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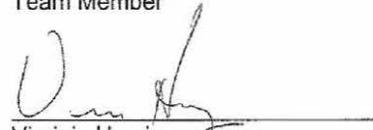

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Chief Negotiator

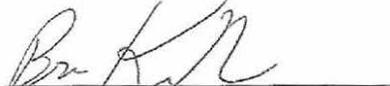

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Theresa Cook
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Joseph Gabardi
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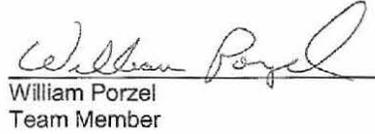

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Team Member

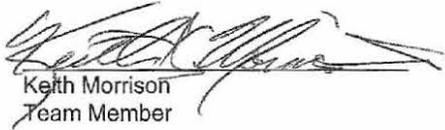

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Team Member

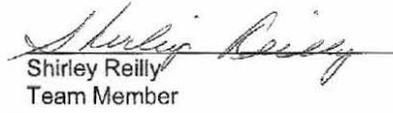

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Wayne Howard
Team Member

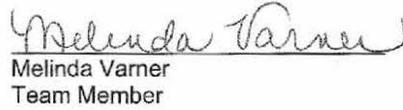

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Team Member

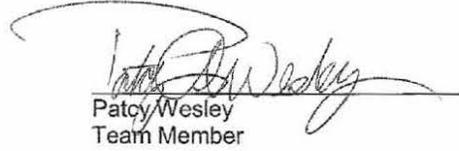

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Shirley Reilly
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Raymond Pietruszki
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Melinda Varner
Team Member

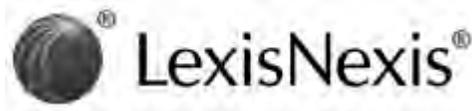

Patcy Wesley
Team Member

DCMA Administrative Record for FY 2013 Furlough Appeals

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*** Current through PL 113-22, approved 7/25/13 ***

TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART I. ORGANIZATION AND GENERAL MILITARY POWERS
CHAPTER 2. DEPARTMENT OF DEFENSE

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10 USCS § 113

§ 113. Secretary of Defense

(a) There is a Secretary of Defense, who is the head of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Secretary of Defense within seven years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Secretary is the principal assistant to the President in all matters relating to the Department of Defense. Subject to the direction of the President and to this title and section 2 of the National Security Act of 1947 (50 U.S.C. 401), he has authority, direction, and control over the Department of Defense.

(c)

(1) The Secretary shall report annually in writing to the President and the Congress on the expenditures, work, and accomplishments of the Department of Defense during the period covered by the report, together with--

(A) a report from each military department on the expenditures, work, and accomplishments of that department;

(B) itemized statements showing the savings of public funds, and the eliminations of unnecessary duplications, made under sections 125 and 191 of this title [10 USCS §§ 125 and 191]; and

(C) such recommendations as he considers appropriate.

(2) At the same time that the Secretary submits the annual report under paragraph (1), the Secretary shall transmit to the President and Congress a separate report from the Reserve Forces Policy Board on any reserve component matter that the Reserve Forces Policy Board considers appropriate to include in the report.

(d) Unless specifically prohibited by law, the Secretary may, without being relieved of his responsibility, perform any of his functions or duties, or exercise any of his powers through, or with the aid of, such persons in, or organizations of, the Department of Defense as he may designate.

(e) (1) The Secretary shall include in his annual report to Congress under subsection (c)--

(A) a description of the major military missions and of the military force structure of the United States for the next fiscal year;

(B) an explanation of the relationship of those military missions to that force structure; and

(C) the justification for those military missions and that force structure.

(2) In preparing the matter referred to in paragraph (1), the Secretary shall take into consideration the content of the annual national security strategy report of the President under section 108 of the National Security Act of 1947 (50 U.S.C. 404a) for the fiscal year concerned.

(f) When a vacancy occurs in an office within the Department of Defense and the office is to be filled by a person appointed from civilian life by the President, by and with the advice and consent of the Senate, the Secretary of Defense shall inform the President of the qualifications needed by a person serving in that office to carry out effectively the duties and responsibilities of that office.

(g)

(1) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall provide annually to the heads of Department of Defense components written policy guidance for the preparation and review of the program recommendations and budget proposals of their respective components. Such guidance shall include guidance on--

(A) national security objectives and policies;

(B) the priorities of military missions; and

(C) the resource levels projected to be available for the period of time for which such recommendations and proposals are to be effective.

(2) The Secretary of Defense, with the approval of the President and after consultation with the Chairman of the Joint Chiefs of Staff, shall provide to the Chairman written policy guidance for the preparation and review of contingency plans, including plans for providing support to civil authorities in an incident of national significance or a catastrophic incident, for homeland defense, and for military support to civil authorities. Such guidance shall be provided every two years or more frequently as needed and shall include guidance on the specific force levels and specific supporting resource levels projected to be available for the period of time for which such plans are to be effective.

(h) The Secretary of Defense shall keep the Secretaries of the military departments informed with respect to military operations and activities of the Department of Defense that directly affect their respective responsibilities.

(i) (1) The Secretary of Defense shall transmit to Congress each year a report that contains a comprehensive net assessment of the defense capabilities and programs of the armed forces of the United States and its allies as compared with those of their potential adversaries.

(2) Each such report shall--

(A) include a comparison of the defense capabilities and programs of the armed forces of the United States and its allies with the armed forces of potential adversaries of the United States and allies of the United States;

(B) include an examination of the trends experienced in those capabilities and programs during the five years immediately preceding the year in which the report is transmitted and an examination of the expected trends in those capabilities and programs during the period covered by the future-years defense program submitted to Congress during that year pursuant to section 221 of this title [10 USCS § 221];

(C) include a description of the means by which the Department of Defense will maintain the capability to reconstitute or expand the defense capabilities and programs of the armed forces of the United States on short notice to meet a resurgent or increased threat to the national security of the United States;

(D) reflect, in the overall assessment and in the strategic and regional assessments, the defense capabilities and programs of the armed forces of the United States specified in the budget submitted to Congress under section 1105 of title 31 in the year in which the report is submitted and in the five-year defense program submitted in such year; and

(E) identify the deficiencies in the defense capabilities of the armed forces of the United States in such budget and such five-year defense program.

(3) The Secretary shall transmit to Congress the report required for each year under paragraph (1) at the same time that the President submits the budget to Congress under section 1105 of title 31 in that year. Such report shall be transmitted in both classified and unclassified form.

(j) (1) Not later than April 8 of each year, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a report on the cost of stationing United States forces outside of the United States. Each such report shall include a detailed statement of the following:

(A) The costs incurred outside the United States in connection with operating, maintaining, and supporting United States forces outside the United States, including all direct and indirect expenditures of United States funds in connection with such stationing.

(B) The amount of direct and indirect support for the stationing of United States forces provided by each host nation.

(2) In this subsection, the term "United States", when used in a geographic sense, includes the territories and possessions of the United States.

(3) [Redesignated]

(k) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall provide annually to the Secretaries of the military departments and to the commanders of the combatant commands written guidelines to direct the effective detection and monitoring of all potential aerial and maritime threats to the national security of the United States. Those guidelines shall include guidance on the specific force levels and specific supporting resources to be made available for the period of time for which the guidelines are to be in effect.

(l) (1) The Secretary shall include in the annual report to Congress under subsection (c) the following:

(A) A comparison of the amounts provided in the defense budget for support and for mission activities for each of the preceding five fiscal years.

(B) A comparison of the following for each of the preceding five fiscal years:

(i) The number of military personnel, shown by major occupational category, assigned to support positions or to mission positions.

(ii) The number of civilian personnel, shown by major occupational category, assigned to support positions or to mission positions.

(iii) The number of contractor personnel performing support functions.

(C) An accounting for each of the preceding five fiscal years of the following:

(i) The number of military and civilian personnel, shown by armed force and by major occupational category, assigned to support positions.

(ii) The number of contractor personnel performing support functions.

(D) An identification, for each of the three workforce sectors (military, civilian, and contractor) of the percentage of the total number of personnel in that workforce sector that is providing support to headquarters and headquarters support activities for each of the preceding five fiscal years.

(2) Contractor personnel shall be determined for purposes of paragraph (1) by using contractor full-time equivalents, based on the inventory required under section 2330a of this title [10 USCS § 2330a].

(m) Information to accompany funding request for contingency operation. Whenever the President submits to Congress a request for appropriations for costs associated with a contingency operation that involves, or likely will involve, the deployment of more than 500 members of the armed forces, the Secretary of Defense shall submit to Congress a report on the objectives of the operation. The report shall include a discussion of the following:

(1) What clear and distinct objectives guide the activities of United States forces in the operation.

(2) What the President has identified on the basis of those objectives as the date, or the set of conditions, that defines the endpoint of the operation.

HISTORY:

(Added Sept. 7, 1962, P.L. 87-651, Title II, § 202, 76 Stat. 517; Dec. 12, 1980, P.L. 96-513, Title V, Part B, § 511(3), 94 Stat. 2920; Oct. 12, 1982, P.L. 97-295, § 1(1), 96 Stat. 1287; Sept. 8, 1982, P.L. 97-252, Title XI, § 1105, 96 Stat. 739; Oct. 1, 1986, P.L. 99-433, Title I, §§ 101(a)(2), 102, 110(b)(2), 110(d)(2), Title III, § 301(b)(2), Title VI, § 603(b), 100 Stat. 994, 996, 1002, 1022, 1075; April 21, 1987, P.L. 100-26, § 7(d)(1), 101 Stat. 280; Dec. 4, 1987, P.L. 100-180, Div A, Title XII, Part B, § 1214, 101 Stat. 1157; July 19, 1988, P.L. 100-370, § 1(o)(1), 102 Stat. 850; Sept. 29, 1988, P.L. 100-456, Div A, Title VII, Part D, § 731, Title XI, § 1101, 102 Stat. 2003, 2042; Nov. 29, 1989, P.L. 101-189, Div A, Title XVI, Part C, § 1622(c)(1), 103 Stat. 1604; Nov. 5, 1990, P.L. 101-510, Div A, Title XIII, Part C, § 1322(a)(1), 104 Stat. 1671; Dec. 5, 1991, P.L. 102-190, Div A, Title III, Part D, § 341, 105 Stat. 1343; Oct. 5, 1994, P.L. 103-337, Div A, Title X, Subtitle G, § 1070(a)(1), Title XVI, Subtitle D, § 1671(b)(2), 108 Stat. 2855, 3014; Feb. 10, 1996, P.L. 104-106, Div A, Title XV, §§ 1501(a)(8)(B), 1502(a)(3), 1503(a)(1), 110 Stat. 495, 502, 510; Sept. 23, 1996, P.L. 104-201, Div A, Title XII, Subtitle C, § 1255(c), 110 Stat. 2698; Nov. 18, 1997, P.L. 105-85, Div A, Title IX, Subtitle A, § 903, 111 Stat. 1854; Oct. 17, 1998, P.L. 105-261, Div A, Title IX, Subtitle B, § 915(a), Title XII, Sub-

title B, § 1212(b), 112 Stat. 2101, 2152; Oct. 5, 1999, P.L. 106-65, Div A, Title X, Subtitle G, § 1067(1), 113 Stat. 774.)

(As amended Jan. 28, 2008, P.L. 110-181, Div A, Title IX, Subtitle A, § 903(a), Title XVIII, Subtitle A, § 1815(e), 122 Stat. 273, 500; Jan. 7, 2011, P.L. 111-383, Div A, Title V, Subtitle B, § 514(b), 124 Stat. 4213; Dec. 31, 2011, P.L. 112-81, Div A, Title IX, Subtitle D, § 933(a), Title X, Subtitle G, § 1064(1), 125 Stat. 1543, 1586; Jan. 2, 2013, P.L. 112-239, Div A, Title X, Subtitle H, § 1076(f)(1), 126 Stat. 1952.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

1962 Act

 Revised Section Source (USCS) Source (Statutes at Large)

133(a) 5:171(a) (last
 10 words). July 26, 1947, ch. 343,
 5:171a(a). Secs. 201(a) (last 10
 133(b) 5:171a(b). words), 202(a), (b); re-
 133(c) 5:171a(d). stated Aug. 10, 1949,
 5:171a-1. ch. 412, Secs. 4 (last 10
 133(d)..... 5:171a(f). words of 1st par.), 5
 5:171n(a) (as applic- (1st and 2d pars.), 63
 able to 5:171a(f)). Stat. 579, 580.
 [Uncodified: 1953 Reorg. July 26, 1947, ch. 343,
 Plan No. 6, Sec. 5, eff. Sec. 202(d); added Apr. 2,
 June 30, 1953, 67 Stat. 1949, ch. 47, Sec. 1; re-
 639]. stated Aug. 10, 1949,
 5:171n(a). ch. 412, Sec. 5 (9th par.);
 restated Aug. 6, 1958,
 Pub. L. 85-599, Sec. 3(b),
 72 Stat. 516.
 July 26, 1947, ch. 343,
 Sec. 202(f); added Aug.
 10, 1949, ch. 412, Sec. 5
 (11th par.), 63 Stat.
 581.
 July 26, 1947, ch. 343,
 Sec. 308(a) (as applicable
 to Sec. 202(f)), 61 Stat.
 509.
 July 9, 1952, ch. 608,
 Sec. 257(e), 66 Stat. 497;
 Sept. 3, 1954, ch. 1257,
 Sec. 702(c), 68 Stat. 1189.
 1953 Reorg. Plan No. 6,
 Sec. 5, eff. June 30, 1953,
 67 Stat. 639.

 In subsection (a), the last sentence is substituted for 5 U.S.C. 171a(a) (proviso).
 In subsection (b), the words "this title and section 401 of title 50" are substituted for 5 U.S.C. 171a(b) (13th through 30th words of last sentence), since those words merely described the coverage of this title and section 401 of title 50.

1980. Act Dec. 12, 1980 (effective upon enactment, as provided by § 701(b)(3) of such Act, which appears as 10 USCS § 101 note), in subsec. (b), substituted "section 2 of the National Security Act of 1947 (50 U.S.C. 401)" for "section 401 of title 50".

1982. Act Oct. 12, 1982, added subsec. (e).

1986. Act Oct. 1, 1986 redesignated this section, formerly 10 USCS § 133, as 10 USCS § 113, and in this section as redesignated, substituted the section heading for one which read: "§ 113. Secretary of Defense: appointment; powers and duties; delegation by"; in subsec. (c)(2), substituted "sections 125 and 191" for "section 125"; substituted subsec. (e) for one which read:

"(e) After consulting with the Secretary of State, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives before February 1 of each year a written report on--

"(1) the foreign policy and military force structure for the next fiscal year;

"(2) the relationship of that policy and structure to each other; and

"(3) the justification for the policy and structure.";

added subsecs. (f)-(h); and redesignated 10 USCS § 114(h) (formerly 10 USCS § 138(h)) as subsec. (i) of 10 USCS § 113.

1987. Act April 21, 1987, in subsec. (e)(2), inserted "(50 U.S.C. 404a)".

Act Dec. 4, 1987 added subsec. (j).

1988. Act July 19, 1988 added subsec. (k).

Act Sept. 29, 1988, in subsec. (j), designated the existing provisions as para. (1), in para. (1) as so designated, deleted "Each such report shall be transmitted in both a classified and an unclassified form." following "adversaries.", and added paras. (2) and (3); and added subsec. (l).

1989. Act Nov. 29, 1989, in subsec. (j)(2)(B), substituted "five-year defense program" for "Five-Year Defense Program".

1990. Act Nov. 5, 1990 deleted subsec. (i), which read: "The Secretary of Defense shall submit to Congress a written report, not later than February 15 of each fiscal year, recommending the amount of funds to be appropriated to the Department of Defense for the next fiscal year for functions relating to the formulation and carrying out of Department of Defense policies on the control of technology transfer and activities related to the control of technology transfer. The Secretary shall include in that report the proposed allocation of the funds requested for such purpose and the number of personnel proposed to be assigned to carry out such activities during such fiscal year."; and redesignated former subsecs. (j)-(l) as subsecs. (i)-(k), respectively.

1991. Act Dec. 5, 1991, in subsec. (i)(2), redesignated subparas. (C) and (D) as subparas. (D) and (E), respectively, and added a new subpara. (C).

1994. Act Oct. 5, 1994, in subsec. (e)(2), substituted "section 108" for "section 104".

Such Act further (effective 10/1/96, as provided by § 1691(b)(1) of such Act, which appears as 10 USCS § 10001 note), as amended by Act Feb. 10, 1996 (effective as if included in Act Oct. 5, 1994, P.L. 103-337, as enacted on Oct. 5, 1994, as provided by § 1501(f)(3) of Act Feb. 10, 1996, which appears as a note to this section), in subsec. (c)(3), substituted "chapters 1219 and 1401 through 1411 of this title" for "chapters 51, 337, 361, 363, 549, 573, 837, 861 and 863 of this title, as far as they apply to reserve officers".

1996. Act Feb. 10, 1996, in subsec. (i)(2)(B), substituted "the period covered by the future-years defense program submitted to Congress during that year pursuant to section 221" for "the five years covered by the five-year defense program submitted to Congress during that year pursuant to section 114(g)"; and, in subsec. (j)(1), substituted "Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the" for "Committees on Armed Services and Committees on Appropriations of the Senate and".

Such Act further (effective as if included in Act Oct. 5, 1994, P.L. 103-337, as enacted on Oct. 5, 1994, as provided by § 1501(f)(3) of Act Feb. 10, 1996, which appears as a note to this section) amended the directory language of § 1671(c)(2) of Act Oct. 5, 1994.

Act Sept 23. 1996, in subsec. (c), deleted para. (3), which read: "(3) a report from the Reserve Forces Policy Board on the reserve programs of the Department of Defense, including a review of the effectiveness of chapters 1219 and 1401 through 1411 of this title; and", redesignated paras. (1), (2), and (4) as subparas. (A), (B), and (C), respectively, in subpara. (B) as redesignated, inserted "and" after the concluding semicolon, designated the text of subsec. (c) as para. (1), and added para. (2).

1997. Act Nov. 18, 1997, in subsec. (g)(2), deleted "annually" following "shall provide" and inserted "be provided every two years or more frequently as needed and shall".

1998. Act Oct. 17, 1998 added subsecs. (l) and (m).

1999. Act Oct. 5, 1999, in subsec. (j)(1), substituted "Committee on Armed Services" for "Committee on National Security" following "and the".

2008. Act Jan. 28, 2008, in subsec. (a), substituted "seven" for "10"; and, in subsec. (g)(2), substituted "contingency plans, including plans for providing support to civil authorities in an incident of national significance or a catastrophic incident, for homeland defense, and for military support to civil authorities" for "contingency plans".

2011. Act Jan. 7, 2011, in subsec. (c)(2), substituted "on any reserve component matter" for "the reserve programs of the Department of Defense and on any other matters".

Act Dec. 31, 2011, in subsec. (j), in para. (1), deleted subpara. (A), which read: "(A) Costs incurred in the United States and costs incurred outside the United States in connection with the stationing of United States forces outside the United States.", redesignated subpara. (B) as subpara. (A), inserted new subpara. (B), and deleted subpara. (C), which read: "(C) The effect of such expenditures outside the United States on the balance of payments of the United States.", deleted para. (2), which read: "(2) Each report under this subsection shall be prepared in consultation with the Secretary of Commerce.", and redesignated para. (3) as para. (2); and substituted subsec. (l) for one which read:

"(l) The Secretary shall include in the annual report to Congress under subsection (c) the following:

"(1) A comparison of the amounts provided in the defense budget for support and for mission activities for each of the preceding five fiscal years.

"(2) A comparison of the number of military and civilian personnel, shown by major occupational category, assigned to support positions and to mission positions for each of the preceding five fiscal years.

"(3) An accounting, shown by service and by major occupational category, of the number of military and civilian personnel assigned to support positions during each of the preceding five fiscal years.

"(4) A listing of the number of military and civilian personnel assigned to management headquarters and headquarters support activities as a percentage of military end-strength for each of the preceding five fiscal years."

2013. Act Jan. 2, 2013, in subsec. (c)(2), deleted "on" following "Board on".

Other provisions:

Delegation of functions to Secretary of Defense. For functions of the President under various sections as delegated to the Secretary of Defense, see Ex. Ord. No. 10621, July 1, 1955, 20 Fed. Reg. 4759, as amended by Ex. Ord. No. 11294, Aug. 4, 1966, 31 Fed. Reg. 10601; Ex. Ord. No. 10661, Feb. 27, 1956, 21 Fed. Reg. 1315; and Ex. Ord. No. 11390, Jan. 22, 1968, 33 Fed. Reg. 841, all appearing as 3 USCS § 301 notes.

Emergency preparedness functions. For assignment of certain emergency preparedness functions to the Secretary of Defense, see Parts 1, 4, and 5 of Ex. Ord. No. 12656 of Nov. 18, 1988, 53 Fed. Reg. 47491, which appears as 50 Appx. USCS § 2251 note.

Repeal of former notes to this section. Act Nov. 16, 1973, P.L. 93-155, Title VIII, § 803(b), 87 Stat. 615, provided for the repeal of the following laws which were formerly set out as notes to this section: (1) Act Aug. 10, 1959, P.L. 86-149, § 412, 73 Stat. 322, as amended by Act April 27, 1962, P.L. 87-436, § 2, 76 Stat. 55; Act Nov. 7, 1963, P.L. 88-174, § 610, 77 Stat. 329; Act June 11, 1965, P.L. 89-37, § 304, 79 Stat. 128; Act Dec. 1, 1967, P.L. 90-168, § 6, 81 Stat. 526; Act Nov. 19, 1969, P.L. 91-121, § 405, 83 Stat. 207; Act Oct. 7, 1970, P.L. 91-441, §§ 505, 509, 84 Stat. 912, 913; Act Sept. 28, 1971, P.L. 92-129, § 701, 85 Stat. 362; and Act Sept. 26, 1972, P.L. 92-436, §§ 302, 604, 86 Stat. 736, 739; and (2) Act Nov. 17, 1971, P.L. 92-156, § 506, 85 Stat. 429. These Acts related to the procurement of aircraft, missiles, Naval vessels, tracked combat vehicles, and other weapons, the authorization of appropriations for procurement, research, development, testing and evaluation activities, the selected reserve of reserve components, and the annual authorization of personnel strength.

Provisions for report to Congressional committees on foreign policy and military force structure repealed. Act Oct. 7, 1975, P.L. 94-106, Title VIII, § 812, 89 Stat. 540, formerly classified as a note to this section, was repealed by Act Oct. 12, 1982, P.L. 97-295, § 6(b) in part, 96 Stat. 1314. Such section provided for a report to Congressional committees on foreign policy and military force structure. Similar provisions now appear as subsec. (e) of this section. For provisions as to the construction of repeals by § 6(b) of Act Oct. 12, 1982, see Act Oct. 12, 1982, P.L. 97-295, § 6, 96 Stat. 1314, which appears as 10 USCS § 101 note.

Repeal of provision relating to report to Congress on proposed transfer or sale of defense articles. Act Oct. 7, 1975, P.L. 94-106, Title VIII, § 813, 89 Stat. 540; July 30, 1977, P.L. 95-79, Title VIII, § 814, 91 Stat. 337; Sept. 8, 1982, P.L. 97-252, Title XI, § 1104, 96 Stat. 739, formerly classified as a note to this section, was repealed by Act Oct. 12, 1982, P.L. 97-295, § 6(b) in part, 96 Stat. 1314. Such section provided for a report to Congress on the proposed transfer or sale of defense articles. For similar provisions, see 10 USCS § 118. For provisions as to the construction of repeals by § 6(b) of Act Oct. 12, 1982, see Act Oct. 12, 1982, P.L. 97-295, § 6, 96 Stat. 1314, which appears as 10 USCS § 101 note.

Study of potential use of military bases. Act Sept. 30, 1976, P.L. 94-431, Title VI, § 610, 90 Stat. 1365, which formerly appeared as a note to this section, was repealed by Act Dec. 1, 1981, P.L. 97-86, Title IX, § 912(b), 95 Stat. 1123. Such section authorized the Secretary of Defense to conduct studies with regard to possible use of military installations being closed and to make recommendations with regard to such installations. For similar provisions, see 10 USCS § 2391.

Prohibition against consolidating functions of the military transportation commands repealed. Act Sept. 8, 1982, P.L. 97-252, Title XI, § 1110, 96 Stat. 747, which formerly appeared as a note to 10 USCS § 133, was repealed by Act Oct. 1, 1986, P.L. 99-433, Title II, § 213(a), 100 Stat. 1018. Such section provided for a prohibition against use of funds for the purpose of consolidating functions of the military transportation commands.

Repeal of provision relating to fee for veterinary services. Act Sept. 24, 1983, P.L. 98-94, Title X, Part D, § 1033, 97 Stat. 672; Oct. 19, 1984, P.L. 98-525, Title VI, Part F, § 656, 98 Stat. 2553, which formerly appeared as a note to this section, was repealed by Act Nov. 8, 1985, P.L. 99-145, Title VI, Part G, § 685(c), 99 Stat. 666, effective Oct. 1, 1985, as provided by § 685(d) of such Act. Such section provided for a fee for veterinary services for pets of armed forces members.

Upgrade of Direct Communication Link. Act Aug. 8, 1985, P.L. 99-85, §§ 1, 2, 99 Stat. 286, 287; Dec. 17, 1993, P.L. 103-199, Title IV, § 404(a), 107 Stat. 2325 (applicable as provided by § 404(b) of such Act, which appears as a note to this section), provides:

"[Section 1.] The Secretary of Defense may provide to Russia, as provided in the Exchange of Notes Between the United States of America and the Union of Soviet Socialist Republics Concerning the Direct Communications Link Upgrade, concluded on July 17, 1984, such equipment and services as may be necessary to upgrade or maintain the Russian part of the Direct Communications Link agreed to in the Memorandum of Understanding between the United States and the Soviet Union signed June 20, 1963 [unclassified]. The Secretary shall provide such equipment and services to Russia at the cost thereof to the United States.

"Sec. 2. (a) The Secretary of Defense may use any funds available to the Department of Defense for the procurement of the equipment and providing the services referred to in the first section.

"(b) Funds received from Russia as payment for such equipment and services shall be credited to the appropriate account of Department of Defense."

Surcharge for sales at animal disease prevention and control centers. Act Nov. 8, 1985, P.L. 99-145, Title VI, Part G, § 685(a), (b), 99 Stat. 666, effective Oct. 1, 1985, as provided by § 685(d) of such Act, provides:

"(a) Required surcharge. The Secretary of Defense shall require that each time a sale is recorded at a military animal disease prevention and control center the person to whom the sale is made shall be charged a surcharge of \$ 2.

"(b) Deposit of receipts in Treasury. Amounts received from surcharges under this section shall be deposited in the Treasury in accordance with section 3302 of title 31."

Repeal of Military Family Act of 1985. Act Nov. 8, 1985, P.L. 99-145, Title VIII, §§ 801-813, 99 Stat. 678; Nov. 14, 1986, P.L. 99-661, Div A, Title VI, Part E, § 653, 100 Stat. 3890; Dec. 4, 1987, P.L. 100-180, Div A, Title VI, Part D, § 635, 101 Stat. 1106; Sept. 29, 1988, P.L. 100-456, Div A, Title V, Part C, § 524, 102 Stat. 1975, which formerly appeared as a note to this section, was repealed by Act Feb. 10, 1996, P.L. 104-106, Div A, Title V, Subtitle F, § 568(e)(1), 110 Stat. 336. Such note related to military family policy and programs.

Prohibition of certain restrictions on institutions eligible to provide educational services. Act Nov. 8, 1985, P.L. 99-145, Title XII, Part A, § 1212, 99 Stat. 726; Nov. 29, 1989, P.L. 101-189, Div A, Title V, Part B, § 518, 103 Stat. 1443, provides:

"(a) No solicitation, contract, or agreement for the provision of off-duty postsecondary education services for members of the Armed Forces of the United States, civilian employees of the Department of Defense, or the dependents of such members or employees may discriminate against or preclude any accredited academic institution authorized to award one or more associate degrees from offering courses within its lawful scope of authority solely on the basis of such institution's lack of authority to award a baccalaureate degree.

"(b) No solicitation, contract, or agreement for the provision of off-duty postsecondary education services for members of the Armed Forces of the United States, civilian employees of the Department of Defense, or the dependents of such members or employees, other than those for services at the graduate or postgraduate level, may limit the offering of such services or any group, category, or level of courses to a single academic institution. However, nothing in this section [this note] shall prohibit such actions taken in accordance with regulations of the Secretary of Defense which are uniform for all armed services as may be necessary to avoid unnecessary duplication of offerings, consistent with the purpose of this provision of ensuring the availability of alternative offerors of such services to the maximum extent feasible.

"(c)

(1) The Secretary of Defense shall conduct a study to determine the current and future needs of members of the Armed Forces, civilian employees of the Department of Defense, and the dependents of such members and employees for postsecondary education services at overseas locations. The Secretary shall determine on the basis of the results of that study whether the policies and procedures of the Department in effect on the date of the enactment of the Department of Defense Authorization Act for Fiscal Years 1990 and 1991 [probably Act Nov. 29, 1989, P.L. 101-189, 103 Stat. 1352; for full classification, consult USCS Tables volumes] with respect to the procurement of such services are--

"(A) consistent with the provisions of subsections (a) and (b);

"(B) adequate to ensure the recipients of such services the benefit of a choice in the offering of such services; and

"(C) adequate to ensure that persons stationed at geographically isolated military installations or at installations with small complements of military personnel are adequately served.

The Secretary shall complete the study in such time as necessary to enable the Secretary to submit the report required by paragraph (2)(A) by the deadline specified in that paragraph.

"(2)

(A) The Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the study referred to in paragraph (1), together with a copy of any revisions in policies and procedures made as a result of such study. The report shall be submitted not later than March 1, 1990.

"(B) The Secretary shall include in the report an explanation of how determinations are made with regard to--

"(i) affording members, employees, and dependents a choice in the offering of courses of postsecondary education; and

"(ii) whether the services provided under a contract for such services should be limited to an installation, theater, or other geographic area.

"(3)

(A) Except as provided in subparagraph (B), no contract for the provision of services referred to in subsection (a) may be awarded, and no contract or agreement entered into before the date of the enactment of this paragraph may be renewed or extended on or after such date, until the end of the 60-day period beginning on the date on which the report referred to in paragraph (2)(A) is received by the committees named in that paragraph.

"(B) A contract or an agreement in effect on October 1, 1989, for the provision of postsecondary education services in the European Theater for members of the Armed Forces, civilian employees of the Department of Defense, and the dependents of such members and employees may be renewed or extended without regard to the limitation in subparagraph (A).

"(C) In the case of a contract for services with respect to which a solicitation is pending on the date of the enactment of this paragraph, the contract may be awarded--

"(i) on the basis of the solicitation as issued before the date of the enactment of this paragraph;

"(ii) on the basis of the solicitation issued before the date of the enactment of this paragraph modified so as to conform to any changes in policies and procedures the Secretary determines should be made as a result of the study required under paragraph (1); or

"(iii) on the basis of a new solicitation.

"(d) Nothing in this section [this note] shall be construed to require more than one academic institution to be authorized to offer courses aboard a particular naval vessel."

Repeal of provision for report of unobligated balances. Act Nov. 8, 1985, P.L. 99-145, Title XIV, Part A, § 1407, 99 Stat. 745, which formerly appeared as a note to this section, was repealed by Act Nov. 14, 1986, P.L. 99-661, Div A, Title XIII, Part A, § 1307(b), 100 Stat. 3981. This section provided for a report to the Congress on unobligated balances.

Repeal of provisions for defense industrial base for textile and apparel products. Act Nov. 8, 1985, P.L. 99-145, Title XIV, Part E, § 1456, 99 Stat. 762, which formerly was classified as a note to this section, was repealed by Act Nov. 5, 1990, P.L. 101-510, Div A, Title VIII, Part C, § 826(b), 104 Stat. 1606. This section provided for the Secretary of Defense's monitoring of the capability of the domestic textile and apparel industrial base to support defense mobilization requirements.

Security at military bases abroad. Act Aug. 27, 1986, P.L. 99-399, Title XI, 100 Stat. 894, provides:

"Sec. 1101. Findings.

"The Congress finds that--

"(1) there is evidence that terrorists consider bases and installations of United States Armed Forces outside the United States to be targets for attack;

"(2) more attention should be given to the protection of members of the Armed Forces, and members of their families, stationed outside the United States; and

"(3) current programs to educate members of the Armed Forces, and members of their families, stationed outside of the United States to the threats of terrorist activity and how to protect themselves should be substantially expanded.

"Sec. 1102. Recommended actions by the Secretary of Defense.

"It is the sense of the Congress that--

"(1) the Secretary of Defense should review the security of each base and installation of the Department of Defense outside the United States, including the family housing and support activities of each such base or installation, and take the steps the Secretary considers necessary to improve the security of such bases and installations; and

"(2) the Secretary of Defense should institute a program of training for members of the Armed Forces, and for members of their families, stationed outside the United States concerning security and antiterrorism.

"Sec. 1103. Report to the Congress.

"No later than June 30, 1987, the Secretary of Defense shall report to the Congress on any actions taken by the Secretary described in section 1102."

Annual report on implementation. Act Oct. 1, 1986, P.L. 99-433, Title IV, § 405, 100 Stat. 1032, provides: "The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of title 10, United States Code (as redesignated by section 101(a)), for each year from 1987 through 1991 a detailed report on the implementation of this title and the amendments made by this title".

Information contained in initial report. Act Oct. 1, 1986, P.L. 99-433, Title IV, § 406(g), 100 Stat. 1034, provides: "The first report submitted by the Secretary of Defense after the date of the enactment of this Act under section 113(c) of title 10, United States Code (as redesignated by section 101), shall contain as much of the information required by section 667 of such title (as added by section 401) as is available to the Secretary at the time of the preparation of the report."

Transfer of Ex. Or. 12568. Ex. Or. No. 12568 of Oct. 2, 1986, 51 Fed. Reg. 35497, which formerly appeared as a note to this section, has been reclassified as a note to 10 USCS § 1784.

Repeal of provision for comparable budgeting for similar systems. Acts Oct. 18, 1986, P.L. 99-500; Oct. 30, 1986, P.L. 99-591, Title I, § 101(c) in part, 100 Stat. 3341-173; Nov. 14, 1986, P.L. 99-661, Div A, Title IV [IX], Part E, § 955, 100 Stat. 3953; April 21, 1987, P.L. 100-26, § 3(5) in part, 101 Stat. 273, applicable as if included in Act Nov. 14, 1986, when enacted on Nov. 14, 1986, as provided by § 12(a) of Act April 21, 1987, which appears as 10 USCS § 774 note, formerly appeared as a note to this section and was repealed by Act July 19, 1988, P.L. 100-370, § 1(d)(3)(B), 102 Stat. 843. Such section provided for comparable budgeting for similar systems. For similar provisions, see 10 USCS § 2217.

Coordination of permanent change of station moves with school year. Act Nov. 14, 1986, P.L. 99-661, Div A, Title VI, Part B, § 612, 100 Stat. 3878, provides: "The Secretary of each military department shall establish procedures to ensure that, to the maximum extent practicable within operational and other military requirements, permanent change of station moves for members of the Armed Forces under the jurisdiction of the Secretary who have dependents in elementary or secondary school occur at times that avoid disruption of the school schedules of such dependents."

Construction of duplicate authorization and appropriation provisions. For construction of the duplicate provisions of Act Oct. 18, 1986, P.L. 99-500, Act Oct. 30, 1986, P.L. 99-591, and Act Nov. 14, 1986, P.L. 99-661 and for the rule for the date of enactment of such Acts, see Act April 21, 1987, P.L. 100-26, § 6, 101 Stat. 274, which appears as 10 USCS § 2301 note.

Regulations regarding employment and volunteer work of spouses of military personnel. Act Dec. 4, 1987, P.L. 100-180, Div A, Title VI, Part D, § 637, 101 Stat. 1106, provides:

"Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall prescribe regulations to establish the policy that--

"(1) the decision by a spouse of a member of the Armed Forces to be employed or to voluntarily participate in activities relating to the Armed Forces should not be influenced by the preferences or requirements of the Armed Forces; and

"(2) neither such decision nor the marital status of a member of the Armed Forces should have an effect on the assignment or promotion opportunities of the member."

Repeal of provision relating to counterintelligence polygraph program. Act Dec. 4, 1987, P.L. 100-180, Div A, Title XI, Part C, § 1121, 101 Stat. 1147; Nov. 18, 1997, P.L. 105-85, Div A, Title X, Subtitle G, § 1073(d)(5), 111 Stat. 1906 (applicable as provided by § 1073(i) of such Act, which appears as 10 USCS § 101 note), which formerly appeared as a note to this section, was repealed by Act Nov. 24, 2003, P.L. 108-136, Div A, Title X, Subtitle E, § 1041(b), 117 Stat. 1608. It provided for a counterintelligence polygraph program. For similar provisions, see 10 USCS § 1564a.

Repeal of provision for report to Congress on cost of overseas troops. Act Dec. 22, 1987, P.L. 100-202, § 101(b) [Title VIII § 8042], 101 Stat. 1329-69, which formerly appeared as a note to this section, was repealed by Act July 19, 1988, P.L. 100-370, § 1(o)(2), 102 Stat. 851. Such section provided for an annual report to Congress on the cost of overseas troops. For similar provisions, see subsec. (j) of this section.

Repeal of provision relating to lead agency for detection of illegal drug transit. Act Sept. 29, 1988, P.L. 100-456, Div A, Title XI, § 1102, 102 Stat. 2042, which formerly appeared as a note to this section, was repealed by Act Nov. 29, 1989, P.L. 101-189, Div A, Title XII, § 1202(b), 103 Stat. 1563. Such section provided for the Department of Defense to serve as lead agency for detection of illegal drug transit. For similar provisions, see 10 USCS § 124.

Repeal of provision for annual assessment of security at United States bases in the Philippines. Act Sept. 29, 1988, P.L. 100-456, Div A, Title XIII, § 1309, 102 Stat. 2063, which formerly appeared as a note to this section, was repealed by Act Oct. 23, 1992, P.L. 102-484, Div A, Title X, Subtitle H, § 1074, 106 Stat. 2511. Such section provided for an annual report by the Secretary of Defense to Congress assessing security at United States military facilities in the Republic of the Philippines, including an assessment of the cooperation provided by the Philippine Government.

Congressional report on military missions assignment; review of long-term strategic interests; appointment of Ambassador at Large; appropriations. Act Oct. 1, 1988, P.L. 100-463, Title VIII, § 8125, 102 Stat. 2270-41; Nov. 29, 1989, P.L. 101-189, Div A, Title XVI, Part C, § 1623, 103 Stat. 1606; April 30, 1994, P.L. 103-236, Title I, Part C, § 162(j), 108 Stat. 408; Feb. 10, 1996, P.L. 104-106, Div A, Title XV, § 1502(f)(1), 110 Stat. 509; Oct. 5, 1999, P.L. 106-65, Div A, Title X, Subtitle G, § 1067(14), 113 Stat. 775, provides:

"(a)

(1) Not later than March 1, 1989, the Secretary of Defense shall submit to Congress a report on the assignment of military missions among the member countries of North Atlantic Treaty Organization (NATO) and on the prospects for the more effective assignment of such missions among such countries.

"(2) The report shall include a discussion of the following:

"(A) The current assignment of military missions among the member countries of NATO.

"(B) Military missions for which there is duplication of capability or for which there is inadequate capability within the current assignment of military missions within NATO.

"(C) Alternatives to the current assignment of military missions that would maximize the military contributions of the member countries of NATO.

"(D) Any efforts that are underway within NATO or between individual member countries of NATO at the time the report is submitted that are intended to result in a more effective assignment of military missions within NATO.

"(b) The Secretary of Defense and the Secretary of State shall (1) conduct a review of the long-term strategic interests of the United States overseas and the future requirements for the assignment of members of the Armed Forces of the United States to permanent duty ashore outside the United States, and (2) determine specific actions that, if taken, would result in a more balanced sharing of defense and foreign assistance spending burdens by the United States and its allies. Not later than August 1, 1989, the Secretary of Defense and the Secretary of State shall transmit to Congress a report containing the findings resulting from the review and their determinations.

"(c) [Deleted]

"(d) The President shall specify (separately by appropriation account) in the Department of Defense items included in each budget submitted to Congress under section 1105 of title 31, United States Code, (1) the amounts necessary for payment of all personnel, operations, maintenance, facilities, and support costs for Department of Defense overseas military units, and (2) the costs for all dependents who accompany Department of Defense personnel outside the United States.

"(e) Not later than May 1, 1989, the Secretary of Defense shall submit to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives a report that sets forth the total costs required to support the dependents who accompany Department of Defense personnel assigned to permanent duty overseas.

"(f) As of September 30 of each fiscal year, the number of members of the Armed Forces on active duty assigned to permanent duty ashore in Japan and the Republic of Korea may not exceed 94,450 (the number of members of the Armed Forces on active duty assigned to permanent duty ashore in Japan and the Republic of Korea on September 30, 1987). The limitation in the preceding sentence may be increased if and when (1) a major reduction of United States forces in the Republic of the Philippines is required because of a loss of basing rights in that nation, and (2) the President determines and certifies to Congress that, as a consequence of such loss, an increase in United States forces stationed in Japan and the Republic of Korea is necessary.

"(g)

(1) After fiscal year 1990, budget submissions to Congress under section 1105 of title 31, United States Code, shall identify funds requested for Department of Defense personnel and units in permanent duty stations ashore outside the United States that exceed the amount of such costs incurred in fiscal year 1989 and shall set forth a detailed description of (A) the types of expenditures increased, by appropriation account, activity and program; and (B) specific efforts to obtain allied host nations' financing for these cost increases.

"(2) The Secretary of Defense shall notify in advance the Committee on Appropriations and the Committee on Armed Services of the Senate and the Committee on Appropriations and the Committee on Armed Services of the House of Representatives, through existing notification procedures, when costs of maintaining Department of Defense personnel and units in permanent duty stations ashore outside the United States will exceed the amounts as defined in the Department of Defense budget as enacted for that fiscal year. Such notification shall describe: (A) the type of expenditures that increased; and (B) the source of funds (including prior year unobligated balances) by appropriation account, activity and program, proposed to finance these costs.

"(3) In computing the costs incurred for maintaining Department of Defense personnel and forces in permanent duty stations ashore outside the United States compared with the amount of such costs incurred in fiscal year 1989, the Secretary shall--

"(A) exclude increased costs resulting from increases in the rates of pay provided for members of the Armed Forces and civilian employees of the United States Government and exclude any cost increases in supplies and services resulting from inflation; and

"(B) include (i) the costs of operation and maintenance and of facilities for the support of Department of Defense overseas personnel, and (ii) increased costs resulting from any decline in the foreign exchange rate of the United States dollar.

"(h) The provisions of subsections (f) and (g) shall not apply in time of war or during a national emergency declared by the President or Congress.

"(i) In this section--

"(1) the term 'personnel' means members of the Armed Forces of the United States and civilian employees of the Department of Defense;

"(2) the term 'Department of Defense overseas personnel' means those Department of Defense personnel who are assigned to permanent duty ashore outside the United States; and

"(3) the term 'United States' includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States."

Repeal of provision for annual report. Act Nov. 29, 1989, P.L. 101-189, Div A, Title II, Part B, § 211(e), 103 Stat. 1394, which formerly appeared as a note to this section, was repealed by Act Feb. 10, 1996, P.L. 104-106, Div A, Title X, Subtitle F, § 1061(1), 110 Stat. 443. It provided for an annual report on the Balanced Technology Initiative and related matters.

Repeal of provisions for military relocation assistance programs. Act Nov. 29, 1989, P.L. 101-189, Div A, Title VI, Part G, § 661, 103 Stat. 1463, which formerly appeared as a note to this section, was repealed by Act Nov. 5, 1990, P.L. 101-510, Div A, Title XIV, Part H, § 1481(c)(3), 104 Stat. 1705. This section provided for military relocation assistance programs.

Repeal of Military Child Care Act of 1989. Act Nov. 29, 1989, P.L. 101-189, Div A, Title XV, §§ 1501-1510, 103 Stat. 1589, which formerly appeared as a note to this section, was repealed by Act Feb. 10, 1996, P.L. 104-106, Div A, Title V, Subtitle F, § 568(e)(2), 110 Stat. 336. Such note provided for funding for military child care for fiscal year 1990, training for child care employees, fees for attendance at military child development centers, child abuse prevention and safety at facilities, parent partnerships with child development centers, a report on five-year demand for child care, subsidies for family home day care, and an early childhood education demonstration program.

National military strategy reports. Act Nov. 5, 1990, P.L. 101-510, Div A, Title IX, Part A, § 901, 104 Stat. 1619, provides:

"(a) Reports by the Secretary of Defense. (1) The Secretary of Defense shall submit to Congress a national military strategy report during each of fiscal years 1992, 1993, and 1994. Each such report shall be submitted with the Secretary's annual report to Congress for that year under section 113(j) of title 10, United States Code.

"(b) Matters to be covered in reports. Each such report shall cover a period of at least ten years and shall address the following:

"(1) The threats facing the United States and its allies.

"(2) The degree to which military forces can contribute to the achievement of national objectives.

"(3) The strategic military plan for applying those forces to the achievement of national objectives.

"(4) The risk to the national security of the United States and its allies that ensues.

"(5) The organization and structure of military forces to implement the strategy.

"(6) The broad mission areas for various components of the forces and the broad support requirements to implement the strategy.

"(7) The functions for which each military department should organize, train, and equip forces for the combatant commands responsible for implementing the strategy.

"(8) The priorities assigned to major weapons and equipment acquisitions and to research and development programs in order to fill the needs and eliminate deficiencies of the combatant commands.

"(c) Relationship of plans to budget. The strategic military plans and other matters covered by each report shall be fiscally constrained and shall relate to the current Department of Defense Multiyear Defense Plan and resource levels projected by the Secretary of Defense to be available over the period covered by the report.

"(d) Effects of alternative budget levels. Each such report shall also include an assessment of the effect on the risk and the other components of subsection (b) in the event that (1) an additional \$ 50,000,000,000 is available in budget authority in the fiscal year which is addressed by the budget request that the report accompanies, and (2) budget authority for that fiscal year is reduced by \$ 50,000,000,000. For these assessments the Secretary of Defense shall make appropriate assumptions about the funds available for the remainder of the period covered by the report.

"(e) Role of Chairman of Joint Chiefs of Staff. In accordance with his role as principal military adviser to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff shall participate fully in the development of each such report. The Secretary of Defense shall provide the Chairman such additional guidance as is necessary to enable the Chairman to develop and recommend fiscally constrained strategic plans for the Secretary's consideration in accordance with section 153(a)(2) of title 10, United States Code. in accordance with additional responsibilities of the Chairman set out in section 153, the Chairman shall provide recommendations to the Secretary on the other components of paragraph (2).

(f) Classification of reports. The reports submitted to Congress under subsection (a) shall be submitted in both classified and (to the extent practicable) unclassified versions."

Permanent ceiling on United States Armed Forces in Japan and contributions by Japan to the support of United States forces in Japan. Act Nov. 5, 1990, P.L. 101-510, Div A, Title XIV, Part E, § 1455, 104 Stat. 1695, provides:

"(a) Purpose. It is the purpose of this section to require Japan to offset the direct costs (other than pay and allowances for United States military and civilian personnel) incurred by the United States related to the presence of United States military personnel in Japan.

"(b) Permanent ceiling on United States Armed Forces in Japan. Funds appropriated pursuant to an authorization contained in this Act or any subsequent Act may not be used to support an end strength level of all personnel of the Armed Forces of the United States stationed in Japan at any level in excess of 50,000.

"(c) Sense of Congress on allied burden sharing.

(1) Congress recognizes that Japan has made a substantial pledge of financial support to the effort to support the United Nations Security Council resolutions on Iraq.

"(2) It is the sense of Congress that--

"(A) all countries that share the benefits of international security and stability should, commensurate with their national capabilities, share in the responsibility for maintaining that security and stability; and

"(B) given the economic capability of Japan to contribute to international security and stability, Japan should make contributions commensurate with that capability.

"(d) Negotiations. At the earliest possible date after the date of the enactment of this Act, the President shall enter into negotiations with Japan for the purpose of achieving an agreement before September 30, 1991, under which Japan offsets all direct costs (other than pay and allowances for United States military and civilian personnel) incurred by the United States related to the presence of all United States military personnel stationed in Japan.

"(e) Exceptions.

(1) This section shall not apply in the event of a declaration of war or an armed attack on Japan.

"(2) This section may be waived by the President if the President--

"(A) declares an emergency or determines that such a waiver is required by the national security interests of the United States; and

"(B) immediately informs the Congress of the waiver and the reasons for the waiver."

Contributions by Japan to the support of United States forces in Japan. Act Nov. 5, 1990, P.L. 101-511, Title VIII, § 8105, 104 Stat. 1902; Dec. 5, 1991, P.L. 102-190, Div A, Title X, Part E, § 1063(b), 105 Stat. 1476, provides:

"(a) Permanent ceiling on United States Armed Forces in Japan. After September 30, 1990, funds appropriated pursuant to an appropriation contained in this Act or any subsequent Act may not be used to support an end strength level of all personnel of the Armed Forces of the United States stationed in Japan at any level in excess of 50,000.

"(b) Annual reduction in ceiling unless support furnished. Unless the President certifies to Congress before the end of each fiscal year that Japan has agreed to offset for that fiscal year the direct costs incurred by the United States related to the presence of all United States military personnel in Japan, excluding the military personnel title costs, the end strength level for that fiscal year of all personnel of the Armed Forces of the United States stationed in Japan may not exceed the number that is 5,000 less than such end strength level for the preceding fiscal year.

"(c) Sense of Congress. It is the sense of Congress that all those countries that share the benefits of international security and stability should share in the responsibility for that stability and security commensurate with their national capabilities. The Congress also recognizes that Japan has made a substantial pledge of financial support to the effort to support the United Nations Security Council resolutions on Iraq. The Congress also recognizes that Japan has a greater economic capability to contribute to international security and stability than any other member of the international community and wishes to encourage Japan to contribute commensurate with that capability.

"(d) Exceptions.

(1) This section shall not apply in the event of a declaration of war or an armed attack on Japan.

"(2) The President may waive the limitation in this section for any fiscal year if he declares that it is in the national interest to do so and immediately informs Congress of the waiver and the reasons for the waiver.

"(e) Effective Date. This section shall take effect on the date of enactment of this Act."

Child care assistance. Act April 6, 1991, P.L. 102-25, Title VI, § 601, 105 Stat. 105; Dec. 5, 1991, P.L. 102-190, Div A, Title X, Part E, § 1063(d)(1), 105 Stat. 1476; Oct. 23, 1992, P.L. 102-484, Div A, Title X, Subtitle F, § 1053(8), 106 Stat. 2502 (effective as of Dec. 5, 1991), provides:

"(a) In general. The Secretary of Defense may provide assistance for families of members of the Armed Forces and of members of the National Guard who served on active duty during the Persian Gulf conflict in order to ensure that the children of such families obtain needed child care services. The assistance authorized by this section should be directed primarily toward providing needed child care services for children of such personnel who are serving in the Persian

Gulf area or who were otherwise deployed, assigned, or ordered to active duty in connection with Operation Desert Storm.

"(b) Authorization of appropriations. Of the amounts authorized to be appropriated from the Defense Cooperation Account for fiscal year 1991 under section 101(a) [unclassified], \$ 20,000,000 shall be available to carry out the provisions of this section. The costs of carrying out such provisions are incremental costs associated with Operation Desert Storm.

"(c) Supplementation of other public funds. Funds appropriated pursuant to subsection (b) that are made available to carry out this section may be used only to supplement, and not to supplant, the amount of any other Federal, State, or local government funds otherwise expended or authorized for the support of child care programs for members of the Armed Forces."

Family education and support services. Act April 6, 1991, P.L. 102-25, Title VI, § 602, 105 Stat. 106; Dec. 5, 1991, P.L. 102-190, Div A, Title X, Part E, § 1063(d)(2), 105 Stat. 1476, provides:

"(a) In general. The Secretary of Defense may provide assistance in accordance with this section to families of members of the Armed Forces and members of the National Guard who served on active duty during the Persian Gulf conflict in order to ensure that those families receive educational assistance and family support services necessary to meet needs arising out of Operation Desert Storm.

"(b) Types of assistance. The assistance authorized by this section may be provided to families directly or through the awarding of grants, contracts, or other forms of financial assistance to appropriate private or public entities.

"(c) Geographic areas assisted.

(1) Such assistance shall be provided primarily in geographic areas--

"(A) in which a substantial number of members of the active components of the Armed Forces of the United States are permanently assigned and from which a significant number of such members are being deployed, or have been deployed, in connection with Operation Desert Storm; or

"(B) from which a significant number of members of the reserve components of the Armed Forces ordered to, or retained on, active duty pursuant to section 672(a), 672(d), 673, 673b, or 688 of title 10, United States Code, are being deployed, or have been deployed, in connection with Operation Desert Storm.

"(2) The Secretary of Defense shall determine which areas meet the criteria set out in paragraph (1).

"(d) Educational assistance. Educational assistance authorized by this section may be used for the furnishing of one or more of the following forms of assistance:

"(1) Individual or group counseling for children and other members of the families of members of the Armed Forces of the United States who have been deployed in connection with, or are casualties of, Operation Desert Storm.

"(2) Training and technical assistance to better prepare teachers and other school employees to address questions and concerns of children of such members of the Armed Forces.

"(3) Other appropriate programs, services, and information designed to address the special needs of children and other members of the families of members of the Armed Forces referred to in paragraph (1) resulting from the deployment, the return from deployment, or the medical or rehabilitation needs of such members.

"(e) Family support assistance. Family support assistance authorized by this section may be used for the following purposes:

"(1) Family crisis intervention.

"(2) Family counseling.

"(3) Family support groups.

"(4) Expenses for volunteer activities.

"(5) Respite care.

"(6) Housing protection and advocacy.

"(7) Food assistance.

"(8) Employment assistance.

"(9) Child care.

"(10) Benefits eligibility determination services.

"(11) Transportation assistance.

"(12) Adult day care for dependent elderly and disabled adults.

"(13) Temporary housing assistance for immediate family members visiting soldiers wounded during Operation Desert Storm and receiving medical treatment at military hospitals and facilities in the United States.

"(f) Authorization of appropriations. Of the amounts authorized to be appropriated from the Defense Cooperation Account for fiscal year 1991 under section 101(a) [unclassified], \$ 30,000,000 shall be available to carry out the provisions of this section. The costs of carrying out such provisions are incremental costs of Operation Desert Storm."

Withholding of payments to indirect-hire civilian personnel of nonpaying pledging nations. Act April 6, 1991, P.L. 102-25, Title VI, § 608, 105 Stat. 112, provides:

"(a) General rule. Effective as of the end of the six-month period beginning on the date of the enactment of this Act, the Secretary of Defense shall withhold payments to any nonpaying pledging nation that would otherwise be paid as reimbursements for expenses of indirect-hire civilian personnel of the Department of Defense in that nation.

"(b) Nonpaying pledging nation defined. For purposes of this section, the term "nonpaying pledging nation" means a foreign nation that has pledged to the United States that it will make contributions to assist the United States in defraying the incremental costs of Operation Desert Shield and which has not paid to the United States the full amount so pledged.

"(c) Release of withheld amounts. When a nation affected by subsection (a) has paid to the United States the full amount pledged, the Secretary of Defense shall release the amounts withheld from payment pursuant to subsection (a).

"(d) Waiver authority. The Secretary of Defense may waive the requirement in subsection (a) upon certification to Congress that the waiver is required in the national security interests of the United States."

Waiver of limitation with respect to end strength level of U.S. Armed Forces in Japan for fiscal year 1991; justification. Presidential Memorandum of May 14, 1991, 56 Fed. Reg. 23991, provides:

"Memorandum for the Secretary of Defense

"Consistent with section 8105(d)(2) of the Department of Defense Appropriation Act, 1991 (Public Law 101-511; 104 Stat. 1856) [note to this section], I hereby waive the limitation in section 8105(b) [note to this section] which states that the end strength level for each fiscal year of all personnel of the Armed Forces of the United States stationed in Japan may not exceed the number that is 5,000 less than such end strength level for the preceding fiscal year, and declare that it is in the national interest to do so.

"You are authorized and directed to inform the Congress of this waiver and of the reasons for the waiver contained in the attached justification, and to publish this memorandum in the Federal Register.

"Justification Pursuant to Section 8105(d)(2) of the Department of Defense Appropriations Act, 1991 (Public Law No. 101-511; 104 Stat 1856) [note to this section]

"In January of this year the Department of Defense signed a new Host Nation Support Agreement with the Government of Japan in which that government agreed to pay all utility and Japanese labor costs incrementally over the next five years (worth \$ 1.7 billion). Because United States forward deployed forces stationed in Japan have regional missions in addition to the defense of Japan, we did not seek to have the Government of Japan offset all of the direct costs incurred by the United States related to the presence of all United States military personnel in Japan (excluding military personnel title costs)."

Provisions similar to those in this note were contained in Act Nov. 5, 1990, P.L. 101-511, Title VIII, § 8092, 104 Stat. 1896.

Delegation of certain defense related authorities of President to Secretary of Defense. Ex. Or. No. 12765 of June 11, 1991, 56 Fed. Reg. 27401, provides:

"By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, and my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

"Section 1. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 749 of title 10 of the United States Code to assign the command without regard to rank in grade to any commissioned officer otherwise eligible to command when two or more commissioned officers of the same grade or corresponding grades are assigned to the same area, field command, or organization.

"Sec. 2. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 7299a(a) of title 10 of the United States Code to direct that combatant vessels and escort vessels be constructed in a Navy or private yard, as the case may be, if the requirement of the Act of March 27, 1934 (ch. 95, 48 Stat. 503) that the first and each succeeding alternate vessel of the same class be constructed in a Navy yard is inconsistent with the public interest.

"Sec. 3. For vessels, and for any major component of the hull or superstructure of vessels to be constructed or repaired for any of the armed forces, the Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 7309(b) of title 10 of the United States Code to authorize exceptions to the prohibition in section 7309(a) of title 10 of the United States Code. Such exceptions shall be based on a determination that it is in the national security interest of the United States to authorize an exception. The Secretary of Defense shall transmit notice of any such determination to the Congress, as required by section 7309(b).

"Sec. 4. The Secretary of Defense may redelegate the authority delegated to him by this order, in accordance with applicable law.

"Sec. 5. This order shall be effective immediately."

Requirements relating to European military procurement practices. Act Dec. 5, 1991, P.L. 102-190, Div A, Title VIII, Part D, § 832, 105 Stat. 1446, provides:

"(a) European procurement practices. The Secretary of Defense shall--

"(1) compute the total value of American-made military goods and services procured each year by European governments or companies;

"(2) review defense procurement practices of European governments to determine what factors are considered in the selection of contractors and to determine whether American firms are discriminated against in the selection of contractors for purchases by such governments of military goods and services; and

"(3) establish a procedure for discussion with European governments about defense contract awards made by them that American firms believe were awarded unfairly.

"(b) Defense trade and cooperation working group. The Secretary of Defense shall establish a defense trade and cooperation working group. The purpose of the group is to evaluate the impact of, and formulate United States positions on, European initiatives that affect United States defense trade, cooperation, and technology security. In carrying out the responsibilities of the working group, members of the group shall consult, as appropriate, with personnel in the Departments of State and Commerce and in the Office of the United States Trade Representative.

"(c) GAO review. The Comptroller General shall conduct a review to determine how the members of the North Atlantic Treaty Organization are implementing their bilateral reciprocal defense procurement memoranda of understanding with the United States. The Comptroller General shall complete the review, and submit to Congress a report on the results of the review, not later than February 1, 1992."

Department of Defense use of national intelligence collection systems. Act Dec. 5, 1991, P.L. 102-190, Div A, Title IX, Part C, § 924, 105 Stat. 1454, provides:

"(a) Procedures for use. The Secretary of Defense, after consultation with the Director of Central Intelligence, shall prescribe procedures for regularly and periodically exercising national intelligence collection systems and exploitation organizations that would be used to provide intelligence support, including support of the combatant commands, during a war or threat to national security.

"(b) Use in joint training exercises. In accordance with procedures prescribed under subsection (a), the Chairman of the Joint Chiefs of Staff shall provide for the use of the national intelligence collection systems and exploitation organizations in joint training exercises to the extent necessary to ensure that those systems and organizations are capable of providing intelligence support, including support of the combatant commands, during a war or threat to national security.

"(c) Report. Not later than May 1, 1992, the Secretary of Defense and the Director of Central Intelligence shall submit to the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a joint report--

"(1) describing the procedures prescribed under subsection (a); and

"(2) stating the assessment of the Chairman of the Joint Chiefs of Staff of the performance in joint training exercises of the national intelligence collection systems and the Chairman's recommendations for any changes that the Chairman considers appropriate to improve that performance."

Family support center for families of prisoners of war and persons missing in action. Act Dec. 5, 1991, P.L. 102-190, Div A, Title X, Part G, § 1083, 105 Stat. 1482, provides:

"(a) Request for establishment. The President is authorized and requested to establish in the Department of Defense a family support center to provide information and assistance to members of the families of persons who at any time while members of the Armed Forces were classified as prisoners of war or missing in action in Southeast Asia and who have not been accounted for. Such a support center should be located in a facility in the National Capital region.

"(b) Duties. The center should be organized and provided with such personnel as necessary to permit the center to assist family members referred to in subsection (a) in contacting the departments and agencies of the Federal Government having jurisdiction over matters relating to such persons."

Commission on the Assignment of Women in the Armed Forces. Act Dec. 5, 1991, P.L. 102-190, Div A, Title V, Part D, Subpart 2, §§ 541-550, 105 Stat. 1365, provide:

"Sec. 541. Establishment of Commission.

"(a) Establishment. There is established a commission to be known as the Commission on the Assignment of Women in the Armed Forces (hereinafter in this subpart referred to as the "Commission").

"(b) Composition.

(1) The Commission shall be composed of 15 members appointed by the President. The Commission membership shall be diverse with respect to race, ethnicity, gender, and age. The President shall designate one of the members as Chairman of the Commission.

"(2) The President shall appoint the members of the Commission from among persons who have distinguished themselves in the public or private sector and who have had significant experience (as determined by the President) with one or more of the following matters:

"(A) Social and cultural matters affecting the military and civilian workplace gained through recognized research and policymaking, as demonstrated by retired military personnel, representatives from educational organizations, and leaders from civilian industry and non-Department of Defense governmental agencies.

"(B) The law.

"(C) Factors used to define appropriate combat job qualifications, including physical, mental, educational, and other factors.

"(D) Service in the Armed Forces in a combat environment.

"(E) Military personnel management.

"(F) Experiences of women in the military gained through service as--

"(i) a female service member (current or former);

"(ii) a manager of an organization with a representative presence of women; or

"(iii) a member of an organization with responsibility for policy review, advice, or oversight of the status of women in the military.

"(G) Women's issues in American society.

"(3) In making appointments to the Commission, the President shall consult with the chairmen and ranking minority members of the Committees on Armed Services of the Senate and the House of Representatives.

"(c) Period of appointment; vacancies. Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

"(d) Initial organizational requirements.

(1) The President shall make all appointments under subsection (b) within 60 days after the date of the enactment of this Act.

"(2) The Commission shall convene its first meeting within 15 days after the first date on which all members of the Commission have been appointed. At that meeting, the Commission shall develop an agenda and a schedule for carrying out its duties.

"Sec. 542. Duties.

"(a) In general. The Commission shall assess the laws and policies restricting the assignment of female service members and shall make findings on such matters.

"(b) Studies. In carrying out such assessment, the Commission shall--

"(1) conduct a thorough study of duty assignments available for female service members;

"(2) examine studies already completed concerning duty assignments for female service members; and

"(3) conduct such additional studies as may be required.

"(c) Matters to be considered. Matters to be considered by the Commission shall include the following:

"(1) The implications, if any, for the combat readiness of the Armed Forces of permitting female service members to qualify for assignment to positions in some or all categories of combat positions and to be assigned to such positions, including the implications with respect to--

"(A) the physical readiness of the armed forces and the process for establishing minimum physical and other qualifications;

"(B) the effects, if any, of pregnancy and other factors resulting in time lost for male and female service members; in evaluating lost time, comparisons must be made between like mental categories and military occupational specialties rather than simple gender comparisons; and

"(C) the effects, if any, of such assignments on unit morale and cohesion.

"(2) The public attitudes in the United States on the use of women in the military.

"(3) The legal and policy implications (A) of permitting only voluntary assignments of female service members to combat positions, and (B) of permitting involuntary assignments of female service members to some or all combat positions.

"(4) The legal and policy implications--

"(A) of requiring females to register for and to be subject to conscription under the Military Selective Service Act [50 USCS Appx. §§ 451 et seq. generally; for full classification, consult USCS Tables volumes] on the same basis as males if females were provided the same opportunity as males for assignment to any position in the Armed Forces;

"(B) of requiring females to register for and to be subject to conscription under the Military Selective Service Act [50 USCS Appx. §§ 451 et seq. generally; for full classification, consult USCS Tables volumes] on the same basis as males if females in the Armed Forces were assigned to combat position only as volunteers; and

"(C) of requiring females to register for and to be subject to conscription under the Military Selective Service Act [50 USCS Appx. §§ 451 et seq. generally; for full classification, consult USCS Tables volumes] on a different basis than males if females in the Armed Forces were not assigned to combat positions on the same basis as males.

"(5) The extent of the need to modify facilities and vessels, aircraft, vehicles, and other equipment of the Armed Forces to accommodate the assignment of female service members to combat positions or to provide training in combat skills to female service members, including any need to modify quarters, weapons, and training facilities and equipment.

"(6) The costs of meeting the needs identified pursuant to paragraph (5).

"(7) The implications of restrictions on the assignment of women on the recruitment, retention, use, and promotion of qualified personnel in the Armed Forces.

"Sec. 543. Report.

"(a) In general.

(1) Not later than November 15, 1992, the Commission shall transmit to the President a final report on the results of the study conducted by the Commission.

"(2) The Commission may transmit to the President and to Congress such interim reports as the Commission considers appropriate.

"(b) Content of final report.

(1) The final report shall contain a detailed statement of the findings and conclusions of the Commission, together with such recommendations for further legislation and administrative action as the Commission considers appropriate.

"(2) The report shall include recommendations on the following matters:

"(A) Whether existing law and policies restricting the assignment of female service members should be retained, modified, or repealed.

"(B) What roles female service members should have in combat.

"(C) What transition process is appropriate if female service members are to be given the opportunity to be assigned to combat positions in the Armed Forces.

"(D) Whether special conditions and different standards should apply to females than apply to males performing similar roles in the Armed Forces.

"(c) Submission of final report to Congress. Not later than December 15, 1992, the President shall transmit to the Congress the report of the Commission, together with the President's comments and recommendations regarding such report.

"Sec. 544. Powers.

"(a) Hearings. The Commission or, at its direction, any panel or member of the Commission, may, for the purpose of carrying out the provisions of this subpart, hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths to the extent that the Commission or any panel or member considers advisable.

"(b) Information. The Commission may secure directly from the Department of Defense and any other Federal department or agency any information that the Commission considers necessary to enable the Commission to carry out its responsibilities under this subpart. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

"Sec. 545. Commission procedures.

"(a) Meetings. The Commission shall meet at the call of the Chairman.

"(b) Quorum.

(1) Five members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

"(2) The Commission shall act by resolution agreed to by a majority of the members of the Commission present at a properly called meeting.

"(c) Panels. The Commission may establish panels composed of less than the full membership of the Commission for the purpose of carrying out the Commission's duties. The actions of each such panel shall be subject to the review and control of the Commission. Any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

"(d) Authority of individuals to act for Commission. Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take under this subpart.

"Sec. 546. Personnel matters.

"(a) Pay of members. Each member of the Commission who is not an officer or employee of the Federal Government shall be paid at a rate equal to the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without pay in addition to that received for their services as officers or employees of the United States.

"(b) Travel expenses. The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code [5 USCS §§ 5701 et seq.], while away from their homes or regular places of business in the performance of services for the Commission.

"(c) Staff.

(1) The Chairman of the Commission may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, appoint a staff director and such additional personnel as may be necessary to enable the Commission to perform its duties. The appointment of a staff director shall be subject to the approval of the Commission.

"(2) The Chairman of the Commission may fix the pay of the staff director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code [5 USCS §§ 5101 et seq., 5331 et seq.], relating to classification of positions and General Schedule pay rates, except that no rate of pay fixed under this paragraph may exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

"(d) Detail of Government employees. Upon request of the Chairman of the Commission, the head of any Federal department or agency may detail, on a nonreimbursable basis, any personnel of that department or agency to the Commission to assist it in carrying out its duties.

"(e) Procurement of temporary and intermittent services. The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

"Sec. 547. Miscellaneous administrative provisions.

"(a) Postal and printing services. The Commission may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(b) Miscellaneous administrative and support services. The Administrator of General Services shall furnish the Commission, on a reimbursable basis, any administrative and support services requested by the Commission.

"(c) Gifts. The Commission may accept, use, and dispose of gifts or donations of services or property.

"(d) Procurement authority. The Commission may procure supplies, services, and property and make contracts, in any fiscal year, in order to carry out its duties, but (except in the case of temporary or intermittent services procured under section 546(e)) only to such extent or in such amounts as are provided in appropriation Acts or are donated pursuant to subsection (c). Contracts and other procurement arrangements may be entered into without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) [41 USCS § 6101] or any similar provision of Federal law.

"(e) Applicability of Federal Advisory Committee Act. The provisions of the Federal Advisory Committee Act [5 USCS Appx.] shall not apply to the Commission.

"(f) Travel. To the maximum extent practicable, the members and employees of the Commission shall travel on military aircraft, military ships, military vehicles, or other military conveyances when travel is necessary in the performance of a responsibility of the Commission, except that no such aircraft, ship, vehicle, or other conveyance may be scheduled primarily for the transportation of any such member or employee when the cost of commercial transportation is less expensive.

"Sec. 548. Payment of Commission expenses.

"The compensation, travel expenses, and per diem allowances of members and employees of the Commission shall be paid out of funds available to the Department of Defense for the payment of compensation, travel allowances, and per diem allowances, respectively, of civilian employees of the Department of Defense. The other expenses of the Commission shall be paid out of funds available to the Department of Defense for the payment of similar expenses incurred by that Department.

"Sec. 549. Termination of the Commission.

"The Commission shall terminate 90 days after the date on which Commission submits its final report under section 543(a)(1).

"Sec. 550. Test assignments of female service members to combat positions.

"(a) Test assignments. In carrying out its duties, the Commission may request the Secretary of Defense to conduct test assignments of female service members to combat positions. The Secretary shall determine, in consultation with the Commission, the types of tests that are appropriate and shall retain a record of the disposition of each such request.

"(b) Waiver authority. For the purpose of conducting test assignments of female service members to combat positions pursuant to requests under subsection (a), the Secretary of Defense may waive section 6015 of title 10, United States Code, and any other restriction that applies under Department of Defense regulations or policy to the assignment of female service members to combat positions."

Programming language Ada to be used for Department of Defense software. Act Oct. 6, 1992, P.L. 102-396, Title IX, § 9070, 106 Stat. 1918, provides: "Notwithstanding any other provision of law, where cost effective, all Department of Defense software shall be written in the programming language Ada, in the absence of special exemption by an official designated by the Secretary of Defense."

Provisions similar to those of this note were contained in Acts Nov. 5, 1990, P.L. 101-511, Title VIII, § 8092, 104 Stat. 1896; Nov. 26, 1991, P.L. 102-172, Title VIII, § 8073, 105 Stat. 1188.

Program to commemorate World War II. Act Oct. 23, 1992, P.L. 102-484, Div A, Title III, Subtitle G, § 378, 106 Stat. 2387; Oct. 5, 1994, P.L. 103-337, Div A, Title III, Subtitle H, § 382(a), 108 Stat. 2740, provides:

"(a) In general. The Secretary of Defense may, during fiscal years 1993 through 1996, conduct a program to commemorate the 50th anniversary of World War II and to coordinate, support, and facilitate other such commemoration programs and activities of the Federal Government, State and local governments, and other persons.

"(b) Use of funds. During fiscal years 1993 through 1996, funds appropriated to the Department of Defense for operation and maintenance of Defense Agencies shall be available to conduct the program referred to in subsection (a).

"(c) Program activities. The program referred to in subsection (a) may include activities and ceremonies--

"(1) to provide the people of the United States with a clear understanding and appreciation of the lessons and history of World War II;

"(2) to thank and honor veterans of World War II and their families;

"(3) to pay tribute to the sacrifices and contributions made on the home front by the people of the United States;

"(4) to foster an awareness in the people of the United States that World War II was the central event of the 20th century that defined the postwar world;

"(5) to highlight advances in technology, science, and medicine related to military research conducted during World War II;

"(6) to inform wartime and postwar generations of the contributions of the Armed Forces of the United States to the United States;

"(7) to recognize the contributions and sacrifices made by World War II allies of the United States; and

"(8) to highlight the role of the Armed Forces of the United States, then and now, in maintaining world peace through strength.

"(d) Authority of the Secretary.

(1) In connection with the program referred to in subsection (a), the Secretary of Defense may adopt, use, and register as trademarks and service marks, emblems, signs, insignia, or words. The Secretary shall have the exclusive right to use such emblems, signs, insignia or words, subject to the preexisting rights described in paragraph (3), and may grant exclusive or nonexclusive licenses in connection therewith.

"(2) Without the consent of the Secretary of Defense, any person who uses any emblem, sign, insignia, or word adopted, used, or registered as a trademark or service mark by the Secretary in accordance with paragraph (1), or any combination or simulation thereof tending to cause confusion, to cause mistake, to deceive, or to falsely suggest a connection with the program referred to in subsection (a), shall be subject to suit in a civil action by the Attorney General, upon complaint by the Secretary of Defense, for the remedies provided in the Act of July 5, 1946, as amended (60 Stat. 427; popularly known as the Trademark Act of 1945) (15 U.S.C. 1051 et seq.).

"(3) Any person who actually used an emblem, sign, insignia, or word adopted, used, or registered as a trademark or service mark by the Secretary in accordance with paragraph (1), or any combination or simulation thereof, for any lawful purpose before such adoption, use, or registration as a trademark or service mark by the Secretary shall not be prohibited by this section from continuing such lawful use for the same purpose and for the same goods or services.

"(e) Establishment of account.

(1) There is established in the Treasury of the United States an account to be known as the 'Department of Defense 50th Anniversary of World War II Commemoration Account' which shall be administered by the Secretary of Defense as a single account. There shall be deposited into the account all proceeds derived from activities described in subsection (d).

"(2) The Secretary may use the funds in the account established in paragraph (1) only for the purpose of conducting the program referred to in subsection (a).

"(3) Not later than 60 days after the termination of the authority of the Secretary to conduct the commemoration program referred to in subsection (a), the Secretary shall transmit to the Committees on Armed Services of the Senate and House of Representatives a report containing an accounting of all the funds deposited into and expended from the account or otherwise expended under this section, and of any amount remaining in the account. Unobligated funds which remain in the account after termination of the authority of the Secretary under this section shall be held in the account until transferred by law after the Committees receive the report.

"(f) Provision of voluntary services.

(1) Notwithstanding section 1342 of title 31, United States Code, the Secretary of Defense may accept from any person voluntary services to be provided in furtherance of the program referred to in subsection (a).

"(2) A person providing voluntary services under this subsection shall be considered to be an employee for the purposes of chapter 81 of title 5 [5 USCS §§ 8101 et seq.], relating to compensation for work-related injuries. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purposes by reason of the provision of such service.

"(3) The Secretary of Defense may provide for reimbursement of incidental expenses which are incurred by a person providing voluntary services under this subsection. The Secretary of Defense shall determine which expenses are eligible for reimbursement under this paragraph."

Review of military flight training activities at civilian airfields. Act Oct. 23, 1992, P.L. 102-484, Div A, Title III, Subtitle G, § 383, 106 Stat. 2392, provides:

"(a) Review required. The Secretary of Defense shall provide for a review of the practices and procedures of the military departments regarding the use of civilian airfields in flight training activities of the Armed Forces.

"(b) Purpose. The purpose of the review is to determine whether the practices and procedures referred to in subsection (a) should be modified to better protect the public safety while meeting training requirements of the Armed Forces.

"(c) Special requirement. In the conduct of the review, particular consideration shall be given to the practices and procedures regarding the use of civilian airfields in heavily populated areas."

Report on actions taken to reduce or eliminate disincentives to report abuse of dependent. Act Oct. 23, 1992, P.L. 102-484, Div A, Title VI, Subtitle E, § 653(d), 106 Stat. 2429, provides:

"(1) Not later than December 15, 1993, the Secretary of Defense shall transmit to the Congress a report on the actions taken and planned to be taken in the Department of Defense to reduce or eliminate disincentives for a dependent of a member of the Armed Forces abused by the member to report the abuse to appropriate authorities.

"(2) The actions considered by the Secretary should include the provision of treatment, child care services, health care services, job training, job placement services, and transitional financial assistance for dependents of members of the Armed Forces referred to in paragraph (1)."

Survivor notification and access to reports relating to service members who die. Act Oct. 23, 1992, P.L. 102-484, Div A, Title X, Subtitle H, § 1072, 106 Stat. 2508, provides:

"(a) Availability of fatality reports and records.

(1) Requirement. The Secretary of each military department shall ensure that fatality reports and records pertaining to any member of the Armed Forces who dies in the line of duty shall be made available to family members of the service member in accordance with this subsection.

"(2) Information to be provided after notification of death. Within a reasonable period of time after family members of a service member are notified of the member's death, but not more than 30 days after the date of notification, the Secretary concerned shall ensure that the family members--

"(A) in any case in which the cause or circumstances surrounding the death are under investigation, are informed of that fact, of the names of the agencies within the Department of Defense conducting the investigations, and of the existence of any reports by such agencies that have been or will be issued as a result of the investigations; and

"(B) are furnished, if the family members so desire, a copy of any completed investigative report and any other completed fatality reports that are available at the time family members are provided the information described in subparagraph (A) to the extent such reports may be furnished consistent with sections 552 and 552a of title 5, United States Code.

"(3) Assistance in obtaining reports.

(A) In any case in which an investigative report or other fatality reports are not available at the time family members of a service member are provided the information described in paragraph (2)(A) about the member's death, the Secretary concerned shall ensure that a copy of such investigative report and any other fatality reports are furnished to

the family members, if they so desire, when the reports are completed and become available, to the extent such reports may be furnished consistent with sections 552 and 552a of title 5, United States Code.

"(B) In any case in which an investigative report or other fatality reports cannot be released at the time family members of a service member are provided the information described in paragraph (2)(A) about the member's death because of section 552 or 552a of title 5, United States Code, the Secretary concerned shall ensure that the family members--

"(i) are informed about the requirements and procedures necessary to request a copy of such reports; and

"(ii) are assisted, if the family members so desire, in submitting a request in accordance with such requirements and procedures.

"(C) The requirement of subparagraph (B) to inform and assist family members in obtaining copies of fatality reports shall continue until a copy of each report is obtained, or access to any such report is denied by competent authority within the Department of Defense.

"(4) Waiver. The requirements of paragraph (2) or (3) may be waived on a case-by-case basis, but only if the Secretary of the military department concerned determines that compliance with such requirements is not in the interests of national security.

"(b) Review of combat fatality notification procedures.

(1) Review. The Secretary of Defense shall conduct a review of the fatality notification procedures used by the military departments. Such review shall examine the following matters:

"(A) Whether uniformity in combat fatality notification procedures among the military departments is desirable, particularly with respect to--

"(i) the use of one or two casualty notification and assistance officers;

"(ii) the use of standardized fatality report forms and witness statements;

"(iii) the use of a single center for all military departments through which combat fatality information may be processed; and

"(iv) the use of uniform procedures and the provision of a dispute resolution process for instances in which members of one of the Armed Forces inflict casualties on members of another of the Armed Forces.

"(B) Whether existing combat fatality report forms should be modified to include a block or blocks with which to identify the cause of death as 'friendly fire', 'U.S. ordnance', or 'unknown'.

"(C) Whether the existing 'Emergency Data' form prepared by members of the Armed Forces should be revised to allow members to specify provision for notification of additional family members in cases such as the case of a divorced service member who leaves children with both a current and a former spouse.

"(D) Whether the military departments should, in all cases, provide family members of a service member who died as a result of injuries sustained in combat with full and complete details of the death of the service member, regardless of whether such details may be graphic, embarrassing to the family members, or reflect negatively on the military department concerned.

"(E) Whether, and when, the military departments should inform family members of a service member who died as a result of injuries sustained in combat about the possibility that the death may have been the result of friendly fire.

"(F) The criteria and standards which the military departments should use in deciding when disclosure is appropriate to family members of a member of the military forces of an allied nation who died as a result of injuries sustained in combat when the death may have been the result of fire from United States armed forces and an investigation into the cause or circumstances of the death has been conducted.

"(2) Report. The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the review conducted under paragraph (1). Such report shall be submitted not later than March 31, 1993, and shall include recommendations on the matters examined in the review and on any other matters the Secretary determines to be appropriate based upon the review or on any other reviews undertaken by the Department of Defense.

"(c) Definitions. In this section:

"(1) The term 'fatality reports' includes investigative reports and any other reports pertaining to the cause or circumstances of death of a member of the Armed Forces in the line of duty (such as autopsy reports, battlefield reports, and medical reports).

"(2) The term 'family members' means parents, spouses, adult children, and such other relatives as the Secretary concerned considers appropriate.

"(d) Applicability.

(1) Except as provided in paragraph (2), this section applies with respect to deaths of members of the Armed Forces occurring after the date of the enactment of this Act.

"(2) With respect to deaths of members of the Armed Forces occurring before the date of the enactment of this Act, the Secretary concerned shall provide fatality reports to family members upon request as promptly as practicable."

Limitation on support for United States contractors selling arms overseas. Act Oct. 23, 1992, P.L. 102-484, Div A, Title X, Subtitle I, § 1082, 106 Stat. 2516; Nov. 24, 2003, P.L. 108-136, Div A, Title X, Subtitle D, § 1031(d)(2), 117 Stat. 1604, provides:

"(a) Support for contractors. In the event that a United States defense contractor or industrial association requests the Department of Defense or a military department to provide support in the form of military equipment for any airshow or trade exhibition to be held outside the United States, such equipment may not be supplied unless the contractor or association agrees to reimburse the Treasury of the United States for--

"(1) all incremental costs of military personnel accompanying the equipment, including food, lodging, and local transportation;

"(2) all incremental transportation costs incurred in moving such equipment from its normally assigned location to the airshow or trade exhibition and return; and

"(3) any other miscellaneous incremental costs not included under paragraphs (1) and (2) that are incurred by the Federal Government but would not have been incurred had military support not been provided to the contractor or industrial association.

"(b) Department of Defense exhibitions.

(1) A military department may not participate directly in any airshow or trade exhibition held outside the United States unless the Secretary of Defense determines that it is in the national security interests of the United States for the military departments to do so.

"(2) The Secretary of Defense may not delegate the authority to make the determination referred to in paragraph (1)(A) below the level of the Under Secretary of Defense for Policy.

"(c) Definition. In this section, the term 'incremental transportation cost' includes the cost of transporting equipment to an airshow or trade exhibition only to the extent that the provision of transportation by the Department of Defense described in subsection (a)(2) does not fulfill legitimate training requirements that would otherwise have to be met."

Repeal of provision for overseas military end strength. Act Oct. 23, 1992, P.L. 102-484, Div A, Title XIII, Subtitle A, § 1302, 106 Stat. 2545, which formerly appeared as a note to this section, was repealed by Act Oct. 5, 1994, P.L. 103-337, Div A, Title XIII, Subtitle B, § 1312(c), 108 Stat. 2894. Such § 1302 provided for overseas military end strength.

Reports on overseas basing. Act Oct. 23, 1992, P.L. 102-484, Div A, Title XIII, Subtitle A, § 1304, 106 Stat. 2546; Nov. 30, 1993, P.L. 103-160, Div B, Title XXIX, Subtitle B, § 2924(a), 107 Stat. 1931; Feb. 10, 1996, P.L. 104-106, Div A, Title XV, § 1502(c)(2)(A), 110 Stat. 506, provides:

"(a) Annual report. The Secretary of Defense shall, not later than March 31 of each year through 1997, submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives, either separately or as part of another relevant report, a report that specifies--

"(1) the stationing and basing plan by installation for United States military forces outside the United States;

"(2) the status of closures of United States military installations located outside the United States;

"(3) both--

"(A) the status of negotiations, if any, between the United States and the host government as to (i) United States claims for compensation for the fair market value of the improvements made by the United States at each installation referred to in paragraph (2), and (ii) any claims of the host government for damages or restoration of the installation; and

"(B) the representative of the United States in any such negotiations;

"(4) the potential savings to the United States resulting from such closures;

"(5) the cost to the United States of any improvements made at each installation referred to in paragraph (2) and the fair market value of such improvements, expressed in constant dollars based on the date of completion of the improvements;

"(6) in each case in which negotiations between the United States and a host government have resulted in an agreement for the payment to the United States by the host government of the value of improvements to an installation made by the United States, the amount of such payment, the form of such payment, and the expected date of such payment; and

"(7) efforts and progress toward achieving host nation offsets under section 1301(e) [unclassified] and reduced end strength levels under section 1302 [note to this section].

"(b) Report on budget implications of overseas basing agreements. Whenever the Secretary of Defense enters into a basing agreement between the United States and a foreign country with respect to United States military forces outside the United States, the Secretary of Defense shall, in advance of the signing of the agreement, submit to the congressional defense committees a report on the Federal budget implications of the agreement."

Repeal of provision relating to notice of proposed changes in combat assignments for female members. Act Nov. 30, 1993, P.L. 103-160, Div A, Title V, Subtitle D, § 542, 107 Stat. 1659; Oct. 30, 2000, P.L. 106-398, § 1, 114 Stat. 1654 (enacting into law § 573(b) of Subtitle G of Title V of Division A of H.R. 5408 (114 Stat. 1654A-136), as introduced on Oct. 6, 2000); Dec. 28, 2001, P.L. 107-107, Div A, Title V, Subtitle J, § 591, 115 Stat. 1125, which formerly appeared as a note to this section, was repealed by Act Jan. 6, 2006, P.L. 109-163, Div A, Title V, Subtitle D, § 541(c), 119 Stat. 3253. Such note provided for notification to Congress of proposed changes in combat assignments to which female members may be assigned. For similar provisions, see 10 USCS § 652.

Gender-neutral occupational performance standards. Act Nov. 30, 1993, P.L. 103-160, Div A, Title V, Subtitle D, § 543, 107 Stat. 1659, provides:

"(a) Gender neutrality requirement. In the case of any military occupational career field that is open to both male and female members of the Armed Forces, the Secretary of Defense--

"(1) shall ensure that qualification of members of the Armed Forces for, and continuance of members of the Armed Forces in, that occupational career field is evaluated on the basis of common, relevant performance standards, without differential standards or evaluation on the basis of gender;

"(2) may not use any gender quota, goal, or ceiling except as specifically authorized by law; and

"(3) may not change an occupational performance standard for the purpose of increasing or decreasing the number of women in that occupational career field.

"(b) Requirements relating to use of specific physical requirements.

(1) For any military occupational specialty for which the Secretary of Defense determines that specific physical requirements for muscular strength and endurance and cardiovascular capacity are essential to the performance of duties, the Secretary shall prescribe specific physical requirements for members in that specialty and shall ensure (in the case of an occupational specialty that is open to both male and female members of the Armed Forces) that those requirements are applied on a gender-neutral basis.

"(2) Whenever the Secretary establishes or revises a physical requirement for an occupational specialty, a member serving in that occupational specialty when the new requirement becomes effective, who is otherwise considered to be a satisfactory performer, shall be provided a reasonable period, as determined under regulations prescribed by the Secretary, to meet the standard established by the new requirement. During that period, the new physical requirement may not be used to disqualify the member from continued service in that specialty.

"(c) Notice to Congress of changes. Whenever the Secretary of Defense proposes to implement changes to the occupational standards for a military occupational field that are expected to result in an increase, or in a decrease, of at least 10 percent in the number of female members of the Armed Forces who enter, or are assigned to, that occupational field, the Secretary of Defense shall submit to Congress a report providing notice of the change and the justification and rationale for the change. Such changes may then be implemented only after the end of the 60-day period beginning on the date on which such report is submitted."

Foreign language proficiency test program. Act Nov. 30, 1993, P.L. 103-160, Div A, Title V, Subtitle G, § 575, 107 Stat. 1675, provides:

"(a) Test program. The Secretary of Defense shall develop and carry out a test program for improving foreign language proficiency in the Department of Defense through improved management and other measures. The test program shall be designed to evaluate the findings and recommendations of--

"(1) the June 1993 inspection report of the Inspector General of the Department of Defense on the Defense Foreign Language Program (report numbered 93-INS-10);

"(2) the report of the Sixth Quadrennial Review of Military Compensation (August 1988); and

"(3) any other recent study of the foreign language proficiency program of the Department of Defense.

"(b) Evaluation of prior recommendations. The test program shall include an evaluation of the following possible changes to current practice identified in the reports referred to in subsection (a):

"(1) Management of linguist billets and personnel for the active and reserve components from a Total Force perspective.

"(2) Improvement of linguist training programs, both resident and nonresident, to provide greater flexibility, to accommodate missions other than signals intelligence, and to improve the provision of resources for nonresident programs.

"(3) Centralized responsibility within the Office of the Secretary of Defense to provide coordinated oversight of all foreign language issues and programs, including a centralized process for determination, validation, and documentation of foreign language requirements for different services and missions.

"(4) Revised policies of each of the military departments to foster maintenance of highly perishable linguistic skills through improved management of the careers of language-trained personnel, including more effective use of language skills, improved career opportunities within the linguistics field, and specific linkage of language proficiency to promotions.

"(5) In the case of language-trained members of the reserve components--

"(A) the use of additional training assemblies (ATAs) as a means of sustaining linguistic proficiency and enhancing retention; and

"(B) the use of larger enlistment and reenlistment bonuses, Special Duty Assignment Pay, and educational incentives.

"(6) Such other management changes as the Secretary may consider necessary.

"(c) Evaluation of adjustment in foreign language proficiency pay.

(1) The Secretary shall include in the test program an evaluation of adjustments in foreign language proficiency pay for active and reserve component personnel (which may be adjusted for purposes of the test program without regard to section 316(b) of title 37, United States Code).

"(2) Before any adjustment in foreign language proficiency pay is included in the test program as authorized by paragraph (1), the Secretary shall submit to the committees named in subsection (d)(2) the following information related to proficiency pay adjustments:

"(A) The response of the Secretary to the findings of the Inspector General in the report on the Defense Foreign Language Program referred to in subsection (a)(1), specifically including the following matters raised in that report: substituted this section for one which read: substituted this section for one which read:

"(i) Inadequate centralized oversight of planning, policy, roles, responsibilities, and funding for foreign language programs.

"(ii) Inadequate management and validation of the requirements process for foreign language programs.

"(iii) Inadequate uniform career management of language-trained personnel, including failure to take sufficient advantage of language skills and to recoup investment of training dollars.

"(iv) Inadequate training programs, both resident and nonresident.

"(B) The current manning of linguistic billets (shown by service, by active or reserve component, and by career field).

"(C) The rates of retention in the service for language-trained personnel (shown by service, by active or reserve component, and by career field).

"(D) The rates of retention by career field for language-trained personnel (shown by service and by active or reserve component).

"(E) The rates of language proficiency for personnel serving in linguistic billets (shown by service, by active or reserve component, and by career field).

"(F) Trends in performance ratings for personnel serving in linguistic billets (shown by service, by active or reserve component, and by career field).

"(G) Promotion rates for personnel serving in linguistic billets (shown by service, by active or reserve component, and by career field).

"(H) The estimated cost of foreign language proficiency pay as proposed to be paid at the adjusted rates for the test program under paragraph (1)--

"(i) for each year of the test program; and

"(ii) for five years, if those rates are subsequently applied to the entire Department of Defense.

"(3) The rates for adjusted foreign language proficiency pay as proposed to be paid for the test program under paragraph (1) may not take effect for the test program unless the senior official responsible for personnel matters in the Office of the Secretary of Defense determines that--

"(A) the foreign language proficiency pay levels established for the test program are consistent with proficiency pay levels for other functions throughout the Department of Defense; and

"(B) the terms and conditions for receiving foreign language proficiency pay conform to current policies and practices within the Department of Defense.

"(d) Report on plan for test program.

(1) The Secretary of Defense shall submit to the committees named in paragraph (2) a report containing a plan for the test program required in subsection (a), an explanation of the plan, and a discussion of the matters stated in subsection (c)(2). The report shall be submitted not later than April 1, 1994.

"(2) The committees referred to in paragraph (1) are--

"(A) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives; and

"(B) the Committee on Armed Services and the Select Committee on Intelligence of the Senate.

"(e) Period of test program.

(1) The test program required by subsection (a) shall begin on October 1, 1994. However, if the report required by subsection (d) is not submitted by the date specified in that subsection for the submission of the report, the test program shall begin at the end of a period of 180 days (as computed under paragraph (2)) beginning on the date on which such report is submitted.

"(2) For purposes of paragraph (1), days on which either House is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment sine die shall be excluded in the computation of such 180-day period.

"(3) The test program shall terminate two years after it begins."

Security clearances for civilian employees. Act Nov. 30, 1993, P.L. 103-160, Div A, Title XI, Subtitle H, § 1183, 107 Stat. 1774, provides:

"(a) Review of security clearance procedures.

(1) The Secretary of Defense shall conduct a review of the procedural safeguards available to Department of Defense civilian employees who are facing denial or revocation of security clearances.

"(2) Such review shall specifically consider--

"(A) whether the procedural rights provided to Department of Defense civilian employees should be enhanced to include the procedural rights available to Department of Defense contractor employees;

"(B) whether the procedural rights provided to Department of Defense civilian employees should be enhanced to include the procedural rights available to similarly situated employees in those Government agencies that provide greater rights than the Department of Defense; and

"(C) whether there should be a difference between the rights provided to both Department of Defense civilian and contractor employees with respect to security clearances and the rights provided with respect to sensitive compartmented information and special access programs.

"(b) Report. The Secretary shall submit to Congress a report on the results of the review required by subsection (a) not later than March 1, 1994.

"(c) Regulations. The Secretary shall revise the regulations governing security clearance procedures for Department of Defense civilian employees not later than May 15, 1994."

Upgrade of Direct Communication Link; savings provision. Act Dec. 17, 1993, P.L. 103-199, Title IV, § 404(b), 107 Stat. 2325, provides: "The amendment made by subsection (a)(2) [amending § 2(b) of Act Aug. 8, 1985, P.L. 99-85, 99 Stat. 287, which appears as a note to this section] does not affect the applicability of section 2(b) of that joint resolution to funds received from the Soviet Union."

Requirements for automated information systems of the Department of Defense. Act Oct. 5, 1994, P.L. 103-337, Div A, Title III, Subtitle H, § 381, 108 Stat. 2738, provides:

"(a) Determination required.

(1) Not later than March 15 in each of 1995, 1996, and 1997, the Secretary of Defense shall--

"(A) determine whether each automated information system described in paragraph (2) meets the requirements set forth in subsection (b); and

"(B) take appropriate action to end the modernization or development by the Department of Defense of any such system that the Secretary determines does not meet such requirements.

"(2) An automated information system referred to in paragraph (1) is an automated information system--

"(A) that is undergoing modernization or development by the Department of Defense;

"(B) that exceeds \$ 50,000,000 in value; and

"(C) that is not a migration system, as determined by the Enterprise Integration Executive Board of the Department of Defense.

"(b) Requirements. The use of an automated information system by the Department of Defense shall--

"(1) contribute to the achievement of Department of Defense strategies for the use of automated information systems;

"(2) as determined by the Secretary, provide an acceptable benefit from the investment in the system or make a substantial contribution to the performance of the defense mission for which the system is used;

"(3) comply with Department of Defense directives applicable to life cycle management of automated information systems; and

"(4) be based on guidance developed under subsection (c).

"(c) Guidance for use. The Secretary of Defense shall develop guidance for the use of automated information systems by the Department of Defense. In developing the guidance, the Secretary shall consider the following:

"(1) Directives of the Office of Management and Budget applicable to returns of investment for such systems.

"(2) A sound, functional economic analysis.

"(3) Established objectives for the Department of Defense information infrastructure.

"(4) Migratory assessment criteria, including criteria under guidance provided by the Defense Information Systems Agency.

"(d) Waiver.

(1) The Secretary of Defense may waive the requirements of subsection (a) for an automated information system if the Secretary determines that the purpose for which the system is being modernized or developed is of compelling military importance.

"(2) If the Secretary exercises the waiver authority provided in paragraph (1), the Secretary shall include the following in the next report required by subsection (f):

"(A) The reasons for the failure of the automated information system to meet all of the requirements of subsection (b).

"(B) A determination of whether the system is expected to meet such requirements in the future, and if so, the date by which the system is expected to meet the requirements.

"(e) Performance measures and management controls.

(1) The Secretary of Defense shall establish performance measures and management controls for the supervision and management of the activities described in paragraph (2). The performance measures and management controls shall be adequate to ensure, to the maximum extent practicable, that the Department of Defense receives the maximum benefit possible from the development, modernization, operation, and maintenance of automated information systems.

"(2) The activities referred to in paragraph (1) are the following:

"(A) Accelerated implementation of migration systems.

"(B) Establishment of data standards.

"(C) Process improvement.

"(f) Reports. Not later than March 15 in each of 1995, 1996, and 1997, the Secretary of Defense shall submit to Congress a report on the establishment and implementation of the performance measures and management controls referred to in subsection (e)(1). Each such report shall also specify--

"(1) the automated information systems that, as determined under subsection (a), meet the requirements of subsection (b);

"(2) the automated information systems that, as determined under subsection (a), do not meet the requirements of subsection (b) and the action taken by the Secretary to end the use of such systems; and

"(3) the automated information systems that, as determined by the Enterprise Integration Executive Board, are migration systems.

"(g) Review by Comptroller General. Not later than April 30, 1995, the Comptroller General of the United States shall submit to Congress a report that contains an evaluation of the following:

"(1) The progress made by the Department of Defense in achieving the goals of the corporate information management program of the Department.

"(2) The progress made by the Secretary of Defense in establishing the performance measures and management controls referred to in subsection (e)(1).

"(3) The progress made by the Department of Defense in using automated information systems that meet the requirements of subsection (b).

"(4) The report required by subsection (f) to be submitted in 1995.

"(h) Definitions. In this section:

"(1) The term 'automated information system' means an automated information system of the Department of Defense described in the exhibits designated as 'IT-43' in the budget submitted to Congress by the President for fiscal year 1995 pursuant to section 1105 of title 31, United States Code.

"(2) The term 'migration system' has the meaning given such term in the document entitled 'Department of Defense Strategy for Acceleration of Migration Systems and Data Standards' attached to the memorandum of the Depart-

ment of Defense dated October 13, 1993 (relating to accelerated implementation of migration systems, data standards, and process improvement)."

Department of Defense policies and procedures on discrimination and sexual harassment. Section 532 of Act Oct. 5, 1994, P.L. 103-337, which formerly appeared as a note to this section, was transferred to 10 USCS § 1561 note.

Annual report on personnel readiness factors by race and gender. Act Oct. 5, 1994, P.L. 103-337, Div A, Title V, Subtitle C, § 533, 108 Stat. 2760, provides:

"(a) Required assessment. The Secretary of Defense shall submit to Congress an annual report on trends in recruiting, retention, and personnel readiness.

"(b) Data to be collected. Each annual report under subsection (a) shall include the following information with respect to the preceding fiscal year for the active components of each of the Armed Forces under the jurisdiction of the Secretary (as well as such additional information as the Secretary considers appropriate):

"(1) The numbers of members of the Armed Forces temporarily and permanently nondeployable and rates of temporary and permanent nondeployability, displayed by cause of nondeployability, rank, and gender.

"(2) The numbers and rates of complaints and allegations within the Armed Forces that involve gender and other unlawful discrimination and sexual harassment, and the rates of substantiation for those complaints and allegations.

"(3) The numbers and rates of disciplinary proceedings, displayed (A) by offense or infraction committed, (B) by gender, rank, and race, and (C) by the categories specified in paragraph (2).

"(4) The retention rates, by gender, rank, and race, with an analysis of factors influencing those rates.

"(5) The propensity of persons to enlist, displayed by gender and race, with an analysis of the factors influencing those propensities.

"(c) Submission to Congress. The Secretary shall submit the report under this section for any fiscal year as part of the annual Department of Defense posture statement provided to Congress in connection with the Department of Defense budget request for that fiscal year.

"(d) Initial submission. The first report under this section shall be submitted in connection with the Department of Defense budget request for fiscal year 1996 and shall include data, to the degree such data already exists, for fiscal years after fiscal year 1991."

Victims' advocates programs in Department of Defense. Act Oct. 5, 1994, P.L. 103-337, Div A, Title V, Subtitle C, § 534, 108 Stat. 2761, provides:

"(a) Establishment.

(1) The Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness, shall revise policies and regulations of the Department of Defense with respect to the programs of the Department of Defense specified in paragraph (2) in order to establish within each of the military departments a victims' advocates program.

"(2) Programs referred to in paragraph (1) are the following:

"(A) Victim and witness assistance programs.

"(B) Family advocacy programs.

"(C) Equal opportunity programs.

"(3) In the case of the Department of the Navy, separate victims' advocates programs shall be established for the Navy and the Marine Corps.

"(b) Purpose. A victims' advocates program established pursuant to subsection (a) shall provide assistance described in subsection (d) to members of the Armed Forces and their dependents who are victims of any of the following:

"(1) Crime.

"(2) Intrafamilial sexual, physical, or emotional abuse.

"(3) Discrimination or harassment based on race, gender, ethnic background, national origin, or religion.

"(c) Interdisciplinary councils.

(1) The Secretary of Defense shall establish a Department of Defense council to coordinate and oversee the implementation of programs under subsection (a). The membership of the council shall be selected from members of the Armed Forces and officers and employees of the Department of Defense having expertise or experience in a variety of disciplines and professions in order to ensure representation of the full range of services and expertise that will be needed in implementing those programs.

"(2) The Secretary of each military department shall establish similar interdisciplinary councils within that military department as appropriate to ensure the fullest coordination and effectiveness of the victims' advocates program of that military department. To the extent practicable, such a council shall be established at each significant military installation.

"(d) Assistance.

(1) Under a victims' advocates program established under subsection (a), individuals working in the program shall principally serve the interests of a victim by initiating action to provide (A) information on available benefits and services, (B) assistance in obtaining those benefits and services, and (C) other appropriate assistance.

"(2) Services under such a program in the case of an individual who is a victim of family violence (including intrafamilial sexual, physical, and emotional abuse) shall be provided principally through the family advocacy programs of the military departments.

"(e) Staffing. The Secretary of Defense shall provide for the assignment of personnel (military or civilian) on a full-time basis to victims' advocates programs established pursuant to subsection (a). The Secretary shall ensure that sufficient numbers of such full-time personnel are assigned to those programs to enable those programs to be carried out effectively.

"(f) Implementation deadline. Subsection (a) shall be carried out not later than six months after the date of the enactment of this Act.

"(g) Implementation report. Not later than 30 days after the date on which Department of Defense policies and regulations are revised pursuant to subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the implementation (and plans for implementation) of this section."

Assistance to family members of Korean conflict and Cold War POW/MIAs who remain unaccounted for. Act Oct. 5, 1994, P.L. 103-337, Div A, Title X, Subtitle D, § 1031, 108 Stat. 2838, provides:

"(a) Single point of contact. The Secretary of Defense shall designate an official of the Department of Defense to serve as a single point of contact within the department--

"(1) for the immediate family members (or their designees) of any unaccounted-for Korean conflict POW/MIA; and

"(2) for the immediate family members (or their designees) of any unaccounted-for Cold War POW/MIA.

"(b) Functions. The official designated under subsection (a) shall serve as a liaison between the family members of unaccounted-for Korean conflict POW/MIAs and unaccounted-for Cold War POW/MIAs and the Department of Defense and other Federal departments and agencies that may hold information that may relate to such POW/MIAs. The functions of that official shall include assisting family members--

"(1) with the procedures the family members may follow in their search for information about the unaccounted-for Korean conflict POW/MIA or unaccounted-for Cold War POW/MIA, as the case may be;

"(2) in learning where they may locate information about the unaccounted-for POW/MIA; and

"(3) in learning how and where to identify classified records that contain pertinent information and that will be declassified.

"(c) Assistance in obtaining declassification. The official designated under subsection (a) shall seek to obtain the rapid declassification of any relevant classified records that are identified.

"(d) Repository. The official designated under subsection (a) shall provide all documents relating to unaccounted-for Korean conflict POW/MIAs and unaccounted-for Cold War POW/MIAs that are located as a result of the official's efforts to the National Archives and Records Administration, which shall locate them in a centralized repository.

"(e) Definitions. For purposes of this section:

"(1) The term 'unaccounted-for Korean conflict POW/MIA' means a member of the Armed Forces or civilian employee of the United States who, as a result of service during the Korean conflict, was at any time classified as a prisoner of war or missing-in-action and whose person or remains have not been returned to United States control and who remains unaccounted for.

"(2) The term 'unaccounted-for Cold War POW/MIA' means a member of the Armed Forces or civilian employee of the United States who, as a result of service during the period from September 2, 1945, to August 21, 1991, was at any time classified as a prisoner of war or missing-in-action and whose person or remains have not been returned to United States control and who remains unaccounted for.

"(3) The term 'Korean conflict' has the meaning given such term in section 101(9) of title 38, United States Code."

Annual report on denial, revocation, and suspension of security clearances. Act Oct. 5, 1994, P.L. 103-337, Div A, Title X, Subtitle E, § 1041, 108 Stat. 2842, provides:

"(a) In general. The Secretary of Defense shall submit to Congress, not later than 90 days after the close of each of fiscal years 1995 through 2000, a report concerning the denial, revocation, or suspension of security clearances for Department of Defense military and civilian personnel, and for Department of Defense contractor employees, for that fiscal year.

"(b) Matter to be included in report. The Secretary shall include in each such report the following information with respect to the fiscal year covered by the report (shown separately for members of the Armed Forces, civilian officers and employees of the Department of Defense, and employees of contractors of the Department of Defense):

"(1) The number of denials, revocations, and suspensions of a security clearance, including clearance for special access programs and for sensitive compartmented information.

"(2) For cases involving the denial or revocation of a security clearance, the average period from the date of the initial determination and notification to the individual concerned of the denial or revocation of the clearance to the date of the final determination of the denial or revocation, as well as the shortest and longest period in such cases.

"(3) For cases involving the suspension of a security clearance, the average period from the date of the initial determination and notification to the individual concerned of the suspension of the clearance to the date of the final determination of the suspension, as well as the shortest and longest period of such cases.

"(4) The number of cases in which a security clearance was suspended in which the resolution of the matter was the restoration of the security clearance, and the average period for such suspensions.

"(5) The number of cases (shown only for members of the Armed Forces and civilian officers and employees of the Department of Defense) in which an individual who had a security clearance denied or revoked remained a member of the Armed Forces or a civilian officer or employee, as the case may be, at the end of the fiscal year.

"(6) The number of cases in which an individual who had a security clearance suspended, and in which no final determination had been made, remained a member of the Armed Forces, a civilian officer or employee, or an employee of a contractor, as the case may be, at the end of the fiscal year.

"(7) The number of cases in which an appeal was made from a final determination to deny or revoke a security clearance and, of those, the number in which the appeal resulted in the granting or restoration of the security clearance."

George C. Marshall European Center for Security Studies. Act Oct. 5, 1994, P.L. 103-337, Div A, Title XIII, Subtitle A, § 1306, 108 Stat. 2892; Nov. 24, 2003, P.L. 108-136, Div A, Title XII, Subtitle C, § 1223, 117 Stat. 1652; Jan. 6, 2006, P.L. 109-163, Div A, Title IX, Subtitle A, § 903(c)(1), 119 Stat. 3399, provides:, provides:

"(a) Waiver of charges. The Secretary of Defense may waive reimbursement of the costs of conferences, seminars, courses of instruction, or similar educational activities of the George C. Marshall European Center for Security Studies for military officers and civilian officials from states located in Europe or the territory of the former Soviet Union if the Secretary determines that attendance by such personnel without reimbursement is in the national security interest of the United States.

"(b) Source of funds. Costs for which reimbursement is waived pursuant to subsection (a) shall be paid from appropriations available for the Center."

Effectiveness of amendments made by § 1501 of Act Feb. 10, 1996. Act Feb. 10, 1996, P.L. 104-106, Div A, Title XV, § 1501(f)(3), 110 Stat. 501, provides: "The amendments made by this section [for full classification, consult USCS Tables volumes] shall take effect as if included in the Reserve Officer Personnel Management Act [Act Oct. 5, 1994, P.L. 103-337, 108 Stat. 2663] as enacted on October 5, 1994."

Review of C<4>I by National Research Council. Act Feb. 10, 1996, P.L. 104-106, Div A, Title II, Subtitle E, § 262, 110 Stat. 236, provides:

"(a) Review by National Research Council. Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall request the National Research Council of the National Academy of Sciences to conduct a comprehensive review of current and planned service and defense-wide programs for command, control, communications, computers, and intelligence (C<4>I) with a special focus on cross-service and inter-service issues.

"(b) Matters to be assessed in review. The review shall address the following:

"(1) The match between the capabilities provided by current service and defense-wide C<4>I programs and the actual needs of users of these programs.

"(2) The interoperability of service and defense-wide C<4>I systems that are planned to be operational in the future.

"(3) The need for an overall defense-wide architecture for C<4>I.

"(4) Proposed strategies for ensuring that future C<4>I acquisitions are compatible and interoperable with an overall architecture.

"(5) Technological and administrative aspects of the C<4>I modernization effort to determine the soundness of the underlying plan and the extent to which it is consistent with concepts for joint military operations in the future.

"(c) Two-year period for conducting review. The review shall be conducted over the two-year period beginning on the date on which the National Research Council and the Secretary of Defense enter into a contract or other agreement for the conduct of the review.

"(d) Reports.

(1) In the contract or other agreement for the conduct of the review, the Secretary of Defense shall provide that the National Research Council shall submit to the Department of Defense and Congress interim reports and progress updates on a regular basis as the review proceeds. A final report on the review shall set forth the findings, conclusions, and recommendations of the Council for defense-wide and service C<4>I programs and shall be submitted to the Committee on Armed Services of the Senate, the Committee on National Security of the House of Representatives, and the Secretary of Defense.

"(2) To the maximum degree possible, the final report shall be submitted in unclassified form with classified annexes as necessary.

"(e) Interagency cooperation with study. All military departments, defense agencies, and other components of the Department of Defense shall cooperate fully with the National Research Council in its activities in carrying out the review under this section.

"(f) Expedited processing of security clearances for study. For the purpose of facilitating the commencement of the study under this section, the Secretary of Defense shall expedite to the fullest degree possible the processing of security clearances that are necessary for the National Research Council to conduct the study.

"(g) Funding. Of the amount authorized to be appropriated in section 201 [unclassified] for defense-wide activities, \$ 900,000 shall be available for the study under this section."

Strategy and report on automated information systems of Department of Defense. Act Feb. 10, 1996, P.L. 104-106, Div A, Title III, Subtitle F, § 366, 110 Stat. 275, provides:

"(a) Development of strategy. The Secretary of Defense shall develop a strategy for the development or modernization of automated information systems for the Department of Defense.

"(b) Matters to consider. In developing the strategy required under subsection (a), the Secretary shall consider the following:

"(1) The use of performance measures and management controls.

"(2) Findings of the Functional Management Review conducted by the Secretary.

"(3) Program management actions planned by the Secretary.

"(4) Actions and milestones necessary for completion of functional and economic analyses for--

"(A) the Automated System for Transportation data;

"(B) continuous acquisition and life cycle support;

"(C) electronic data interchange;

"(D) flexible computer integrated manufacturing;

"(E) the Navy Tactical Command Support System; and

"(F) the Defense Information System Network.

"(5) Progress made by the Secretary in resolving problems with respect to the Defense Information System Network and the Joint Computer-Aided Acquisition and Logistics Support System.

"(6) Tasks identified in the review conducted by the Secretary of the Standard Installation/Division Personnel System-3.

"(7) Such other matters as the Secretary considers appropriate.

"(c) Report on strategy.

(1) Not later than April 15, 1996, the Secretary shall submit to Congress a report on the development of the strategy required under subsection (a).

"(2) In the case of the Air Force Wargaming Center, the Air Force Command Exercise System, the Cheyenne Mountain Upgrade, the Transportation Coordinator Automated Command and Control Information Systems, and the Wing Command and Control Systems, the report required by paragraph (1) shall provide functional economic analyses and address waivers exercised for compelling military importance under section 381(d) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2739) [note to this section].

"(3) The report required by paragraph (1) shall also include the following:

"(A) A certification by the Secretary of the termination of the Personnel Electronic Record Management System or a justification for the continued need for such system.

"(B) Findings of the Functional Management Review conducted by the Secretary and program management actions planned by the Secretary for--

"(i) the Base Level System Modernization and the Sustaining Base Information System; and

"(ii) the Standard Installation/Division Personnel System-3.

"(C) An assessment of the implementation of migration systems and applications, including--

"(i) identification of the systems and applications by functional or business area, specifying target dates for operation of the systems and applications;

"(ii) identification of the legacy systems and applications that will be terminated;

"(iii) the cost of and schedules for implementing the migration systems and applications; and

"(iv) termination schedules.

"(D) A certification by the Secretary that each information system that is subject to review by the Major Automated Information System Review Committee of the Department is cost-effective and supports the corporate information management goals of the Department, including the results of the review conducted for each such system by the Committee."

Report concerning appropriate forum for judicial review of Department of Defense personnel actions. Act Feb. 10, 1996, P.L. 104-106, Div A, Title V, Subtitle E, § 551, 110 Stat. 318, provides:

"(a) Establishment. The Secretary of Defense shall establish an advisory committee to consider issues relating to the appropriate forum for judicial review of Department of Defense administrative personnel actions.

"(b) Membership.

(1) The committee shall be composed of five members, who shall be appointed by the Secretary of Defense after consultation with the Attorney General and the Chief Justice of the United States.

"(2) All members of the committee shall be appointed not later than 30 days after the date of the enactment of this Act.

"(c) Duties. The committee shall review, and provide findings and recommendations regarding, the following matters with respect to judicial review of administrative personnel actions of the Department of Defense:

"(1) Whether the existing forum for such review through the United States district courts provides appropriate and adequate review of such actions.

"(2) Whether jurisdiction to conduct judicial review of such actions should be established in a single court in order to provide a centralized review of such actions and, if so, in which court that jurisdiction should be vested.

"(d) Report.

(1) Not later than December 15, 1996, the committee shall submit to the Secretary of Defense a report setting forth its findings and recommendations, including its recommendations pursuant to subsection (c).

"(2) Not later than January 1, 1997, the Secretary of Defense, after consultation with the Attorney General, shall transmit the committee's report to Congress. The Secretary may include in the transmittal any comments on the report that the Secretary or the Attorney General consider appropriate.

"(e) Termination of committee. The committee shall terminate 30 days after the date of the submission of its report to Congress under subsection (d)(2)."

Order of succession. For the order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 13000 of April 24, 1996, 61 Fed. Reg. 18483, which appears as 5 USCS § 3345 note.

Enforcement of child support obligations of members of the armed forces; availability of locator information. Act Aug. 22, 1996, P.L. 104-193, Title III, Subtitle G, § 363(a), 110 Stat. 2247; Nov. 25, 2002, P.L. 107-296, Title XVII, § 1704(e)(1)(A), 116 Stat. 2315, provides:

"(1) Maintenance of address information. The Secretary of Defense shall establish a centralized personnel locator service that includes the address of each member of the Armed Forces under the jurisdiction of the Secretary. Upon request of the Secretary of Homeland Security, addresses for members of the Coast Guard shall be included in the centralized personnel locator service.

"(2) Type of address.

(A) Residential address. Except as provided in subparagraph (B), the address for a member of the Armed Forces shown in the locator service shall be the residential address of that member.

"(B) Duty address. The address for a member of the Armed Forces shown in the locator service shall be the duty address of that member in the case of a member--

"(i) who is permanently assigned overseas, to a vessel, or to a routinely deployable unit; or

"(ii) with respect to whom the Secretary concerned makes a determination that the member's residential address should not be disclosed due to national security or safety concerns.

"(3) Updating of locator information. Within 30 days after a member listed in the locator service establishes a new residential address (or a new duty address, in the case of a member covered by paragraph (2)(B)), the Secretary concerned shall update the locator service to indicate the new address of the member.

"(4) Availability of information. The Secretary of Defense shall make information regarding the address of a member of the Armed Forces listed in the locator service available, on request, to the Federal Parent Locator Service established under section 453 of the Social Security Act [42 USCS § 653]."

Hate crimes in the military. Act Sept. 23, 1996, P.L. 104-201, Div A, Title V, Subtitle H, § 571(a), (b), 110 Stat. 2532, provides:

"(a) Human relations training.

(1) The Secretary of Defense shall ensure that the Secretary of each military department conducts ongoing programs for human relations training for all members of the Armed Forces under the jurisdiction of the Secretary. Matters to be covered by such training include race relations, equal opportunity, opposition to gender discrimination, and sensitivity to "hate group" activity. Such training shall be provided during basic training (or other initial military training) and on a regular basis thereafter.

"(2) The Secretary of Defense shall also ensure that unit commanders are aware of their responsibilities in ensuring that impermissible activity based upon discriminatory motives does not occur in units under their command.

"(b) Information to be provided to prospective recruits. The Secretary of Defense shall ensure that each individual preparing to enter an officer accession program or to execute an original enlistment agreement is provided information concerning the meaning of the oath of office or oath of enlistment for service in the Armed Forces in terms of the equal protection and civil liberties guarantees of the Constitution, and each such individual shall be informed that if supporting those guarantees is not possible personally for that individual, then that individual should decline to enter the Armed Forces."

Expansion of report on implementation of automated information systems to include additional matters regarding information resources management. Act Sept. 23, 1996, P.L. 104-201, Div A, Title VIII, Subtitle B, § 830, 110 Stat. 2614; Sept. 30, 1996, P.L. 104-208, Div A, Title I, § 101(f) [Title VIII, § 808(c)], 110 Stat. 3009-394, provides:

"(a) Expanded report. The Secretary of Defense shall include in the report submitted in 1997 under section 381(f) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 10 U.S.C. 113 note) a discussion of the following matters relating to information resources management:

"(1) The progress made in implementing the Information Technology Management Reform Act of 1996 (division E of Public Law 104-106; 110 Stat. 679; 40 U.S.C. 1401 et seq.) [repealed and reenacted as 40 USCS §§ 11101 et seq.] and the amendments made by that Act [for full classification, consult USCS Tables volumes].

"(2) The progress made in implementing the strategy for the development or modernization of automated information systems for the Department of Defense, as required by section 366 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106; 110 Stat. 275; 10 U.S.C. 113 note).

"(3) Plans of the Department of Defense for establishing an integrated framework for management of information resources within the department.

"(b) Specific elements of report. The presentation of matters under subsection (a) shall specifically include a discussion of the following:

"(1) The status of the implementation of performance measures.

"(2) The specific actions being taken to link the proposed performance measures to the planning, programming, and budgeting system of the Department of Defense and to the life-cycle management processes of the department.

"(3) The results of pilot program testing of proposed performance measures.

"(4) The additional training necessary for the implementation of performance-based information management.

"(5) The department-wide actions that are necessary to comply with the requirements of the following provisions of law:

"(A) The amendments made by the Government Performance and Results Act of 1993 (Public Law 103-62; 107 Stat. 285) [for full classification, consult USCS Tables volumes].

"(B) The Information Technology Management Reform Act of 1996 (division E of Public Law 104-106; 110 Stat. 679; 40 U.S.C. 1401 et seq.) [repealed and reenacted as 40 USCS §§ 11101 et seq.] and the amendments made by that Act [for full classification, consult USCS Tables volumes].

"(C) Title V of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355; 108 Stat. 3349) and the amendments made by that title [for full classification, consult USCS Tables volumes].

"(D) The Chief Financial Officers Act of 1990 (Public Law 101-576; 104 Stat. 2838) and the amendments made by that Act [for full classification, consult USCS Tables volumes]."

Annual report on Operation Provide Comfort and Operation Enhanced Southern Watch. Act Sept. 23, 1996, P.L. 104-201, Div A, Title X, Subtitle D, § 1041, 110 Stat. 2640, provides:

"(a) Annual report. Not later than March 1 of each year, the Secretary of Defense shall submit to Congress a report on Operation Provide Comfort and Operation Enhanced Southern Watch.

"(b) Matters relating to Operation Provide Comfort. Each report under subsection (a) shall include, with respect to Operation Provide Comfort, the following:

"(1) A detailed presentation of the projected costs to be incurred by the Department of Defense for that operation during the fiscal year in which the report is submitted and projected for the following fiscal year, together with a discussion of missions and functions expected to be performed by the Department as part of that operation during each of those fiscal years.

"(2) A detailed presentation of the projected costs to be incurred by other departments and agencies of the Federal Government participating in or providing support to that operation during each of those fiscal years.

"(3) A discussion of options being pursued to reduce the involvement of the Department of Defense in those aspects of that operation that are not directly related to the military mission of the Department of Defense.

"(4) A discussion of the exit strategy for United States involvement in, and support for, that operation.

"(5) A description of alternative approaches to accomplishing the mission of that operation that are designed to limit the scope and cost to the Department of Defense of accomplishing that mission while maintaining mission success.

"(6) The contributions (both in-kind and actual) by other nations to the costs of conducting that operation.

"(7) A detailed presentation of significant Iraqi military activity (including specific violations of the no-fly zone) determined to jeopardize the security of the Kurdish population in northern Iraq.

"(c) Matters relating to Operation Enhanced Southern Watch. Each report under subsection (a) shall include, with respect to Operation Enhanced Southern Watch, the following:

"(1) The expected duration and annual costs of the various elements of that operation.

"(2) The political and military objectives associated with that operation.

"(3) The contributions (both in-kind and actual) by other nations to the costs of conducting that operation.

"(4) A description of alternative approaches to accomplishing the mission of that operation that are designed to limit the scope and cost of accomplishing that mission while maintaining mission success.

"(5) A comprehensive discussion of the political and military objectives and initiatives that the Department of Defense has pursued, and intends to pursue, in order to reduce United States involvement in that operation.

"(6) A detailed presentation of significant Iraqi military activity (including specific violations of the no-fly zone) determined to jeopardize the security of the Shiite population by air attack in southern Iraq or to jeopardize the security of Kuwait.

"(d) Termination of report requirement. The requirement under subsection (a) shall cease to apply with respect to an operation named in that subsection upon the termination of United States involvement in that operation.

"(e) Definitions. For purposes of this section:

"(1) Operation Enhanced Southern Watch. The term 'Operation Enhanced Southern Watch' means the operation of the Department of Defense that as of October 30, 1995, is designated as Operation Enhanced Southern Watch.

"(2) Operation Provide Comfort. The term 'Operation Provide Comfort' means the operation of the Department of Defense that as of October 30, 1995, is designated as Operation Provide Comfort."

Repeal of provision requiring annual report on emerging operational concepts. Act Sept. 23, 1996, P.L. 104-201, Div A, Title X, Subtitle D, § 1042, 110 Stat. 2642; Oct. 5, 1999, P.L. 106-65, Div A, Title X, Subtitle G, § 1067(5), 113 Stat. 774, which formerly appeared as a note to this section, was repealed by Act Oct. 5, 1999, P.L. 106-65, Div A, Title II, Subtitle D, § 241(b), 113 Stat. 550. Such note provided for an annual report on emerging operational concepts. For similar provisions, see 10 USCS § 486.

George C. Marshall European Center for Strategic Security Studies. Act Sept. 23, 1996, P.L. 104-201, Div A, Title X, Subtitle F, § 1065, 110 Stat. 2653; Nov. 24, 2003, P.L. 108-136, Div A, Title X, Subtitle D, § 1031(f)(2), 117 Stat. 1604; Jan. 6, 2006, P.L. 109-163, Div A, Title IX, Subtitle A, § 903(c)(2), 119 Stat. 3399, provides:

"(a) Marshall Center participation by foreign nations. Notwithstanding any other provision of law, the Secretary of Defense may authorize participation by a European or Eurasian nation in Marshall Center programs if the Secretary determines, after consultation with the Secretary of State, that such participation is in the national interest of the United States.

"(b) Exemptions for members of Marshall Center Board of Visitors from certain requirements.

(1) In the case of any person invited to serve without compensation on the Marshall Center Board of Visitors, the Secretary of Defense may waive any requirement for financial disclosure that would otherwise apply to that person solely by reason of service on such Board.

"(2) Notwithstanding any other provision of law, a member of the Marshall Center Board of Visitors may not be required to register as an agent of a foreign government solely by reason of service as a member of the Board.

"(3) Notwithstanding section 219 of title 18, United States Code [18 USCS § 219], a non-United States citizen may serve on the Marshall Center Board of Visitors even though registered as a foreign agent."

Participation of members, dependents, and other persons in crime prevention efforts at installations. Act Sept. 23, 1996, P.L. 104-201, Div A, Title X, Subtitle F, § 1070, 110 Stat. 2656, provides:

"(a) Crime prevention plan. The Secretary of Defense shall prepare and implement an incentive-based plan to encourage members of the Armed Forces, dependents of members, civilian employees of the Department of Defense, and employees of defense contractors performing work at military installations to report to an appropriate military law enforcement agency any crime or criminal activity that the person reasonably believes occurred on a military installation or involves a member of the Armed Forces.

"(b) Incentives to report criminal activity. The Secretary of Defense shall include in the plan developed under subsection (a) incentives for members and other persons described in such subsection to provide information to appropriate military law enforcement agencies regarding any crime or criminal activity occurring on a military installation or involving a member of the Armed Forces.

"(c) Report regarding implementation. Not later than February 1, 1997, the Secretary shall submit to Congress a report describing the plan being developed under subsection (a)."

Requirement for prior matching of disbursements to particular obligations. Act Sept. 30, 1996, P.L. 104-208, Div A, Title I, § 101(b) [Title VIII, § 8106], 110 Stat. 3009-111; Oct. 8, 1997, P.L. 105-56, Title VIII, § 8113, 111 Stat. 1245 (effective June 30, 1998); Oct. 21, 1998, P.L. 105-277, Div C, Title I, § 143, 112 Stat. 2681-609; Oct. 25, 1999, P.L. 106-79, Title VIII, § 8135, 113 Stat. 1268, provides:

"(a) The Secretary of Defense shall require each disbursement by the Department of Defense in an amount in excess of \$ 500,000 be matched to a particular obligation before the disbursement is made.

"(b) The Secretary shall ensure that a disbursement in excess of the threshold amount applicable under section (a) is not divided into multiple disbursements of less than that amount for the purpose of avoiding the applicability of such section to that disbursement."

Similar provisions were contained in Acts Sept. 30, 1994, P.L. 103-335, Title VIII, § 8137, 108 Stat. 2654; Dec. 1, 1995, P.L. 104-61, Title VIII, § 8102, 109 Stat. 672.

Program to investigate fraud, waste, and abuse within Department of Defense. Act Nov. 18, 1997, P.L. 105-85, Div A, Title III, Subtitle F, § 392, 111 Stat. 1717; Oct. 17, 1998, P.L. 105-261, Div A, Title III, Subtitle G, § 374, 112 Stat. 1992, provides: "The Secretary of Defense shall maintain a specific coordinated program for the investigation of evidence of fraud, waste, and abuse within the Department of Defense, particularly fraud, waste, and abuse regarding finance and accounting matters and any fraud, waste, and abuse occurring in connection with overpayments made to vendors by the Department of Defense, including overpayments identified under section 354 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106; 10 U.S.C. 2461 note)."

Coordination of Department of Defense criminal investigations and audits. Act Nov. 18, 1997, P.L. 105-85, Div A, Title IX, Subtitle A, § 907, 111 Stat. 1856, provides:

"(a) Military department criminal investigative organizations.

(1) The heads of the military department criminal investigative organizations shall take such action as may be practicable to conserve the limited resources available to the military department criminal investigative organizations by sharing personnel, expertise, infrastructure, training, equipment, software, and other resources.

"(2) The heads of the military department criminal investigative organizations shall meet on a regular basis to determine the manner in which and the extent to which the military department criminal investigative organizations will be able to share resources.

"(b) Defense auditing organizations.

(1) The heads of the defense auditing organizations shall take such action as may be practicable to conserve the limited resources available to the defense auditing organizations by sharing personnel, expertise, infrastructure, training, equipment, software, and other resources.

"(2) The heads of the defense auditing organizations shall meet on a regular basis to determine the manner in which and the extent to which the defense auditing organizations will be able to share resources.

"(c) Implementation plan. Not later than December 31, 1997, the Secretary of Defense shall submit to Congress a plan designed to maximize the resources available to the military department criminal investigative organizations and the defense auditing organizations, as required by this section.

"(d) Definitions. For purposes of this section:

"(1) The term 'military department criminal investigative organizations' means--

"(A) the Army Criminal Investigation Command;

"(B) the Naval Criminal Investigative Service; and

"(C) the Air Force Office of Special Investigations.

"(2) The term 'defense auditing organizations' means--

"(A) the Office of the Inspector General of the Department of Defense;

"(B) the Defense Contract Audit Agency;

- "(C) the Army Audit Agency;
- "(D) the Naval Audit Service; and
- "(E) the Air Force Audit Agency."

Provision of adequate troop protection equipment for armed forces personnel engaged in peace operations; report on antiterrorism activities and protection of personnel. Act Nov. 18, 1997, P.L. 105-85, Div A, Title X, Subtitle E, § 1052, 111 Stat. 1889, provides:

"(a) Protection of personnel. The Secretary of Defense shall take appropriate actions to ensure that units of the Armed Forces engaged in a peace operation are provided adequate troop protection equipment for that operation.

"(b) Specific actions. In taking actions under subsection (a), the Secretary shall--

"(1) identify the additional troop protection equipment, if any, required to equip a division (or the equivalent of a division) with adequate troop protection equipment for peace operations; and

"(2) establish procedures to facilitate the exchange or transfer of troop protection equipment among units of the Armed Forces.

"(c) Designation of responsible official. The Secretary of Defense shall designate an official within the Department of Defense to be responsible for--

"(1) ensuring the appropriate allocation of troop protection equipment among the units of the Armed Forces engaged in peace operations; and

"(2) monitoring the availability, status or condition, and location of such equipment.

"(d) Troop protection equipment defined. In this section, the term 'troop protection equipment' means the equipment required by units of the Armed Forces to defend against any hostile threat that is likely during a peace operation, including an attack by a hostile crowd, small arms fire, mines, and a terrorist bombing attack.

"(e) Report on antiterrorism activities of the Department of Defense and protection of personnel. Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report, in classified and unclassified form, on antiterrorism activities of the Department of Defense and the actions taken by the Secretary under subsections (a), (b), and (c). The report shall include the following:

"(1) A description of the programs designed to carry out antiterrorism activities of the Department of Defense, any deficiencies in those programs, and any actions taken by the Secretary to improve implementation of such programs.

"(2) An assessment of the current policies and practices of the Department of Defense with respect to the protection of members of the Armed Forces overseas against terrorist attack, including any modifications to such policies or practices that are proposed or implemented as a result of the assessment.

"(3) An assessment of the procedures of the Department of Defense for determining accountability, if any, in the command structure of the Armed Forces in instances in which a terrorist attack results in the loss of life at an overseas military installation or facility.

"(4) A detailed description of the roles of the Office of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Secretaries of the military departments, and the combatant commanders in providing guidance and support with respect to the protection of members of the Armed Forces deployed overseas against terrorist attack (both before and after the November 1995 bombing in Riyadh, Saudi Arabia) and how these roles have changed since the June 25, 1996, terrorist bombing at Khobar Towers in Dhahran, Saudi Arabia.

"(5) A description of the actions taken by the Secretary of Defense under subsections (a), (b), and (c) to provide adequate troop protection equipment for units of the Armed Forces engaged in a peace operation."

Study of investigative practices of military criminal investigative organizations relating to sex crimes. Act Nov. 18, 1997, P.L. 105-85, Div A, Title X, Subtitle G, § 1072, 111 Stat. 1898, provides:

"(a) Independent study required.

(1) The Secretary of Defense shall provide for an independent study of the policies, procedures, and practices of the military criminal investigative organizations for the conduct of investigations of complaints of sex crimes and other criminal sexual misconduct arising in the Armed Forces.

"(2) The Secretary shall provide for the study to be conducted by the National Academy of Public Administration. The amount of a contract for the study may not exceed \$ 2,000,000.

"(3) The Secretary shall require that all components of the Department of Defense cooperate fully with the organization carrying out the study.

"(b) Matters to be included in study. The Secretary shall require that the organization conducting the study under this section specifically consider each of the following matters:

"(1) The need (if any) for greater organizational independence and autonomy for the military criminal investigative organizations than exists under current chain-of-command structures within the military departments.

"(2) The authority of each of the military criminal investigative organizations to investigate allegations of sex crimes and other criminal sexual misconduct and the policies of those organizations for carrying out such investigations.

"(3) The training (including training in skills and techniques related to the conduct of interviews) provided by each of those organizations to agents or prospective agents responsible for conducting or providing support to investigations of alleged sex crimes and other criminal sexual misconduct, including--

"(A) the extent to which that training is comparable to the training provided by the Federal Bureau of Investigation and other civilian law enforcement agencies; and

"(B) the coordination of training and investigative policies related to alleged sex crimes and other criminal sexual misconduct of each of those organizations with the Federal Bureau of Investigation and other civilian Federal law enforcement agencies.

"(4) The procedures and relevant professional standards of each military criminal investigative organization with regard to recruitment and hiring of agents, including an evaluation of the extent to which those procedures and standards provide for--

"(A) sufficient screening of prospective agents based on background investigations; and

"(B) obtaining sufficient information about the qualifications and relevant experience of prospective agents.

"(5) The advantages and disadvantages of establishing, within each of the military criminal investigative organizations or within the Defense Criminal Investigative Service only, a special unit for the investigation of alleged sex crimes and other criminal sexual misconduct.

"(6) The clarity of guidance for, and consistency of investigative tactics used by, each of the military criminal investigative organizations for the investigation of alleged sex crimes and other criminal sexual misconduct, together with a comparison with the guidance and tactics used by the Federal Bureau of Investigation and other civilian law enforcement agencies for such investigations.

"(7) The number of allegations of agent misconduct in the investigation of sex crimes and other criminal sexual misconduct for each of those organizations, together with a comparison with the number of such allegations concerning agents of the Federal Bureau of Investigation and other civilian law enforcement agencies for such investigations.

"(8) The procedures of each of the military criminal investigative organizations for administrative identification (known as 'titling') of persons suspected of committing sex crimes or other criminal sexual misconduct, together with a comparison with the comparable procedures of the Federal Bureau of Investigation and other civilian Federal law enforcement agencies for such investigations.

"(9) The accuracy, timeliness, and completeness of reporting of sex crimes and other criminal sexual misconduct by each of the military criminal investigative organizations to the National Crime Information Center maintained by the Department of Justice.

"(10) Any recommendation for legislation or administrative action to revise the organizational or operational arrangements of the military criminal investigative organizations or to alter recruitment, training, or operational procedures, as they pertain to the investigation of sex crimes and other criminal sexual misconduct.

"(c) Report.

(1) The Secretary of Defense shall require the organization conducting the study under this section to submit to the Secretary a report on the study not later than one year after the date of the enactment of this Act. The organization shall include in the report its findings and conclusions concerning each of the matters specified in subsection (b).

"(2) The Secretary shall submit the report under paragraph (1), together with the Secretary's comments on the report, to Congress not later than 30 days after the date on which the report is submitted to the Secretary under paragraph (1).

"(d) Military criminal investigative organization defined. For the purposes of this section, the term 'military criminal investigative organization' means any of the following:

"(1) The Army Criminal Investigation Command.

"(2) The Naval Criminal Investigative Service.

"(3) The Air Force Office of Special Investigations.

"(4) The Defense Criminal Investigative Service.

"(e) Criminal sexual misconduct defined. For the purposes of this section, the term 'criminal sexual misconduct' means conduct by a member of the Armed Forces involving sexual abuse, sexual harassment, or other sexual misconduct that constitutes an offense under the Uniform Code of Military Justice [10 USCS §§ 801 et seq.]."

Program to commemorate 50th anniversary of the Korean War. Act Nov. 18, 1997, P.L. 105-85, Div A, Title X, Subtitle G, § 1083, 111 Stat. 1918; Dec. 1, 1997, P.L. 105-129, § 1(b)(1), 111 Stat. 2551 (effective as if included in the provisions of Act Nov. 18, 1997 to which it relates, as provided by § 1(b)(2) of such Act); Oct. 17, 1998, P.L. 105-261, Div A, Title X, Subtitle G, § 1067(a), (c), 112 Stat. 2134; Oct. 5, 1999, P.L. 106-65, Div A, Title X, Subtitle F, §

1052(a), (b)(1), (c), 113 Stat. 764 (effective and applicable as provided by § 1052(b)(2), (d) of such Act); Dec. 28, 2001, P.L. 107-107, Div A, Title X, Subtitle E, §§ 1048(g)(6) (effective 10/5/99, and as if included in Act Oct. 5, 1999 as enacted, as provided by § 1048(g) of the 2001 Act), 1048(i)(1), 115 Stat. 1228, 1229; Dec. 2, 2002, P.L. 107-314, Div A, Title X, Subtitle F, § 1069, 116 Stat. 2660, provides:

"(a) Commemorative program. During fiscal years 2000 through 2004, the Secretary of Defense may conduct a program to commemorate the 50th anniversary of the Korean War. In conducting the commemorative program, the Secretary may coordinate, support, and facilitate other programs and activities of the Federal Government, State and local governments, and other persons in commemoration of the Korean War.

"(b) Commemorative activities. The commemorative program may include activities and ceremonies--

"(1) to provide the people of the United States with a clear understanding and appreciation of the lessons and history of the Korean War;

"(2) to thank and honor veterans of the Korean War and their families;

"(3) to pay tribute to the sacrifices and contributions made on the home front by the people of the United States during the Korean War;

"(4) to highlight advances in technology, science, and medicine related to military research conducted during the Korean War;

"(5) to recognize the contributions and sacrifices made by the allies of the United States in the Korean War; and

"(6) to highlight the role of the Armed Forces of the United States, then and now, in maintaining world peace through strength.

"(c) Name and symbols. The Secretary of Defense shall have the sole and exclusive right to use the name 'The United States of America Korean War Commemoration', and such seal, emblems, and badges incorporating such name as the Secretary may lawfully adopt. Nothing in this section may be construed to supersede rights that are established or vested before the date of the enactment of this Act.

"(d) Commemorative account.

(1) There is established in the Treasury an account to be known as the 'Department of Defense Korean War Commemoration Account', which shall be administered by the Secretary of Defense. There shall be deposited into the account all proceeds derived from the Secretary's use of the exclusive rights described in subsection (c). The Secretary may use funds in the account only for the purpose of conducting the commemorative program.

"(2) Not later than 60 days after completion of all activities and ceremonies conducted as part of the commemorative program, the Secretary shall submit to Congress a report containing an accounting of all of the funds deposited into and expended from the account or otherwise expended under this section, and of any funds remaining in the account. Unobligated funds remaining in the account on that date shall be held in the account until transferred by law.

"(e) Acceptance of voluntary services.

(1) Notwithstanding section 1342 of title 31, United States Code, the Secretary of Defense may accept from any person voluntary services to be provided in furtherance of the commemorative program.

"(2) A person providing voluntary services under this subsection shall be considered to be a Federal employee for purposes of chapter 81 of title 5, United States Code, relating to compensation for work-related injuries. The person shall also be considered a special governmental employee for purposes of standards of conduct and sections 202, 203, 205, 207, 208, and 209 of title 18, United States Code. A person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of the provision of voluntary services under this subsection.

"(3) The Secretary may provide for reimbursement of incidental expenses incurred by a person providing voluntary services under this subsection. The Secretary shall determine which expenses are eligible for reimbursement under this paragraph.

"(f) Use of funds.

(1) Funds appropriated for the Army for fiscal years 2000 through 2004 for operation and maintenance shall be available for the commemorative program authorized under subsection (a).

"(2) The total amount expended by the Department of Defense through the Department of Defense 50th Anniversary of the Korean War Commemoration Committee, an entity within the Department of the Army, to carry out the commemorative program authorized under subsection (a) for fiscal years 2000 through 2004 may not exceed \$ 10,000,000."

Annual report on moratorium on use by armed forces of antipersonnel landmines. Act Nov. 18, 1997, P.L. 105-85, Div A, Title XIII, § 1309, 111 Stat. 1956, provides:

"(a) Findings. Congress makes the following findings:

"(1) The United States has stated its support for a ban on antipersonnel landmines that is global in scope and verifiable.

"(2) On May 16, 1996, the President announced that the United States, as a matter of policy, would eliminate its stockpile of non-self-destructing antipersonnel landmines, except those used for training purposes and in Korea, and that the United States would reserve the right to use self-destructing antipersonnel landmines in the event of conflict.

"(3) On May 16, 1996, the President also announced that the United States would lead an effort to negotiate an international treaty permanently banning the use of all antipersonnel landmines.

"(4) The United States is currently participating at the United Nations Conference on Disarmament in negotiations aimed at achieving a global ban on the use of antipersonnel landmines.

"(5) On August 18, 1997, the administration agreed to participate in international negotiations sponsored by Canada (the so-called 'Ottawa process') designed to achieve a treaty that would outlaw the production, use, and sale of antipersonnel landmines.

"(6) On September 17, 1997, the President announced that the United States would not sign the antipersonnel landmine treaty concluded in Oslo, Norway, by participants in the Ottawa process because the treaty would not provide a geographic exception to allow the United States to stockpile and use antipersonnel landmines in Korea or an exemption that would preserve the ability of the United States to use mixed antitank mine systems which could be used to deter an armored assault against United States forces.

"(7) The President also announced a change in United States policy whereby the United States--

"(A) would no longer deploy antipersonnel landmines, including self-destructing antipersonnel landmines, by 2003, except in Korea;

"(B) would seek to field alternatives by that date, or by 2006 in the case of Korea;

"(C) would undertake a new initiative in the United Nations Conference on Disarmament to establish a global ban on the transfer of antipersonnel landmines; and

"(D) would increase its current humanitarian demining activities around the world.

"(8) The President's decision would allow the continued use by United States forces of self-destructing antipersonnel landmines that are used as part of a mixed antitank mine system.

"(9) Under existing law (as provided in section 580 of Public Law 104-107; 110 Stat. 751 [unclassified]), on February 12, 1999, the United States will implement a one-year moratorium on the use of antipersonnel landmines by United States forces except along internationally recognized national borders or in demilitarized zones within a perimeter marked area that is monitored by military personnel and protected by adequate means to ensure the exclusion of civilians.

"(b) Sense of Congress. It is the sense of Congress that--

"(1) the United States should not implement a moratorium on the use of antipersonnel landmines by United States Armed Forces in a manner that would endanger United States personnel or undermine the military effectiveness of United States Armed Forces in executing their missions; and

"(2) the United States should pursue the development of alternatives to self-destructing antipersonnel landmines.

"(c) Annual report. Not later than December 31 each year, the Secretary of Defense shall submit to the congressional defense committees a report concerning antipersonnel landmines. Each such report shall include the Secretary's description of the following:

"(1) The military utility of the continued deployment and use by the United States of antipersonnel landmines.

"(2) The effect of a moratorium on the production, stockpiling, and use of antipersonnel landmines on the ability of United States forces to deter and defend against attack on land by hostile forces, including on the Korean peninsula.

"(3) Progress in developing and fielding systems that are effective substitutes for antipersonnel landmines, including an identification and description of the types of systems that are being developed and fielded, the costs associated with those systems, and the estimated timetable for developing and fielding those systems.

"(4) The effect of a moratorium on the use of antipersonnel landmines on the military effectiveness of current antitank mine systems.

"(5) The number and type of pure antipersonnel landmines that remain in the United States inventory and that are subject to elimination under the President's September 17, 1997, declaration on United States antipersonnel landmine policy.

"(6) The number and type of mixed antitank mine systems that are in the United States inventory, the locations where they are deployed, and their effect on the deterrence and warfighting ability of United States Armed Forces.

"(7) The effect of the elimination of pure antipersonnel landmines on the warfighting effectiveness of the United States Armed Forces.

"(8) The costs already incurred and anticipated of eliminating antipersonnel landmines from the United States inventory in accordance with the policy enunciated by the President on September 17, 1997.

"(9) The benefits that would result to United States military and civilian personnel from an international treaty banning the production, use, transfer, and stockpiling of antipersonnel landmines."

Oversight of development and implementation of automated identification technology. Act Oct. 17, 1998, P.L. 105-261, Div A, Title III, Subtitle E, § 344, 112 Stat. 1977; Oct. 5, 1999, P.L. 106-65, Div A, Title III, Subtitle H, § 373(h), Title X, Subtitle G, § 1067(3), 113 Stat. 581, 774, provides:

"(a) Definitions. In this section:

"(1) The term 'automated identification technology program' means a program in the Department of Defense, including any pilot program, employing one or more of the following technologies:

"(A) Magnetic stripe.

"(B) Bar codes, both linear and two-dimensional (including matrix symbologies).

"(C) Smart Card.

"(D) Optical memory.

"(E) Personal computer memory card international association carriers.

"(F) Any other established or emerging automated identification technology, including biometrics and radio frequency identification.

"(2) The term 'Smart Card' means a credit card size device that contains one or more integrated circuits.

"(b) [Deleted]

"(c) Funding for increased use of Smart Cards.

(1) Of the funds available for the Navy for fiscal year 1999 for operation and maintenance, the Secretary of the Navy shall allocate sufficient amounts, up to \$ 25,000,000, for the purpose of making significant progress toward ensuring that Smart Cards with a multi-application, multi-technology automated reading capability are issued and used throughout the Navy and the Marine Corps for purposes for which Smart Cards are suitable.

"(2) Not later than June 30, 1999, the Secretary of the Navy shall equip with Smart Card technology at least one carrier battle group, one carrier air wing, and one amphibious readiness group (including the Marine Corps units embarked on the vessels of such battle and readiness groups) in each of the United States Atlantic Command and the United States Pacific Command.

"(3) None of the funds appropriated pursuant to any authorization of appropriations in this Act may be expended after June 30, 1999, for the procurement of the Joint Uniformed Services Identification card for members of the Navy or the Marine Corps or for the issuance of such card to such members, until the Secretary of the Navy certifies in writing to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives that the Secretary has completed the issuance of Smart Cards in accordance with paragraph (2).

"(d) Defense-wide plan. Not later than March 31, 1999, the Secretary of Defense shall submit to the congressional defense committees a plan for the use of Smart Card technology by each military department. The Secretary shall include in the plan an estimate of the costs of the plan, the savings to be derived from carrying out the plan, and a description of the ways in which the Department of Defense will review and revise business practices to take advantage of Smart Card technology."

Pilot program for acceptance and use of landing fees charged for use of domestic military airfields by civil aircraft. Act Oct. 17, 1998, P.L. 105-261, Div A, Title III, Subtitle G, § 377, 112 Stat. 1993; Oct. 30, 2000, P.L. 106-398, § 1, 114 Stat. 1654 (enacting into law § 387 of Subtitle H of Title III of Division A of H.R. 5408 (114 Stat. 1654A-88), as introduced on Oct. 6, 2000), provides:

"(a) Pilot program authorized. The Secretary of each military department may carry out a pilot program to demonstrate the use of landing fees as a source of funding for the operation and maintenance of airfields of that department.

"(b) Landing fee defined. In this section, the term 'landing fee' means any fee that is established under or in accordance with regulations of the military department concerned (whether prescribed in a fee schedule or imposed under a joint-use agreement) to recover costs incurred for use by civil aircraft of an airfield of the military department in the United States or in a territory or possession of the United States.

"(c) Use of proceeds. Amounts received in payment of landing fees for use of a military airfield in a fiscal year of the pilot program shall be credited to the appropriation that is available for that fiscal year for the operation and maintenance of the military airfield, shall be merged with amounts in the appropriation to which credited, and shall be available for that military airfield for the same period and purposes as the appropriation is available.

"(d) Report. Not later than March 31, 2003, the Secretary of Defense shall submit to Congress a report on the pilot programs carried out under this section by the Secretaries of the military departments. The report shall specify the amounts of fees received and retained by each military department under its pilot program as of December 31, 2002.

"(e) Duration of pilot program. The pilot program under this section may not be carried out after September 30, 2010."

Report on terminology. Act Oct. 17, 1998, P.L. 105-261, Div A, Title IX, Subtitle B, § 915(b), 112 Stat. 2102, provides: "Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report setting forth the definitions of the terms 'support' and 'mission' that the Secretary proposes to use for purposes of the report requirement under section 113(l) of title 10, United States Code, as added by subsection (a)."

Redesignation of Commemoration Account. Act Oct. 17, 1998, P.L. 105-261, Div A, Title X, Subtitle G, § 1067(b), 112 Stat. 2134, provides: "The account in the Treasury known as the 'Department of Defense Korean Conflict Commemoration Account' is redesignated as the 'Department of Defense Korean War Commemoration Account'."

Construction of references to Korean Conflict Commemoration or Korean Conflict Commemoration Account. Act Oct. 17, 1998, P.L. 105-261, Div A, Title X, Subtitle G, § 1067(d), 112 Stat. 2135, provides: "Any reference to the Department of Defense Korean Conflict Commemoration or the Department of Defense Korean Conflict Commemoration Account in any law, regulation, document, record, or other paper of the United States shall be considered to be a reference to the Department of Defense Korean War Commemoration or the Department of Defense Korean War Commemoration Account, respectively."

Report on supplemental nutrition assistance program benefits assistance for members of the Armed Forces. Act Oct. 17, 1998, P.L. 105-262, Title VIII, § 8119, 112 Stat. 2331; May 22, 2008, P.L. 110-234, Title IV, Subtitle A, Part I, § 4002(b)(1)(B), (D), (E), (2)(K), 122 Stat. 1096, 1097 (repealed effective 5/22/2008 as provided by § 4 of Act June 18, 2008, which appears as 7 USCS § 8701 note); June 18, 2008, P.L. 110-246, Title IV, Subtitle A, Part I, § 4002(b)(1)(B), (D), (E), (2)(K), 122 Stat. 1857, 1858 (effective 10/1/2008, as provided by § 4407 of such Act, which appears as 2 USCS § 1161 note), provides:

"(a) The Secretary of Defense shall submit to the Committees on Appropriations of the Senate and the House of Representatives a report on supplemental nutrition assistance benefits assistance for members of the Armed Forces. The Secretary shall submit the report at the same time that the Secretary submits to Congress, in support of the fiscal year 2001 budget, the materials that relate to the funding provided in that budget for the Department of Defense.

"(b) The report shall include the following:

"(1) The number of members of the Armed Forces and dependents of members of the Armed Forces who are eligible for supplemental nutrition assistance program benefits.

"(2) The number of members of the Armed Forces and dependents of members of the Armed Forces who received supplemental nutrition assistance program benefits in fiscal year 1998.

"(3) A proposal for using, as a means for eliminating or reducing significantly the need of such personnel for supplemental nutrition assistance program benefits, the authority under section 2828 of title 10, United States Code, to lease housing facilities for enlisted members of the Armed Forces and their families when Government quarters are not available for such personnel.

"(4) A proposal for increased locality adjustments through the basic allowance for housing and other methods as a means for eliminating or reducing significantly the need of such personnel for supplemental nutrition assistance program benefits.

"(5) Other potential alternative actions (including any recommended legislation) for eliminating or reducing significantly the need of such personnel for supplemental nutrition assistance program benefits.

"(6) A discussion of the potential for each alternative action referred to in paragraph (3) or (4) to result in the elimination or a significant reduction in the need of such personnel for supplemental nutrition assistance program benefits.

"(c) Each potential alternative action included in the report under paragraph (3) or (4) of subsection (b) shall meet the following requirements:

"(1) Apply only to persons referred to in paragraph (1) of such subsection.

"(2) Be limited in cost to the lowest amount feasible to achieve the objectives.

"(d) In this section:

"(1) The term 'fiscal year 2001 budget' means the budget for fiscal year 2001 that the President submits to Congress under section 1105(a) of title 31, United States Code.

"(2) The term 'supplemental nutrition assistance program benefits' means assistance under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.)."

Defense reform initiative enterprise pilot program for military manpower and personnel information. Act Oct. 17, 1998, P.L. 105-262, Title VIII, § 8147, 112 Stat. 2341, provides: "The Secretary of Defense shall establish, through a revised Defense Integrated Military Human Resources System (DIMHRS), a defense reform initiative enterprise pilot

program for military manpower and personnel information: *Provided*, That this pilot program should include all functions and systems currently included in DIMHRS and shall be expanded to include all appropriate systems within the enterprise of personnel, manpower, training, and compensation: *Provided further*, That in establishing a revised DIMHRS enterprise program for manpower and personnel information superiority the functions of this program shall include, but not be limited to: (1) an analysis and determination of the number and kinds of information systems necessary to support manpower and personnel within the Department of Defense; and (2) the establishment of programs to develop and implement information systems in support of manpower and personnel to include an enterprise level strategic approach, performance and results based management, business process improvement and other non-material solutions, the use of commercial or government off-the-shelf technology, the use of modular contracting as defined by Public Law 104-106 [Act Feb. 10, 1996; for full classification, consult USCS Tables volumes], and the integration and consolidation of existing manpower and personnel information systems: *Provided further*, That the Secretary of Defense shall re-instate fulfillment standards designated as ADS-97-03-GD, dated January, 1997: *Provided further*, That the requirements of this section should be implemented not later than 6 months after the date of the enactment of this Act."

Establishment of logistics standards for sustained military operations. Act Oct. 5, 1999, P.L. 106-65, Div A, Title III, Subtitle G, § 366, 113 Stat. 578, provides:

"(a) Establishment of standards. The Secretary of each military department shall establish, for deployable units of each of the Armed Forces under the jurisdiction of the Secretary, standards regarding--

- "(1) the level of spare parts that the units must have on hand; and
- "(2) similar logistics and sustainment needs of the units.

"(b) Basis for standards. The standards to be established for a unit under subsection (a) shall be based upon the following:

- "(1) The unit's wartime mission, as reflected in the war-fighting plans of the relevant combatant commanders.
- "(2) An assessment of the likely requirement for sustained operations under each such war-fighting plan.

"(3) An assessment of the likely requirement for that unit to conduct sustained operations in an austere environment, while drawing exclusively on its own internal logistics capabilities.

"(c) Sufficiency capabilities. The standards to be established by the Secretary of a military department under subsection (a) shall reflect those spare parts and similar logistics capabilities that the Secretary considers sufficient for the units of each of the Armed Forces under the Secretary's jurisdiction to successfully execute their missions under the conditions described in subsection (b).

"(d) Relation to readiness reporting system. The standards established under subsection (a) shall be taken into account in designing the comprehensive readiness reporting system for the Department of Defense required by section 117 of title 10, United States Code, and shall be an element in determining a unit's readiness status.

"(e) Relation to annual funding needs. The Secretary of Defense shall consider the standards established under subsection (a) in establishing the annual funding requirements for the Department of Defense.

"(f) Reporting requirement. The Secretary of Defense shall include in the annual report required by section 113(c) of title 10, United States Code, an analysis of the then current spare parts, logistics, and sustainment standards of the Armed Forces, as described in subsection (a), including any shortfalls and the cost of addressing these shortfalls."

Use of smart card technology in Department of Defense. Act Oct. 5, 1999, P.L. 106-65, Div A, Title III, Subtitle H, § 373(a)-(g), 113 Stat. 580, provide:

"(a) Department of Navy as lead agency. The Department of the Navy shall serve as the lead agency for the development and implementation of a Smart Card program for the Department of Defense.

"(b) Cooperation of other military departments. The Department of the Army and the Department of the Air Force shall each establish a project office and cooperate with the Department of the Navy to develop implementation plans for exploiting the capability of Smart Card technology as a means for enhancing readiness and improving business processes throughout the military departments.

"(c) Senior coordinating group.

(1) Not later than November 30, 1999, the Secretary of Defense shall establish a senior coordinating group to develop and implement--

"(A) Department-wide interoperability standards for use of Smart Card technology; and

"(B) a plan to exploit Smart Card technology as a means for enhancing readiness and improving business processes.

"(2) The senior coordinating group shall be chaired by a representative of the Secretary of the Navy and shall include senior representatives from each of the Armed Forces and such other persons as the Secretary of Defense considers appropriate.

"(3) Not later than March 31, 2000, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing a detailed discussion of the progress made by the senior coordinating group in carrying out its duties.

"(d) Role of Department of Defense Chief Information Office. The senior coordinating group established under subsection (c) shall report to and receive guidance from the Department of Defense Chief Information Office.

"(e) Increased use targeted to certain Naval regions. Not later than November 30, 1999, the Secretary of the Navy shall establish a business plan to implement the use of Smart Cards in one major Naval region of the continental United States that is in the area of operations of the United States Atlantic Command and one major Naval region of the continental United States that is in the area of operations of the United States Pacific Command. The regions selected shall include a major fleet concentration area. The implementation of the use of Smart Cards in each region shall cover the Navy and Marine Corps bases and all non-deployed units in the region. The Secretary of the Navy shall submit the business plan to the congressional defense committees.

"(f) Funding for increased use of smart cards. Of the funds authorized to be appropriated for the Navy by section 102(a)(4) or 301(2), the Secretary of the Navy--

"(1) shall allocate such amounts as may be necessary, but not to exceed \$ 30,000,000, to ensure that significant progress is made toward complete implementation of the use of Smart Card technology in the Department of the Navy; and

"(2) may allocate additional amounts for the conversion of paper-based records to electronic media for records systems that have been modified to use Smart Card technology.

"(g) Definitions. In this section:

"(1) The term 'Smart Card' means a credit card-size device, normally for carrying and use by personnel, that contains one or more integrated circuits and may also employ one or more of the following technologies:

"(A) Magnetic stripe.

"(B) Bar codes, linear or two-dimensional.

"(C) Non-contact and radio frequency transmitters.

"(D) Biometric information.

"(E) Encryption and authentication.

"(F) Photo identification.

"(2) The term 'Smart Card technology' means a Smart Card together with all of the associated information technology hardware and software that comprise the system for support and operation."

Survey of members leaving military service on attitudes toward military service. Act Oct. 5, 1999, P.L. 106-65, Div A, Title V, Subtitle J, § 581, 113 Stat. 633, provides:

"(a) Exit survey. The Secretary of Defense shall develop and implement, as part of outprocessing activities, a survey on attitudes toward military service to be completed by all members of the Armed Forces who during the period beginning on January 1, 2000, and ending on June 30, 2000, are voluntarily discharged or separated from the Armed Forces or transfer from a regular component to a reserve component.

"(b) Matters to be covered. The survey shall, at a minimum, cover the following subjects:

"(1) Reasons for leaving military service.

"(2) Command climate.

"(3) Attitude toward leadership.

"(4) Attitude toward pay and benefits.

"(5) Job satisfaction during service as a member of the Armed Forces.

"(6) Plans for activities after separation (such as enrollment in school, use of Montgomery GI Bill benefits, and work).

"(7) Affiliation with a reserve component, together with the reasons for affiliating or not affiliating, as the case may be.

"(8) Such other matters as the Secretary determines appropriate to the survey concerning reasons why military personnel are leaving military service.

"(c) Report to Congress. Not later than October 1, 2000, the Secretary shall submit to Congress a report containing the results of the survey under subsection (a). The Secretary shall compile the information in the report so as to assist in assessing reasons why military personnel are leaving military service."

Administration of defense reform initiative enterprise program for military manpower and personnel information. Act Oct. 5, 1999, P.L. 106-65, Div A, Title IX, Subtitle C, § 924, 113 Stat. 726, provides:

"(a) Executive agent. The Secretary of Defense may designate the Secretary of the Navy as the Department of Defense executive agent for carrying out the pilot program described in subsection (c).

"(b) Implementing office. If the Secretary of Defense makes the designation referred to in subsection (a), the Secretary of the Navy, in carrying out that pilot program, shall act through the head of the Systems Executive Office for Manpower and Personnel of the Department of the Navy, who shall act in coordination with the Under Secretary of Defense for Personnel and Readiness and the Chief Information Officer of the Department of Defense.

"(c) Pilot program. The pilot program referred to in subsection (a) is the defense reform initiative enterprise pilot program for military manpower and personnel information established pursuant to section 8147 of the Department of Defense Appropriations Act, 1999 (Public Law 105-262; 112 Stat. 2341; 10 U.S.C. 113 note)."

Repeal of provisions relating to annual report on United States military activities in Colombia. Act Oct. 5, 1999, P.L. 106-65, Div A, Title X, Subtitle C, § 1025, 113 Stat. 748, which formerly appeared as a note to this section, was repealed by Act Dec. 31, 2011, P.L. 112-81, Div A, Title X, Subtitle G, § 1062(j)(2), 125 Stat. 1585. It provided for an annual report on United States military activities in Colombia.

Report on NATO Defense Capabilities Initiative. Act Oct. 5, 1999, P.L. 106-65, Div A, Title X, Subtitle D, § 1039, 113 Stat. 756; Nov. 24, 2003, P.L. 108-136, Div A, Title X, Subtitle D, § 1031(h)(3), 117 Stat. 1605, provides:

"(a) Findings. Congress makes the following findings:

"(1) At the meeting of the North Atlantic Council held in Washington, DC, in April 1999, the NATO Heads of State and Governments launched a Defense Capabilities Initiative.

"(2) The Defense Capabilities Initiative is designed to improve the defense capabilities of the individual nations of the NATO Alliance to ensure the effectiveness of future operations across the full spectrum of Alliance missions in the present and foreseeable security environment.

"(3) Under the Defense Capabilities Initiative, special focus will be given to improving interoperability among Alliance forces and to increasing defense capabilities through improvements in the deployability and mobility of Alliance forces, the sustainability and logistics of those forces, the survivability and effective engagement capability of those forces, and command and control and information systems.

"(4) The successful implementation of the Defense Capabilities Initiative will serve to enable all members of the Alliance to make a more equitable contribution to the full spectrum of Alliance missions, thereby increasing burdensharing within the Alliance and enhancing the ability of European members of the Alliance to undertake operations pursuant to the European Security and Defense Identity within the Alliance.

"(b) [Deleted]".

Construction of amendment made to § 1083(c) of Act Nov. 18, 1997 (note to this section). Act Oct. 5, 1999, P.L. 106-65, Div A, Title X, Subtitle F, § 1052(b)(2), 113 Stat. 764, provides: "The amendment made by paragraph (1) [substituting 'United States of America Korean War Commemoration' for 'Department of Defense Korean War Commemoration' in subsec. (c) of Act Nov. 18, 1997, P.L. 105-85, which appears as a note to this section] may not be construed to supersede rights that are established or vested before the date of the enactment of this Act."

References to Department of Defense Korean War Commemoration. Act Oct. 5, 1999, P.L. 106-65, Div A, Title X, Subtitle F, § 1052(b)(3), 113 Stat. 764, provides: "Any reference to the Department of Defense Korean War Commemoration in any law, regulation, document, record, or other paper of the United States shall be considered to be a reference to the United States of America Korean War Commemoration."

Commemoration of the victory of freedom in the Cold War. Act Oct. 5, 1999, P.L. 106-65, Div A, Title X, Subtitle F, § 1053, 113 Stat. 764; Dec. 28, 2001, P.L. 107-107, Div A, Title X, Subtitle E, § 1048(g)(7), 115 Stat. 1228 (effective 10/5/99, and as if included in Act Oct. 5, 1999 as enacted, as provided by § 1048(g) of the 2001 Act), provides:

"(a) Findings. Congress makes the following findings:

"(1) The Cold War between the United States and its allies and the former Union of Soviet Socialist Republics and its allies was the longest and most costly struggle for democracy and freedom in the history of mankind.

"(2) Whether millions of people all over the world would live in freedom hinged on the outcome of the Cold War.

"(3) Democratic countries bore the burden of the struggle and paid the costs in order to preserve and promote democracy and freedom.

"(4) The Armed Forces and the taxpayers of the United States bore the greatest portion of that burden and struggle in order to protect those principles.

"(5) Tens of thousands of United States soldiers, sailors, airmen, and Marines paid the ultimate price during the Cold War in order to preserve the freedoms and liberties enjoyed in democratic countries.

"(6) The Berlin Wall erected in Berlin, Germany, epitomized the totalitarianism that the United States struggled to eradicate during the Cold War.

"(7) The fall of the Berlin Wall on November 9, 1989, was a major event of the Cold War.

"(8) The Soviet Union collapsed on December 25, 1991.

"(b) Sense of Congress. It is the sense of Congress that the President should issue a proclamation calling on the people of the United States to observe the victory in the Cold War with appropriate ceremonies and activities.

"(c) Participation of Armed Forces in celebration of end of Cold War.

(1) Subject to paragraphs (2), (3), and (4), amounts authorized to be appropriated by section 301 may be available for costs of the Armed Forces in participating in a celebration of the end of the Cold War to be held in Washington, District of Columbia.

"(2) The total amount of funds available under paragraph (1) for the purpose set forth in that paragraph shall not exceed \$ 5,000,000.

"(3) The Secretary of Defense may accept contributions from the private sector for the purpose of reducing the costs of the Armed Forces described in paragraph (1). The amount of funds available under paragraph (1) for the purpose set forth in that paragraph shall be reduced by an amount equal to the amount of contributions accepted by the Secretary under the preceding sentence.

"(4) The funding authorized in paragraph (1) shall not be available until 30 days after the date upon which the plan required by subsection (d) is submitted.

"(d) Report.

(1) The President shall transmit to Congress--

"(A) a report on the content of the proclamation referred to in subsection (b); and

"(B) a plan for appropriate ceremonies and activities.

"(2) The plan submitted under paragraph (1) shall include the following:

"(A) A discussion of the content, location, date, and time of each ceremony and activity included in the plan.

"(B) The funding allocated to support those ceremonies and activities.

"(C) The organizations and individuals consulted while developing the plan for those ceremonies and activities.

"(D) A list of private sector organizations and individuals that are expected to participate in each ceremony and activity.

"(E) A list of local, State, and Federal agencies that are expected to participate in each ceremony and activity.

"(e) Commission on Victory in the Cold War.

(1) There is hereby established a commission to be known as the 'Commission on Victory in the Cold War'.

"(2) The Commission shall be composed of twelve members, as follows:

"(A) Two shall be appointed by the President.

"(B) Three shall be appointed by the Speaker of the House of Representatives.

"(C) Two shall be appointed by the minority leader of the House of Representatives.

"(D) Three shall be appointed by the majority leader of the Senate.

"(E) Two shall be appointed by the minority leader of the Senate.

"(3) The Commission shall review and make recommendations regarding the celebration of the victory in the Cold War, to include the date of the celebration, usage of facilities, participation of the Armed Forces, and expenditure of funds.

"(4) The Secretary shall--

"(A) consult with the Commission on matters relating to the celebration of the victory in the Cold War;

"(B) reimburse Commission members for expenses relating to participation of Commission members in Commission activities from funds made available under subsection (c); and

"(C) provide the Commission with administrative support.

"(5) The Commission shall be co-chaired by two members as follows:

"(A) One selected by and from among those appointed pursuant to subparagraphs (A), (C), and (E) of paragraph (2).

"(B) One selected by and from among those appointed pursuant to subparagraphs (B) and (D) of paragraph (2)."

Annual report on military and security developments involving the People's Republic of China. Act Oct. 5, 1999, P.L. 106-65, Div A, Title XII, Subtitle A, § 1202, 113 Stat. 781; Dec. 28, 2001, P.L. 107-107, Div A, Title XII, Subtitle C, § 1221, 115 Stat. 1252; Jan. 28, 2008, P.L. 110-181, Div A, Title XII, Subtitle E, § 1263, 122 Stat. 407; Oct. 28, 2009, P.L. 111-84, Div A, Title XII, Subtitle C, § 1246(a)-(c), 123 Stat. 2544 (effective on enactment and applicable as provided by § 1246(e) of such Act, which appears as a note to this section); Dec. 31, 2011, P.L. 112-81, Div A, Title X, Subtitle G, § 1066(e)(1), Title XII, Subtitle C, § 1238(a), 125 Stat. 1589, 1642 (§ 1238(a) effective on enactment and applicable to reports submitted on or after that date, as provided by § 1238(b) of such Act); Jan. 2, 2013, P.L. 112-239, Div A, Title XII, Subtitle F, § 1271, 126 Stat. 2022, provides:

"(a) Annual report. Not later than March 1 each year, the Secretary of Defense shall submit to the specified congressional committees a report, in both classified and unclassified form, on military and security developments involving the People's Republic of China. The report shall address the current and probable future course of military-technological development of the People's Liberation Army and the tenets and probable development of Chinese security strategy and military strategy, and of military organizations and operational concepts, through the next 20 years. The report shall also address United States-China engagement and cooperation on security matters during the period covered by the report, including through United States-China military-to-military contacts, and the United States strategy for such engagement and cooperation in the future.

"(b) Matters to be included. Each report under this section shall include analyses and forecasts of the following:

"(1) The goals and factors shaping Chinese security strategy and military strategy.

"(2) Trends in Chinese security and military behavior that would be designed to achieve, or that are inconsistent with, the goals described in paragraph (1).

"(3) The security situation in the Taiwan Strait.

"(4) Chinese strategy regarding Taiwan.

"(5) The size, location, and capabilities of Chinese strategic, land, sea, and air forces, including detailed analysis of those forces facing Taiwan.

"(6) Developments in Chinese military doctrine and training.

"(7) Efforts, including technology transfers and espionage, by the People's Republic of China to develop, acquire, or gain access to information, communication, space and other advanced technologies that would enhance military capabilities or otherwise undermine the Department of Defense's capability to conduct information assurance. Such analyses shall include an assessment of the damage inflicted on the Department of Defense by reason thereof.

"(8) An assessment of any challenges during the preceding year to the deterrent forces of the Republic of China on Taiwan, consistent with the commitments made by the United States in the Taiwan Relations Act (Public Law 96-8) [22 USCS §§ 3301 et seq.].

"(9) Developments in China's asymmetric capabilities, including its strategy and efforts to develop and deploy cyberwarfare and electronic warfare capabilities, details on the number of malicious cyber incidents originating from China against Department of Defense infrastructure, and associated activities originating or suspected of originating from China.

"(10) The strategy and capabilities of Chinese space and counterspace programs, including trends, global and regional activities, the involvement of military and civilian organizations, including state-owned enterprises, academic institutions, and commercial entities, and efforts to develop, acquire, or gain access to advanced technologies that would enhance Chinese military capabilities.

"(11) Developments in China's nuclear program, including the size and state of China's stockpile, its nuclear strategy and associated doctrines, its civil and military production capacities, and projections of its future arsenals.

"(12) A description of China's anti-access and area denial capabilities.

"(13) A description of China's command, control, communications, computers, intelligence, surveillance, and reconnaissance modernization program and its applications for China's precision guided weapons.

"(14) A description of the roles and activities of the People's Liberation Army Navy and those of China's paramilitary and maritime law enforcement vessels, including their response to United States naval activities.

"(15) In consultation with the Secretary of Energy and the Secretary of State, developments regarding United States-China engagement and cooperation on security matters.

"(16) The current state of United States military-to-military contacts with the People's Liberation Army, which shall include the following:

"(A) A comprehensive and coordinated strategy for such military-to-military contacts and updates to the strategy.

"(B) A summary of all such military-to-military contacts during the period covered by the report, including a summary of topics discussed and questions asked by the Chinese participants in those contacts.

"(C) A description of such military-to-military contacts scheduled for the 12-month period following the period covered by the report and the plan for future contacts.

"(D) The Secretary's assessment of the benefits the Chinese expect to gain from such military-to-military contacts.

"(E) The Secretary's assessment of the benefits the Department of Defense expects to gain from such military-to-military contacts, and any concerns regarding such contacts.

"(F) The Secretary's assessment of how such military-to-military contacts fit into the larger security relationship between the United States and the People's Republic of China.

"(G) The Secretary's certification whether or not any military-to-military exchange or contact was conducted during the period covered by the report in violation of section 1201(a) [10 USCS § 168 note].

"(17) Other military and security developments involving the People's Republic of China that the Secretary of Defense considers relevant to United States national security.

"(18) A description of Chinese military-to-military relationships with other countries, including the size and activity of military attache offices around the world and military education programs conducted in China for other countries or in other countries for the Chinese.

"(19) A description of any significant sale or transfer of military hardware, expertise, and technology to or from the People's Republic of China, including a forecast of possible future sales and transfers, a description of the implications of those sales and transfers for the security of the United States and its partners and allies in Asia, and a description of any significant assistance to and from any selling state with military-related research and development programs in China.

"(c) Specified congressional committees. For purposes of this section, the term 'specified congressional committees' means the following:

"(1) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

"(2) The Committee on Armed Services and the Committee on International Relations of the House of Representatives.

"(d) Report on significant sales and transfers to China.

(1) The report to be submitted under this section not later than March 1, 2002, shall include in a separate section a report describing any significant sale or transfer of military hardware, expertise, and technology to the People's Republic of China. The report shall set forth the history of such sales and transfers since 1995, forecast possible future sales and transfers, and address the implications of those sales and transfers for the security of the United States and its friends and allies in Asia.

"(2) The report shall include analysis and forecasts of the following matters related to military cooperation between selling states and the People's Republic of China:

"(A) The extent in each selling state of government knowledge, cooperation, or condoning of sales or transfers of military hardware, expertise, or technology to the People's Republic of China.

"(B) An itemization of significant sales and transfers of military hardware, expertise, or technology from each selling state to the People's Republic of China that have taken place since 1995, with a particular focus on command, control, communications, and intelligence systems.

"(C) Significant assistance by any selling state to key research and development programs of China, including programs for development of weapons of mass destruction and delivery vehicles for such weapons, programs for development of advanced conventional weapons, and programs for development of unconventional weapons.

"(D) The extent to which arms sales by any selling state to the People's Republic of China are a source of funds for military research and development or procurement programs in the selling state.

"(3) The report under paragraph (1) shall include, with respect to each area of analysis and forecasts specified in paragraph (2)--

"(A) an assessment of the military effects of such sales or transfers to entities in the People's Republic of China;

"(B) an assessment of the ability of the People's Liberation Army to assimilate such sales or transfers, mass produce new equipment, or develop doctrine for use; and

"(C) the potential threat of developments related to such effects on the security interests of the United States and its friends and allies in Asia."

Nuclear mission management plan. Act Oct. 5, 1999, P.L. 106-65, Div C, Title XXXI, Subtitle E, § 3163(d), 113 Stat. 945, provides:

"(1) The Secretary of Defense shall develop and implement a plan to ensure the continued reliability of the capability of the Department of Defense to carry out its nuclear deterrent mission.

"(2) The plan shall do the following:

"(A) Articulate the current policy of the United States on the role of nuclear weapons and nuclear deterrence in the conduct of defense and foreign relations matters.

"(B) Establish stockpile viability and capability requirements with respect to that mission, including the number and variety of warheads required.

"(C) Establish requirements relating to the contractor industrial base, support infrastructure, and surveillance, testing, assessment, and certification of nuclear weapons necessary to support that mission.

"(3) The plan shall take into account the following:

"(A) Requirements for the critical skills, readiness, training, exercise, and testing of personnel necessary to meet that mission.

"(B) The relevant programs and plans of the military departments and the Defense Agencies with respect to readiness, sustainment (including research and development), and modernization of the strategic deterrent forces."

Policy concerning rights of individuals whose names have been entered into Department of Defense official criminal investigative reports. Act Oct. 30, 2000, P.L. 106-398, § 1, 114 Stat. 1654 (enacting into law § 552 of Subtitle E of Title V of Division A of H.R. 5408 (114 Stat. 1654A-125), as introduced on Oct. 6, 2000), provides:

"(a) Policy requirement. The Secretary of Defense shall establish a policy creating a uniform process within the Department of Defense that--

"(1) affords any individual who, in connection with the investigation of a reported crime, is designated (by name or by any other identifying information) as a suspect in the case in any official investigative report, or in a central index for potential retrieval and analysis by law enforcement organizations, an opportunity to obtain a review of that designation; and

"(2) requires the expungement of the name and other identifying information of any such individual from such report or index in any case in which it is determined the entry of such identifying information on that individual was made contrary to Department of Defense requirements.

"(b) Effective date. The policy required by subsection (a) shall be established not later than 120 days after the date of the enactment of this Act."

Test of ability of reserve component intelligence units and personnel to meet current and emerging defense intelligence needs. Act Oct. 30, 2000, P.L. 106-398, § 1, 114 Stat. 1654 (enacting into law § 576 of Subtitle G of Title V of Division A of H.R. 5408 (114 Stat. 1654A-138), as introduced on Oct. 6, 2000), provides:

"(a) Test program required.

(1) Beginning not later than June 1, 2001, the Secretary of Defense shall conduct a three-year test program of reserve component intelligence units and personnel. The purpose of the test program shall be--

"(A) to determine the most effective peacetime structure and operational employment of reserve component intelligence assets for meeting current and future Department of Defense peacetime operational intelligence requirements; and

"(B) to establish a means to coordinate and transition that peacetime intelligence operational support network into use for meeting wartime requirements.

"(2) The test program shall be carried out using the Joint Reserve Intelligence Program and appropriate reserve component intelligence units and personnel.

"(3) In conducting the test program, the Secretary of Defense shall expand the current Joint Reserve Intelligence Program as needed to meet the objectives of the test program.

"(b) Oversight panel. The Secretary shall establish an oversight panel to structure the test program so as to achieve the objectives of the test program, ensure proper funding for the test program, and oversee the conduct and evaluation of the test program. The panel members shall include--

"(1) the Assistant Secretary of Defense for Command, Control, Communications and Intelligence;

"(2) the Assistant Secretary of Defense for Reserve Affairs; and

"(3) representatives from the Defense Intelligence Agency, the Army, Navy, Air Force, and Marine Corps, the Joint Staff, and the combatant commands.

"(c) Test program objectives. The test program shall have the following objectives:

"(1) To identify the range of peacetime roles and missions that are appropriate for reserve component intelligence units and personnel, including the following missions: counterdrug, counterintelligence, counterterrorism, information operations, information warfare, and other emerging threats.

"(2) To recommend a process for justifying and validating reserve component intelligence force structure and manpower to support the peacetime roles and missions identified under paragraph (1) and to establish a means to coordinate and transition that peacetime operational support network and structure into wartime requirements.

"(3) To provide, pursuant to paragraphs (1) and (2), the basis for new or revised intelligence and reserve component policy guidelines for the peacetime use, organization, management, infrastructure, and funding of reserve component intelligence units and personnel.

"(4) To determine the most effective structure, organization, manning, and management of Joint Reserve Intelligence Centers to enable them to be both reserve training facilities and virtual collaborative production facilities in support of Department of Defense peacetime operational intelligence requirements.

"(5) To determine the most effective uses of technology for virtual collaborative intelligence operational support during peacetime and wartime.

"(6) To determine personnel and career management initiatives or modifications that are required to improve the recruiting and retention of personnel in the reserve component intelligence specialties and occupational skills.

"(7) To identify and make recommendations for the elimination of statutory prohibitions and barriers to using reserve component intelligence units and individuals to carry out peacetime operational requirements.

"(d) Reports. The Secretary of Defense shall submit to Congress--

"(1) interim reports on the status of the test program not later than July 1, 2002, and July 1, 2003; and

"(2) a final report, with such recommendations for changes as the Secretary considers necessary, not later than December 1, 2004."

Study on civilian personnel services. Act Oct. 30, 2000, P.L. 106-398, § 1, 114 Stat. 1654 (enacting into law § 1105 of Subtitle A of Title XI of Division A of H.R. 5408 (114 Stat. 1654A-311), as introduced on Oct. 6, 2000), provides:

"(a) Study required. The Secretary of Defense shall assess the manner in which personnel services are provided for civilian personnel in the Department of Defense and determine whether--

"(1) administration of such services should continue to be centralized in individual military services and Defense Agencies or whether such services should be centralized within designated geographical areas to provide services to all Department of Defense elements;

"(2) offices that perform such services should be established to perform specific functions rather than cover an established geographical area;

"(3) processes and functions of civilian personnel offices should be reengineered to provide greater efficiency and better service to management and employees of the Department of Defense; and

"(4) efficiencies could be gained by public-private competition of the delivery of any of the personnel services for civilian personnel of the Department of Defense.

"(b) Report. Not later than January 1, 2002, the Secretary of Defense shall submit a report on the study, including recommendations, to the Committees on Armed Services of the Senate and the House of Representatives. The report shall include the Secretary's assessment of the items described in subsection (a), and, if appropriate, a proposal for a demonstration program to test the concepts developed under the study. The Secretary may also include any recommendations for legislation or other actions that the Secretary considers appropriate to increase the effectiveness and efficiency of the delivery of personnel services with respect to civilian personnel of the Department of Defense."

Pilot program for reengineering the equal employment opportunity complaint process. Act Oct. 30, 2000, P.L. 106-398, § 1, 114 Stat. 1654 (enacting into law § 1111 of Subtitle B of Title XI of Division A of H.R. 5408 (114 Stat. 1654A-312), as introduced on Oct. 6, 2000), provides:

"(a) Pilot program.

(1) The Secretary of Defense shall carry out a pilot program to improve processes for the resolution of equal employment opportunity complaints by civilian employees of the Department of Defense. Complaints processed under the pilot program shall be subject to the procedural requirements established for the pilot program and shall not be subject to the procedural requirements of part 1614 of title 29 of the Code of Federal Regulations or other regulations, directives, or regulatory restrictions prescribed by the Equal Employment Opportunity Commission.

"(2) The pilot program shall include procedures to reduce processing time and eliminate redundancy with respect to processes for the resolution of equal employment opportunity complaints, reinforce local management and chain-of-command accountability, and provide the parties involved with early opportunity for resolution.

"(3) The Secretary may carry out the pilot program for a period of three years, beginning on January 1, 2001.

"(4)

(A) Participation in the pilot program shall be voluntary on the part of the complainant. Complainants who participate in the pilot program shall retain the right to appeal a final agency decision to the Equal Employment Opportunity Commission and to file suit in district court. The Equal Employment Opportunity Commission shall not reverse a final agency decision on the grounds that the agency did not comply with the regulatory requirements promulgated by the Commission.

"(B) Subparagraph (A) shall apply to all cases--

"(i) pending as of January 1, 2001, before the Equal Employment Opportunity Commission involving a civilian employee who filed a complaint under the pilot program of the Department of the Navy to improve processes for the resolution of equal employment opportunity complaints; and

"(ii) hereinafter filed with the Commission under the pilot program established by this section.

"(5) The pilot program shall be carried out in at least one military department and two Defense Agencies.

"(b) Report. Not later than 90 days following the end of the first and last full or partial fiscal years during which the pilot program is implemented, the Comptroller General shall submit to Congress a report on the pilot program. Such report shall contain the following:

"(1) A description of the processes tested by the pilot program.

"(2) The results of such testing.

"(3) Recommendations for changes to the processes for the resolution of equal employment opportunity complaints as a result of such pilot program.

"(4) A comparison of the processes used, and results obtained, under the pilot program to traditional and alternative dispute resolution processes used in the government or private industry."

Work safety demonstration program. Act Oct. 30, 2000, P.L. 106-398, § 1, 114 Stat. 1654 (enacting into law § 1112 of Subtitle B of Title XI of Division A of H.R. 5408 (114 Stat. 1654A-313), as introduced on Oct. 6, 2000); Dec. 2, 2002, P.L. 107-314, Div A, Title III, Subtitle G, § 363, 116 Stat. 2520, provides:

"(a) Establishment. The Secretary of Defense shall carry out a defense employees work safety demonstration program.

"(b) Private sector work safety models. Under the demonstration program, the Secretary shall--

"(1) adopt for use in the workplace of civilian employees of the Department of Defense such work safety models used by employers in the private sector that the Secretary considers as being representative of the best work safety practices in use by private sector employers; and

"(2) determine whether the use of those practices in the Department of Defense improves the work safety record of Department of Defense employees.

"(c) Sites.

(1) The Secretary shall carry out the demonstration program--

"(A) at not fewer than two installations of each of the Armed Forces (other than the Coast Guard), for employees of the military department concerned; and

"(B) in at least two Defense Agencies (as defined in section 101(a)(11) of title 10, United States Code).

"(2) The Secretary shall select the installations and Defense Agencies from among the installations and Defense Agencies listed in the Federal Worker 2000 Presidential Initiative.

"(d) Period for program. The demonstration program shall begin not later than 180 days after the date of the enactment of this Act and shall terminate on September 30, 2003.

"(e) Reports.

(1) The Secretary of Defense shall submit an interim report on the demonstration program to the Committees on Armed Services of the Senate and the House of Representatives not later than December 1, 2001. The interim report shall contain, at a minimum, for each site of the demonstration program the following:

"(A) A baseline assessment of the lost workday injury rate.

"(B) A comparison of the lost workday injury rate for fiscal year 2000 with the lost workday injury rate for fiscal year 1999.

"(C) The direct and indirect costs associated with all lost workday injuries.

"(2) The Secretary of Defense shall submit a final report on the demonstration program to the Committees on Armed Services of the Senate and the House of Representatives not later than December 1, 2003. The final report shall contain, at a minimum, for each site of the demonstration program the following:

"(A) The Secretary's determination on the issue described in subsection (b)(2).

"(B) A comparison of the lost workday injury rate under the program with the baseline assessment of the lost workday injury rate.

"(C) The lost workday injury rate for fiscal years 2002 and 2003.

"(D) A comparison of the direct and indirect costs associated with all lost workday injuries for fiscal years 2002 and 2003 with the direct and indirect costs associated with all lost workday injuries for fiscal year 2001.

"(f) Funding. Of the amount authorized to be appropriated under section 301(5) [unclassified], \$ 5,000,000 shall be available for the demonstration program under this section."

GAO study on benefits and costs of United States military engagement in Europe. Act Oct. 30, 2000, P.L. 106-398, § 1, 114 Stat. 1654 (enacting into law § 1223 of Subtitle C of Title XII of Division A of H.R. 5408 (114 Stat. 1654A-328), as introduced on Oct. 6, 2000), provides:

"(a) Comptroller General study. The Comptroller General shall conduct a study assessing the benefits and costs to the United States and United States national security interests of the engagement of United States forces in Europe and of United States military strategies used to shape the international security environment in Europe.

"(b) Matters to be included. The study shall include an assessment of the following matters:

"(1) The benefits and costs to the United States of having forces stationed in Europe and assigned to areas of regional conflict such as Bosnia and Kosovo.

"(2) The benefits and costs associated with stationing United States forces in Europe and with assigning those forces to areas of regional conflict, including an analysis of the benefits and costs of deploying United States forces with the forces of European allies.

"(3) The amount and type of the following kinds of contributions to European security made by European allies in 1999 and 2000:

"(A) Financial contributions.

"(B) Contributions of military personnel and units.

"(C) Contributions of nonmilitary personnel, such as medical personnel, police officers, judicial officers, and other civic officials.

"(D) Contributions, including contributions in kind, for humanitarian and reconstruction assistance and infrastructure building or activities that contribute to regional stability, whether in lieu of or in addition to military-related contributions.

"(4) The extent to which a forward United States military presence compensates for existing shortfalls of air and sea lift capability in the event of regional conflict in Europe or the Middle East.

"(c) Report. The Comptroller General shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of the study not later than December 1, 2001."

Reliability of Department of Defense financial statements. Act Dec. 28, 2001, P.L. 107-107, Div A, Title X, Subtitle A, § 1008, 115 Stat. 1204; Dec. 31, 2011, P.L. 112-81, Div A, Title X, Subtitle F, § 1052, 125 Stat. 1582, provides:

"(a) Annual report on reliability.

(1) Not later than September 30 of each year but subject to subsection (f), the Secretary of Defense shall submit to the recipients specified in paragraph (3) a report on the reliability of the Department of Defense financial statements, including the financial statements of each component of the Department that is required to prepare a financial statement under section 3515(c) of title 31, United States Code.

"(2) The annual report shall contain the following:

"(A) A conclusion regarding whether the policies and procedures of the Department of Defense, and the systems used within the Department of Defense, for the preparation of financial statements allow the achievement of reliability in those financial statements.

"(B) For each of the financial statements prepared for the Department of Defense for the fiscal year in which the report is submitted, a conclusion regarding the expected reliability of the financial statement (evaluated on the basis of Office of Management and Budget guidance on financial statements), together with a discussion of the major deficiencies to be expected in the statement.

"(C) A summary of the specific sections of the annual Financial Management Improvement Plan of the Department of Defense, current as of the date of the report, that--

"(i) detail the priorities, milestones, and measures of success that apply to the preparation of the financial statements;

"(ii) detail the planned improvements in the process for the preparation of financial statements that are to be implemented within 12 months after the date on which the plan is issued; and

"(iii) provide an estimate of when each financial statement will convey reliable information.

"(3) The annual report shall be submitted to the following:

"(A) The Committee on Armed Services and the Committee on Governmental Affairs of the Senate.

"(B) The Committee on Armed Services and the Committee on Government Reform of the House of Representatives.

"(C) The Director of the Office of Management and Budget.

"(D) The Secretary of the Treasury.

"(E) The Comptroller General of the United States.

"(4) The Secretary of Defense shall make a copy of the annual report available to the Inspector General of the Department of Defense.

"(b) Minimization of use of resources for unreliable financial statements.

(1) With respect to each financial statement for a fiscal year that the Secretary of Defense assesses as being expected to be unreliable in the annual report under subsection (a), the Under Secretary of Defense (Comptroller) shall take appropriate actions to minimize, consistent with the benefits to be derived, the resources (including contractor support) that are used to develop, compile, and report the financial statement.

"(2) With the annual budget justifications for the Department of Defense submitted to Congress each year, the Under Secretary of Defense (Comptroller) shall submit, with respect to the fiscal year in which submitted, the preceding fiscal year, and the following fiscal year, the following information:

"(A) An estimate of the resources that the Department of Defense is saving or expects to save as a result of actions taken and to be taken under paragraph (1) with respect to the preparation of financial statements.

"(B) A discussion of how the resources saved as estimated under subparagraph (A) have been redirected or are to be redirected from the preparation of financial statements to the improvement of systems underlying financial management within the Department of Defense and to the improvement of financial management policies, procedures, and internal controls within the Department of Defense.

"(c) Information to auditors. Not later than the date that is 180 days prior to the date set by the Office of Management and Budget for the submission of financial statements of each year, the Under Secretary of Defense (Comptroller) and the Assistant Secretary of each military department with responsibility for financial management and comptroller functions shall each provide to the auditors of the financial statement of that official's department for the fiscal year ending during the preceding month that official's preliminary management representation, in writing, regarding the expected reliability of the financial statement. The representation shall be consistent with guidance issued by the Director of the Office of Management and Budget and shall include the basis for the reliability assessment stated in the representation.

"(d) Limitation on Inspector General audits.

(1) On each financial statement that an official asserts is unreliable under subsection (b) or (c), the Inspector General of the Department of Defense shall only perform the audit procedures required by generally accepted government auditing standards consistent with any representation made by management.

"(2) With the annual budget justifications for the Department of Defense submitted to Congress each year, the Under Secretary of Defense (Comptroller) shall submit, with respect to the fiscal year in which submitted, the preceding fiscal year, and the following fiscal year, information which the Inspector General shall report to the Under Secretary, as follows:

"(A) An estimate of the resources that the Inspector General is saving or expects to save as a result of actions taken and to be taken under paragraph (1) with respect to the auditing of financial statements.

"(B) A discussion of how the resources saved as estimated under subparagraph (A) have been redirected or are to be redirected from the auditing of financial statements to the oversight and improvement of systems underlying financial management within the Department of Defense and to the oversight and improvement of financial management policies, procedures, and internal controls within the Department of Defense.

"(e) Effective date. The requirements of this section shall apply with respect to financial statements for fiscal years after fiscal year 2001 and to the auditing of those financial statements.

"(f) Termination of applicability. If the Secretary of Defense certifies to the Inspector General of the Department of Defense that the financial statement for the Department of Defense, or a financial statement for a component of the Department of Defense, for a fiscal year is reliable, this section shall not apply with respect to that financial statement or to any successive financial statement for the Department of Defense, or for that component, as the case may be, for any later fiscal year."

Uniform financial management system for Department of Defense test and evaluation facilities. Act Dec. 2, 2002, P.L. 107-314, Div A, Title II, Subtitle D, § 233, 116 Stat. 2490, provides:

"(a) Requirement for system. The Secretary of Defense shall implement a single financial management and accounting system for all test and evaluation facilities of the Department of Defense. The Secretary shall implement such system as soon as practicable, and shall establish the objective that such system be implemented not later than September 30, 2006.

"(b) System features. The system required by subsection (a) shall be designed to achieve, at a minimum, the following functional objectives:

"(1) Enable managers within the Department of Defense to compare the costs of carrying out test and evaluation activities in the various facilities of the military departments.

"(2) Enable the Secretary of Defense--

"(A) to make prudent investment decisions; and

"(B) to reduce the extent to which unnecessary costs of owning and operating test and evaluation facilities of the Department of Defense are incurred.

"(3) Enable the Department of Defense to track the total cost of test and evaluation activities.

"(4) Comply with the financial management architecture established by the Secretary."

Training range sustainment plan, global status of resources and training system, and training range inventory. Act Dec. 2, 2002, P.L. 107-314, Div A, Title III, Subtitle G, § 366, 116 Stat. 2522; Oct. 17, 2006, P.L. 109-364, Div

A, Title III, Subtitle E, § 348, 120 Stat. 2159; Jan. 28, 2008, P.L. 110-181, Div A, Title X, Subtitle F, § 1063(c)(2), 122 Stat. 322 (effective as if included in Act Oct. 17, 2006, as provided by § 1063(c) of such Act); Jan. 7, 2011, P.L. 111-383, Div A, Title X, Subtitle H, § 1075(g)(2), 124 Stat. 4376 (effective as of 10/17/2006 and as if included in Act Oct. 17, 2006 as enacted, as provided by § 1075(g) of the 2011 Act); Jan. 2, 2013, P.L. 112-239, Div A, Title III, Subtitle B, § 311, 126 Stat. 1691, provides:

"(a) Plan required.

(1) The Secretary of Defense shall develop a comprehensive plan for using existing authorities available to the Secretary of Defense and the Secretaries of the military departments to address training constraints caused by limitations on the use of military lands, marine areas, and airspace that are available in the United States and overseas for training of the Armed Forces.

"(2) As part of the preparation of the plan, the Secretary of Defense shall conduct the following:

"(A) An assessment of current and future training range requirements of the Armed Forces.

"(B) An evaluation of the adequacy of current Department of Defense resources (including virtual and constructive training assets as well as military lands, marine areas, and airspace available in the United States and overseas) to meet those current and future training range requirements.

"(3) The plan shall include the following:

"(A) Proposals to enhance training range capabilities and address any shortfalls in current Department of Defense resources identified pursuant to the assessment and evaluation conducted under paragraph (2).

"(B) Goals and milestones for tracking planned actions and measuring progress.

"(C) Projected funding requirements for implementing planned actions.

"(D) Designation of an office in the Office of the Secretary of Defense and in each of the military departments that will have lead responsibility for overseeing implementation of the plan.

"(4) At the same time as the President submits to Congress the budget for fiscal year 2004, the Secretary of Defense shall submit to Congress a report describing the progress made in implementing this subsection, including--

"(A) the plan developed under paragraph (1);

"(B) the results of the assessment and evaluation conducted under paragraph (2); and

"(C) any recommendations that the Secretary may have for legislative or regulatory changes to address training constraints identified pursuant to this section.

"(5) At the same time as the President submits to Congress the budget for each fiscal year through fiscal year 2018, the Secretary shall submit to Congress a report describing the progress made in implementing the plan and any additional actions taken, or to be taken, to address training constraints caused by limitations on the use of military lands, marine areas, and airspace.

"(b) Readiness reporting improvement. Not later than June 30, 2003, the Secretary of Defense, using existing measures within the authority of the Secretary, shall submit to Congress a report on the plans of the Department of Defense to improve the Global Status of Resources and Training System to reflect the readiness impact that training constraints caused by limitations on the use of military lands, marine areas, and airspace have on specific units of the Armed Forces.

"(c) Training range inventory.

(1) The Secretary of Defense shall develop and maintain a training range inventory for each of the Armed Forces--

"(A) to identify all available operational training ranges;

"(B) to identify all training capacities and capabilities available at each training range; and

"(C) to identify training constraints caused by limitations on the use of military lands, marine areas, and airspace at each training range.

"(2) The Secretary of Defense shall submit an initial inventory to Congress at the same time as the President submits the budget for fiscal year 2004 and shall submit an updated inventory to Congress at the same time as the President submits the budget for each fiscal year through fiscal year 2018.

"(d) GAO evaluation. The Secretary of Defense shall transmit copies of each report required by subsections (a) and (b) to the Comptroller General. Within 90 days of receiving a report, the Comptroller General shall submit to Congress an evaluation of the report.

"(e) Armed Forces defined. In this section, the term 'Armed Forces' means the Army, Navy, Air Force, and Marine Corps."

Repeal of provision relating to financial management enterprise architecture. Act Dec. 2, 2002, P.L. 107-314, Div A, Title X, Subtitle A, § 1004, 116 Stat. 2629, which formerly appeared as a note to this section, was repealed by

Act Oct. 28, 2004, P.L. 108-375, Div A, Title III, Subtitle D, § 332(f), 118 Stat. 1846. It provided for development and implementation of financial management enterprise architecture.

Annual report on military operations conducted as part of Operation Enduring Freedom. Act Dec. 2, 2002, P.L. 107-314, Div A, Title X, Subtitle D, § 1043, 116 Stat. 2646, provides:

"(a) Reports required.

(1) The Secretary of Defense shall submit to the congressional committees specified in subsection (d) an annual report on the conduct of military operations conducted as part of Operation Enduring Freedom. The first report, which shall include a definition of the military operations carried out as part of Operation Enduring Freedom, shall be submitted not later than June 15, 2003. Subsequent reports shall be submitted not later than June 15 each year, and the final report shall be submitted not later than 180 days after the date (as determined by the Secretary of Defense) of the cessation of hostilities undertaken as part of Operation Enduring Freedom.

"(2) Each report under this section shall be prepared in consultation with the Chairman of the Joint Chiefs of Staff, the commander of the United States Central Command, the Director of Central Intelligence, and such other officials as the Secretary considers appropriate.

"(3) Each such report shall be submitted in both a classified form and an unclassified form, as necessary.

"(b) Special matters to be included. Each report under this section shall include the following:

"(1) A discussion of the command, control, coordination, and support relationship between United States special operations forces and Central Intelligence Agency elements participating in Operation Enduring Freedom and any lessons learned from the joint conduct of operations by those forces and elements.

"(2) Recommendations to improve operational readiness and effectiveness of these forces and elements.

"(c) Other matters to be included. Each report under this section shall include a discussion, with a particular emphasis on accomplishments and shortcomings, of the following matters with respect to Operation Enduring Freedom:

"(1) The political and military objectives of the United States.

"(2) The military strategy of the United States to achieve those political and military objectives.

"(3) The concept of operations, including any new operational concepts, for the operation.

"(4) The benefits and disadvantages of operating with local opposition forces.

"(5) The benefits and disadvantages of operating in a coalition with the military forces of allied and friendly nations.

"(6) The cooperation of nations in the region for overflight, basing, command and control, and logistic and other support.

"(7) The conduct of relief operations both during and after the period of hostilities.

"(8) The conduct of close air support (CAS), particularly with respect to the timeliness, efficiency, and effectiveness of such support.

"(9) The use of unmanned aerial vehicles for intelligence, surveillance, reconnaissance, and combat support to operational forces.

"(10) The use and performance of United States and coalition military equipment, weapon systems, and munitions.

"(11) The effectiveness of reserve component forces, including their use and performance in the theater of operations.

"(12) The importance and effectiveness of the International Security Assistance Force.

"(13) The importance and effectiveness of United States civil affairs forces.

"(14) The anticipated duration of the United States military presence in Afghanistan.

"(15) The most critical lessons learned that could lead to long-term doctrinal, organizational, and technological changes.

"(d) Congressional committees. The committees referred to in subsection (a)(1) are the following:

"(1) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

"(2) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives."

Comprehensive plan for improving the preparedness of military installations for terrorist incidents. Act Dec. 2, 2002, P.L. 107-314, Div A, Title XIV, § 1402, 116 Stat. 2675, provides:

"(a) Comprehensive plan. The Secretary of Defense shall develop a comprehensive plan for improving the preparedness of military installations for preventing and responding to terrorist attacks, including attacks involving the use or threat of use of weapons of mass destruction.

"(b) Preparedness strategy. The plan under subsection (a) shall include a preparedness strategy that includes each of the following:

"(1) Identification of long-term goals and objectives for improving the preparedness of military installations for preventing and responding to terrorist attacks.

"(2) Identification of budget and other resource requirements necessary to achieve those goals and objectives.

"(3) Identification of factors beyond the control of the Secretary that could impede the achievement of those goals and objectives.

"(4) A discussion of the extent to which local, regional, or national military response capabilities are to be developed, integrated, and used.

"(5) A discussion of how the Secretary will coordinate the capabilities referred to in paragraph (4) with local, regional, or national civilian and other military capabilities.

"(c) Performance plan. The plan under subsection (a) shall include a performance plan that includes each of the following:

"(1) A reasonable schedule, with milestones, for achieving the goals and objectives of the strategy under subsection (b).

"(2) Performance criteria for measuring progress in achieving those goals and objectives.

"(3) A description of the process, together with a discussion of the resources, necessary to achieve those goals and objectives.

"(4) A description of the process for evaluating results in achieving those goals and objectives.

"(d) Submittal to Congress. The Secretary shall submit the comprehensive plan developed under subsection (a) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 180 days after the date of the enactment of this Act.

"(e) Comptroller General review and report. Not later than 60 days after the date on which the Secretary submits the comprehensive plan under subsection (a), the Comptroller General shall review the plan and submit to the committees referred to in subsection (d) the Comptroller General's assessment of the plan.

"(f) Annual report.

(1) In each of 2004, 2005, and 2006, the Secretary of Defense shall include a report on the comprehensive plan developed under subsection (a) with the materials that the Secretary submits to Congress in support of the budget submitted by the President that year pursuant to section 1105(a) of title 31, United States Code.

"(2) Each such report shall include--

"(A) a discussion of any revision that the Secretary has made in the comprehensive plan developed under subsection (a) since the last report under this subsection or, in the case of the first such report, since the plan was submitted under subsection (d); and

"(B) an assessment of the progress made in achieving the goals and objectives of the strategy set forth in the plan.

"(3) If the Secretary includes in the report for 2004 or 2005 under this subsection a declaration that the goals and objectives of the preparedness strategy set forth in the comprehensive plan have been achieved, no further report is required under this subsection."

Annual report on military operations and reconstruction activities in Iraq and Afghanistan. Act Nov. 6, 2003, P.L. 108-106, Title I, Ch. 1, § 1120, 117 Stat. 1219, provides:

"(a) Not later than April 30 and October 31 of each year, the Secretary of Defense shall submit to Congress a report on the military operations of the Armed Forces and the reconstruction activities of the Department of Defense in Iraq and Afghanistan.

"(b) Each report shall include the following information:

"(1) For each of Iraq and Afghanistan for the half-fiscal year ending during the month preceding the due date of the report, the amount expended for military operations of the Armed Forces and the amount expended for reconstruction activities, together with the cumulative total amounts expended for such operations and activities.

"(2) An assessment of the progress made toward preventing attacks on United States personnel.

"(3) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the readiness of the Armed Forces.

"(4) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the recruitment and retention of personnel for the Armed Forces.

"(5) For the half-fiscal year ending during the month preceding the due date of the report, the costs incurred for repair of Department of Defense equipment used in the operations and activities in Iraq and Afghanistan.

"(6) The foreign countries, international organizations, and nongovernmental organizations that are contributing support for the ongoing military operations and reconstruction activities, together with a discussion of the amount and

types of support contributed by each during the half-fiscal year ending during the month preceding the due date of the report.

"(7) The extent to which, and the schedule on which, the Selected Reserve of the Ready Reserve of the Armed Forces is being involuntarily ordered to active duty under section 12304 of title 10, United States Code.

"(8) For each unit of the National Guard of the United States and the other reserve components of the Armed Forces on active duty pursuant to an order to active duty under section 12304 of title 10, United States Code, the following information:

"(A) The unit.

"(B) The projected date of return of the unit to its home station.

"(C) The extent (by percentage) to which the forces deployed within the United States and outside the United States in support of a contingency operation are composed of reserve component forces."

Studies of fleet platform architectures for the Navy. Act Nov. 24, 2003, P.L. 108-136, Div A, Title II, Subtitle B, § 216, 117 Stat. 1418, provides:

"(a) Independent studies.

(1) The Secretary of Defense shall provide for the performance of two independent studies of alternative future fleet platform architectures for the Navy.

"(2) The Secretary shall forward the results of each study to the congressional defense committees [the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives] not later than January 15, 2005.

"(3) Each such study shall be submitted both in unclassified, and to the extent necessary, in classified versions.

"(b) Entities to perform studies. The Secretary of Defense shall provide for the studies under subsection (a) to be performed as follows:

"(1) One study shall be performed by a federally funded research and development center.

"(2) The other study shall be performed by the Office of Force Transformation within the Office of the Secretary of Defense and shall include participants from (A) the Office of Net Assessment within the Office of the Secretary of Defense, (B) the Department of the Navy, and (C) the Joint Staff.

"(c) Performance of studies.

(1) The Secretary of Defense shall require the two studies under this section to be conducted independently of each other.

"(2) In performing a study under this section, the organization performing the study, while being aware of the current and projected fleet platform architectures, shall not be limited by the current or projected fleet platform architecture and shall consider the following:

"(A) The National Security Strategy of the United States.

"(B) Potential future threats to the United States and to United States naval forces.

"(C) The traditional roles and missions of United States naval forces.

"(D) Alternative roles and missions for United States naval forces.

"(E) Other government and non-government analyses that would contribute to the study through variations in study assumptions or potential scenarios.

"(F) The role of evolving technology on future naval forces.

"(G) Opportunities for reduced manning and unmanned ships and vehicles in future naval forces.

"(d) Study results. The results of each study under this section shall--

"(1) present the alternative fleet platform architectures considered, with assumptions and possible scenarios identified for each;

"(2) provide for presentation of minority views of study participants; and

"(3) for the recommended architecture, provide--

"(A) the numbers, kinds, and sizes of vessels, the numbers and types of associated manned and unmanned vehicles, and the basic capabilities of each of those platforms; and

"(B) other information needed to understand that architecture in basic form and the supporting analysis."

Report regarding impact of civilian community encroachment and certain legal requirements on military installations and ranges and plan to address encroachment. Act Nov. 24, 2003, P.L. 108-136, Div A, Title III, Subtitle B, § 320, 117 Stat. 1435, provides:

"(a) Study required. The Secretary of Defense shall conduct a study on the impact, if any, of the following types of encroachment issues affecting military installations and operational ranges:

"(1) Civilian community encroachment on those military installations and ranges whose operational training activities, research, development, test, and evaluation activities, or other operational, test and evaluation, maintenance,

storage, disposal, or other support functions require, or in the future reasonably may require, safety or operational buffer areas. The requirement for such a buffer area may be due to a variety of factors, including air operations, ordnance operations and storage, or other activities that generate or might generate noise, electro-magnetic interference, ordnance arcs, or environmental impacts that require or may require safety or operational buffer areas.

"(2) Compliance by the Department of Defense with State Implementation Plans for Air Quality under section 110 of the Clean Air Act (42 U.S.C. 7410).

"(3) Compliance by the Department of Defense with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

"(b) Matters to be included with respect to civilian community encroachments. With respect to paragraph (1) of subsection (a), the study shall include the following:

"(1) A list of all military installations described in subsection (a)(1) at which civilian community encroachment is occurring.

"(2) A description and analysis of the types and degree of such civilian community encroachment at each military installation included on the list.

"(3) An analysis, including views and estimates of the Secretary of Defense, of the current and potential future impact of such civilian community encroachment on operational training activities, research, development, test, and evaluation activities, and other significant operational, test and evaluation, maintenance, storage, disposal, or other support functions performed by military installations included on the list. The analysis shall include the following:

"(A) A review of training and test ranges at military installations, including laboratories and technical centers of the military departments, included on the list.

"(B) A description and explanation of the trends of such encroachment, as well as consideration of potential future readiness problems resulting from unabated encroachment.

"(4) An estimate of the costs associated with current and anticipated partnerships between the Department of Defense and non-Federal entities to create buffer zones to preclude further development around military installations included on the list, and the costs associated with the conveyance of surplus property around such military installations for purposes of creating buffer zones.

"(5) Options and recommendations for possible legislative or budgetary changes necessary to mitigate current and anticipated future civilian community encroachment problems.

"(c) Matters to be included with respect to compliance with specified laws. With respect to paragraphs (2) and (3) of subsection (a), the study shall include the following:

"(1) A list of all military installations and other locations at which the Armed Forces are encountering problems related to compliance with the laws specified in such paragraphs.

"(2) A description and analysis of the types and degree of compliance problems encountered.

"(3) An analysis, including views and estimates of the Secretary of Defense, of the current and potential future impact of such compliance problems on the following functions performed at military installations:

"(A) Operational training activities.

"(B) Research, development, test, and evaluation activities.

"(C) Other significant operational, test and evaluation, maintenance, storage, disposal, or other support functions.

"(4) A description and explanation of the trends of such compliance problems, as well as consideration of potential future readiness problems resulting from such compliance problems.

"(d) Plan to respond to encroachment issues. On the basis of the study conducted under subsection (a), including the specific matters required to be addressed by subsections (b) and (c), the Secretary of Defense shall prepare a plan to respond to the encroachment issues described in subsection (a) affecting military installations and operational ranges.

"(e) Reporting requirements. The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the following reports regarding the study conducted under subsection (a), including the specific matters required to be addressed by subsections (b) and (c):

"(1) Not later than January 31, 2004, an interim report describing the progress made in conducting the study and containing the information collected under the study as of that date.

"(2) Not later than January 31, 2006, a report containing the results of the study and the encroachment response plan required by subsection (d).

"(3) Not later than January 31, 2007, and each January 31 thereafter through January 31, 2010, a report describing the progress made in implementing the encroachment response plan."

High-performing organization business process reengineering pilot program. Act Nov. 24, 2003, P.L. 108-136, Div A, Title III, Subtitle C, § 337, 117 Stat. 1445, provides:

"(a) Pilot program. The Secretary of Defense shall establish a pilot program under which the Secretary concerned shall create, or continue the implementation of, high-performing organizations through the conduct of a Business Process Reengineering initiative at selected military installations and facilities under the jurisdiction of the Secretary concerned.

"(b) Effect of participation in pilot program.

(1) During the period of an organization's participation in the pilot program, including the periods referred to in paragraphs (2) and (3) of subsection (f), the Secretary concerned may not require the organization to undergo any Office of Management and Budget Circular A-76 competition or other public-private competition involving any function of the organization covered by the Business Process Reengineering initiative. The organization may elect to undergo such a competition as part of the initiative.

"(2) Civilian employee or military personnel positions of the participating organization that are part of the Business Process Reengineering initiative shall be counted toward any numerical goals, target, or quota that the Secretary concerned is required or requested to meet during the term of the pilot program regarding the number of positions to be covered by public-private competitions.

"(c) Eligible organizations. Subject to subsection (d), the Secretary concerned may select two types of organizations to participate in the pilot program:

"(1) Organizations that underwent a Business Process Reengineering initiative within the preceding five years, achieved major performance enhancements under the initiative, and will be able to sustain previous or achieve new performance goals through the continuation of its existing or completed Business Process Reengineering plan.

"(2) Organizations that have not undergone or have not successfully completed a Business Process Reengineering initiative, but which propose to achieve, and reasonably could reach, enhanced performance goals through implementation of a Business Process Reengineering initiative.

"(d) Additional eligibility requirements.

(1) To be eligible for selection to participate in the pilot program under subsection (c)(1), an organization described in such subsection shall demonstrate, to the satisfaction of the Secretary concerned, the completion of a total organizational assessment that resulted in enhanced performance measures at least comparable to those performance measures that might be achieved through competitive sourcing.

"(2) To be eligible for selection to participate in the pilot program under subsection (c)(2), an organization described in such subsection shall identify, to the satisfaction of the Secretary concerned--

"(A) functions, processes, and measures to be studied under the Business Process Reengineering initiative;

"(B) adequate resources to carry out the Business Process Reengineering initiative; and

"(C) labor-management agreements in place to ensure effective implementation of the Business Process Reengineering initiative.

"(e) Limitation on number of participants. Total participants in the pilot program is limited to eight military installations and facilities, with some participants to be drawn from organizations described in subsection (c)(1) and some participants to be drawn from organizations described in subsection (c)(2).

"(f) Implementation and duration.

(1) The implementation and management of a Business Process Reengineering initiative under the pilot program shall be the responsibility of the commander of the military installation or facility at which the Business Process Reengineering initiative is carried out.

"(2) An organization selected to participate in the pilot program shall be given a reasonable initial period, to be determined by the Secretary concerned, in which the organization must implement the Business Process Reengineering initiative. At the end of this period, the Secretary concerned shall determine whether the organization has achieved initial progress toward designation as a high-performing organization. In the absence of such progress, the Secretary concerned shall terminate the organization's participation in the pilot program.

"(3) If an organization successfully completes implementation of the Business Process Reengineering initiative under paragraph (2), the Secretary concerned shall designate the organization as a high-performing organization and grant the organization an additional five-year period in which to achieve projected or planned efficiencies and savings under the pilot program.

"(g) Reviews and reports. The Secretary concerned shall conduct annual performance reviews of the participating organizations or functions under the jurisdiction of the Secretary concerned. Reviews and reports shall evaluate organizational performance measures or functional performance measures and determine whether organizations are performing satisfactorily for purposes of continuing participation in the pilot program.

"(h) Performance measures. Performance measures utilized in the pilot program should include the following, which shall be measured against organizational baselines determined before participation in the pilot program:

"(1) Costs, savings, and overall financial performance of the organization.

"(2) Organic knowledge, skills or expertise.

"(3) Efficiency and effectiveness of key functions or processes.

"(4) Efficiency and effectiveness of the overall organization.

"(5) General customer satisfaction.

"(i) Definitions. In this section

"(1) The term 'Business Process Reengineering' refers to an organization's complete and thorough analysis and reengineering of mission and support functions and processes to achieve improvements in performance, including a fundamental reshaping of the way work is done to better support an organization's mission and reduce costs.

"(2) The term 'high-performing organization' means an organization whose performance exceeds that of comparable providers, whether public or private.

"(3) The term 'Secretary concerned' means the Secretary of a military department and the Secretary of Defense, with respect to matters concerning the Defense Agencies."

Secretary of Defense assessment of mobilization of reserve component personnel. Act Nov. 24, 2003, P.L. 108-136, Div A, Title V, Subtitle B, § 517(b), 117 Stat. 1461, provides:

"Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the following:

"(1) A description of the effects on reserve component recruitment and retention that have resulted from--

"(A) the calls and orders of Reserves to active duty during fiscal years 2002 and 2003; and

"(B) the tempo of the service of the Reserves on the active duty to which called or ordered.

"(2) A description of changes in the Armed Forces, including any changes in the allocation of roles and missions, in force structure, and in capabilities between the active components and the reserve components of the Armed Forces, that are envisioned by the Secretary of Defense on the basis of--

"(A) the effects discussed under paragraph (1);

"(B) the lessons learned from calling and ordering the reserve components to active duty during fiscal years 2002 and 2003; or

"(C) future military force structure and capabilities requirements.

"(3) On the basis of the lessons learned as a result of calling and ordering members of the reserve components to active duty during fiscal years 2002 and 2003, an assessment of the process for calling and ordering such members to active duty, preparing such members for active duty, processing such members into the force upon entry onto active duty, and deploying such members, including an assessment of the adequacy of the alert and notification process from the perspectives of individual members, of reserve component units, and of employers of such members."

Policy on public identification of casualties. Act Nov. 24, 2003, P.L. 108-136, Div A, Title V, Subtitle E, § 546, 117 Stat. 1479, provides:

"(a) Requirement for policy. Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall prescribe the policy of the Department of Defense on public release of the name or other personally identifying information of any member of the Army, Navy, Air Force, or Marine Corps who while on active duty or performing inactive-duty training is killed or injured, whose duty status becomes unknown, or who is otherwise considered to be a casualty.

"(b) Guidance on timing of release. The policy under subsection (a) shall include guidance for ensuring that any public release of information on a member under the policy occurs only after the lapse of an appropriate period following notification of the next-of-kin regarding the casualty status of such member."

Plan for prompt global strike capability. Act Nov. 24, 2003, P.L. 108-136, Div A, Title X, Subtitle D, § 1032, 117 Stat. 1605; Jan. 28, 2008, P.L. 110-181, Div A, Title X, Subtitle E, § 1043, 122 Stat. 311, provides:

"(a) Integrated plan for prompt global strike capability. The Secretary of Defense shall establish an integrated plan for developing, deploying, and sustaining a prompt global strike capability in the Armed Forces. The Secretary shall update the plan annually.

"(b) Annual reports.

(1) Not later than April 1 of each of 2004, 2005, and 2006, and each of 2007, 2008, and 2009, the Secretary shall submit to the congressional defense committees [the Committee on Armed Services and the Committee on Appropriations of the Senate, and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives] a report on the plan established under subsection (a).

"(2) Each report under paragraph (1) shall include the following:

"(A) A description and assessment of the targets against which long-range strike assets might be directed and the conditions under which those assets might be used.

"(B) The role of, and plans for ensuring, sustainment and modernization of current long-range strike assets, including bombers, intercontinental ballistic missiles, and submarine-launched ballistic missiles.

"(C) A description of the capabilities desired for advanced long-range strike assets and plans to achieve those capabilities.

"(D) A description of the capabilities desired for advanced conventional munitions and the plans to achieve those capabilities.

"(E) An assessment of advanced nuclear concepts that could contribute to the prompt global strike mission.

"(F) An assessment of the command, control, and communications capabilities necessary to support prompt global strike capabilities.

"(G) An assessment of intelligence, surveillance, and reconnaissance capabilities necessary to support prompt global strike capabilities.

"(H) A description of how prompt global strike capabilities are to be integrated with theater strike capabilities.

"(I) An estimated schedule for achieving the desired prompt global strike capabilities.

"(J) The estimated cost of achieving the desired prompt global strike capabilities.

"(K) A description of ongoing and future studies necessary for updating the plan appropriately."

Report on acquisition by Iraq of advanced weapons. Act Nov. 24, 2003, P.L. 108-136, Div A, Title XII, Subtitle A, § 1204, 117 Stat. 1649, provides:

"(a) Report. Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and International Relations of the House of Representatives a report on the acquisition by Iraq of weapons of mass destruction and associated delivery systems and the acquisition by Iraq of advanced conventional weapons.

"(b) Matters to be included. The report shall include the following:

"(1) A description of any materials, technology, and know-how that Iraq was able to obtain for its nuclear, chemical, biological, ballistic missile, and unmanned aerial vehicle programs, and advanced conventional weapons programs, from 1979 through April 2003 from entities (including Iraqi citizens) outside of Iraq, as well as a description of how Iraq obtained these capabilities from those entities.

"(2) An assessment of the degree to which United States, foreign, and multilateral export control regimes prevented acquisition by Iraq of weapons of mass destruction-related technology and materials and advanced conventional weapons and delivery systems since the commencement of international inspections in Iraq.

"(3) An assessment of the effectiveness of United Nations sanctions at halting the flow of militarily-useful contraband to Iraq from 1991 until the end of Operation Iraqi Freedom.

"(4) An assessment of how Iraq was able to evade International Atomic Energy Agency and United Nations inspections regarding chemical, nuclear, biological, and missile weapons and related capabilities.

"(5) Identification and a catalog of the entities and countries that transferred militarily useful contraband and items described pursuant to paragraph (1) to Iraq between 1991 and the end of major combat operations of Operation Iraqi Freedom on May 1, 2003, and the nature of that contraband and of those items.

"(c) Form of report. The report shall be submitted in unclassified form with a classified annex, if necessary."

Reports on conventional weapons and ammunition obtained by Iraq in violation of certain United Nations Security Council resolutions. Act Dec. 13, 2003, P.L. 108-177, Title III, Subtitle D, § 358, 117 Stat. 2621, provides:

"(a) Preliminary report. Not later than 90 days after the date of the enactment of this Act, the Director of the Defense Intelligence Agency shall, after such consultation with the Secretary of State and the Attorney General as the Director considers appropriate, submit to the appropriate committees of Congress a preliminary report on all information obtained by the Department of Defense and the intelligence community on the conventional weapons and ammunition obtained by Iraq in violation of applicable resolutions of the United Nations Security Council adopted since the invasion of Kuwait by Iraq in August 1990.

"(b) Final report.

(1) Not later than one year after the date of the enactment of this Act, the Director shall submit to the appropriate committees of Congress a final report on the information described in subsection (a).

"(2) The final report under paragraph (1) shall include such updates of the preliminary report under subsection (a) as the Director considers appropriate.

"(c) Elements. Each report under this section shall set forth, to the extent practicable, with respect to each shipment of weapons or ammunition addressed in such report the following:

"(1) The country of origin.

"(2) Any country of transshipment.

"(d) Form. Each report under this section shall be submitted in unclassified form, but may include a classified annex.

"(e) Appropriate committees of Congress defined. In this section, the term 'appropriate committees of Congress' means--

"(1) the Select Committee on Intelligence and the Committees on Armed Services and Foreign Relations of the Senate; and

"(2) the Permanent Select Committee on Intelligence and the Committees on Armed Services and International Relations of the House of Representatives."

Report on military operations and reconstruction activities in Iraq and Afghanistan. Act Aug. 5, 2004, P.L. 108-287, Title IX, § 9010, 118 Stat. 1008; Oct. 13, 2004, P.L. 108-324, Div B, Ch. 3, § 306, 118 Stat. 1243, provides:

"(a) Not later than April 30 and October 31 of each year, the Secretary of Defense shall submit to Congress a report on the military operations of the Armed Forces and the reconstruction activities of the Department of Defense in Iraq and Afghanistan.

"(b) Each report shall include the following information:

"(1) For each of Iraq and Afghanistan for the half-fiscal year ending during the month preceding the due date of the report, the amount expended for military operations of the Armed Forces and the amount expended for reconstruction activities, together with the cumulative total amounts expended for such operations and activities.

"(2) An assessment of the progress made toward preventing attacks on United States personnel.

"(3) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the readiness of the Armed Forces.

"(4) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the recruitment and retention of personnel for the Armed Forces.

"(5) For the half-fiscal year ending during the month preceding the due date of the report, the costs incurred for repair of Department of Defense equipment used in the operations and activities in Iraq and Afghanistan.

"(6) The foreign countries, international organizations, and nongovernmental organizations that are contributing support for the ongoing military operations and reconstruction activities, together with a discussion of the amount and types of support contributed by each during the half-fiscal year ending during the month preceding the due date of the report.

"(7) The extent to which, and the schedule on which, the Selected Reserve of the Ready Reserve of the Armed Forces is being involuntarily ordered to active duty under section 12302 of title 10, United States Code.

"(8) For each unit of the National Guard of the United States and the other reserve components of the Armed Forces on active duty pursuant to an order to active duty under section 12302 of title 10, United States Code, the following information:

"(A) The unit.

"(B) The projected date of return of the unit to its home station.

"(C) The extent (by percentage) to which the forces deployed within the United States and outside the United States in support of a contingency operation are composed of reserve component forces."

Processing of forensic evidence collection kits and acquisition of sufficient stocks of such kits. Act Oct. 28, 2004, P.L. 108-375, Div A, Title V, Subtitle J, § 573, 118 Stat. 1921, provides:

"(a) Elimination of backlog, etc. The Secretary of Defense shall take such steps as may be necessary to ensure that--

"(1) the United States Army Criminal Investigation Laboratory has the personnel and resources to effectively process forensic evidence used by the Department of Defense within 60 days of receipt by the laboratory of such evidence;

"(2) consistent policies are established among the Armed Forces to reduce the time period between the collection of forensic evidence and the receipt and processing of such evidence by United States Army Criminal Investigation Laboratory; and

"(3) there is an adequate supply of forensic evidence collection kits--

"(A) for all United States military installations, including the military service academies; and

"(B) for units of the Armed Forces deployed in theaters of operation.

"(b) Training. The Secretary shall take such measures as the Secretary considers appropriate to ensure that personnel are appropriately trained--

"(1) in the use of forensic evidence collection kits; and

"(2) in the prescribed procedures to ensure protection of the chain of custody of such kits once used."

Department of Defense policy and procedures on prevention and response to sexual assaults involving members of the Armed Forces. Section 577 of Act Oct. 28, 2004, P.L. 108-375, as amended, which formerly appeared as a note to this section, was transferred to 10 USCS § 1561 note.

Policy for timely notification of next of kin of members seriously ill or injured in combat zones. Act Oct. 28, 2004, P.L. 108-375, Div A, Title VII, Subtitle C, § 724, 118 Stat. 1990, provides:

"(a) Policy required. The Secretary of Defense shall prescribe the policy of the Department of Defense for providing, in the case of the serious illness or injury of a member of the Armed Forces in a combat zone, timely notification to the next of kin of the member regarding the illness or injury, including information on the condition of the member and the location at which the member is receiving treatment. In prescribing the policy, the Secretary shall ensure respect for the expressed desires of individual members of the Armed Forces regarding the notification of next of kin and shall include standards of timeliness for both the initial notification of next of kin under the policy and subsequent updates regarding the condition and location of the member.

"(b) Submission of policy. Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a copy of the policy."

Secretary of Defense criteria for and guidance on identification and internal transmission of critical information. Act Oct. 28, 2004, P.L. 108-375, Div A, Title IX, Subtitle D, § 932, 118 Stat. 2031, provides:

"(a) Criteria for critical information.

(1) The Secretary of Defense shall establish criteria for determining categories of critical information that should be made known expeditiously to senior civilian and military officials in the Department of Defense. Those categories should be limited to matters of extraordinary significance and strategic impact to which rapid access by those officials is essential to the successful accomplishment of the national security strategy or a major military mission. The Secretary may from time to time modify the list to suit the current strategic situation.

"(2) The Secretary shall provide the criteria established under paragraph (1) to the Chairman of the Joint Chiefs of Staff, the Secretaries of the military departments, the commanders of the unified and specified commands, the commanders of deployed forces, and such other elements of the Department of Defense as the Secretary considers necessary.

"(b) Matters to be included. The criteria established under subsection (a) shall include, at a minimum, requirement for identification of the following:

"(1) Any incident that may result in a contingency operation, based on the incident's nature, gravity, or potential for significant adverse consequences to United States citizens, military personnel, interests, or assets, including an incident that could result in significant adverse publicity having a major strategic impact.

"(2) Any event, development, or situation that could be reasonably assumed to escalate into an incident described in paragraph (1).

"(3) Any deficiency or error in policy, standards, or training that could be reasonably assumed to have the effects described in paragraph (1).

"(c) Requirements for transmission of critical information. The criteria under subsection (a) shall include such requirements for transmission of such critical information to such senior civilian and military officials of the Department of Defense as the Secretary of Defense considers appropriate.

"(d) Time for issuance of criteria. The Secretary of Defense shall establish the criteria required by subsection (a) not later than 120 days after the date of the enactment of this Act."

Program to commemorate 60th anniversary of World War II. Act Oct. 28, 2004, P.L. 108-375, Div A, Title X, Subtitle D, § 1032, 118 Stat. 2045, provides:

"(a) In general. For fiscal year 2005, the Secretary of Defense may conduct a program--

"(1) to commemorate the 60th anniversary of World War II; and

"(2) to coordinate, support, and facilitate other such commemoration programs and activities of the Federal Government, State and local governments, and other persons.

"(b) Program activities. The program referred to in subsection (a) may include activities and ceremonies--

"(1) to provide the people of the United States with a clear understanding and appreciation of the lessons and history of World War II;

"(2) to thank and honor veterans of World War II and their families;

"(3) to pay tribute to the sacrifices and contributions made on the home front by the people of the United States;

"(4) to foster an awareness in the people of the United States that World War II was the central event of the 20th century that defined the postwar world;

"(5) to highlight advances in technology, science, and medicine related to military research conducted during World War II;

"(6) to inform wartime and postwar generations of the contributions of the Armed Forces of the United States to the United States;

"(7) to recognize the contributions and sacrifices made by World War II allies of the United States; and

"(8) to highlight the role of the Armed Forces of the United States, then and now, in maintaining world peace through strength.

"(c) Establishment of account.

(1) There is established in the Treasury of the United States an account to be known as the 'Department of Defense 60th Anniversary of World War II Commemoration Account' which shall be administered by the Secretary as a single account.

"(2) There shall be deposited in the account, from amounts appropriated to the Department of Defense for operation and maintenance of Defense Agencies, such amounts as the Secretary considers appropriate to conduct the program referred to in subsection (a).

"(3) The Secretary may use the funds in the account established in paragraph (1) only for the purpose of conducting the program referred to in subsection (a).

"(4) Not later than 60 days after the termination of the authority of the Secretary to conduct the program referred to in subsection (a), the Secretary shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing an accounting of all the funds deposited into and expended from the account or otherwise expended under this section, and of any amount remaining in the account. Unobligated funds which remain in the account after termination of the authority of the Secretary under this section shall be held in the account until transferred by law after the Committees receive the report.

"(d) Acceptance of voluntary services.

(1) Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept from any person voluntary services to be provided in furtherance of the program referred to in subsection (a).

"(2) A person providing voluntary services under this subsection shall be considered to be an employee for the purposes of chapter 81 of title 5, United States Code [5 USCS §§ 8101 et seq.], relating to compensation for work-related injuries. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purposes by reason of the provision of such service.

"(3) The Secretary may reimburse a person providing voluntary services under this subsection for incidental expenses incurred by such person in providing such services. The Secretary shall determine which expenses are eligible for reimbursement under this paragraph."

Preservation of search and rescue capabilities of the Federal government. Act Oct. 28, 2004, P.L. 108-375, Div A, Title X, Subtitle I, § 1085, 118 Stat. 2065; Jan. 28, 2008, P.L. 110-181, Div A, Title III, Subtitle E, § 360(c), 122 Stat. 78; Jan. 7, 2011, P.L. 111-383, Div A, Title X, Subtitle H, § 1075(i)(2), 124 Stat. 4378, provides:

"The Secretary of Defense may not reduce or eliminate search and rescue capabilities at any military installation in the United States unless the Secretary, after reviewing the search and rescue capabilities report prepared by the Secretary of the Air Force under section 360(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 77) [unclassified], first certifies to the Committees on Armed Services of the Senate and the House of Representatives that equivalent search and rescue capabilities will be provided, without interruption and consistent with the policies and objectives set forth in the United States National Search and Rescue Plan entered into force on January 1, 1999, by--

"(1) the Department of Interior, the Department of Commerce, the Department of Homeland Security, the Department of Transportation, the Federal Communications Commission, or the National Aeronautics and Space Administration; or

"(2) the Department of Defense, either directly or through a Department of Defense contract with an emergency medical service provider or other private entity to provide such capabilities."

Sunken military craft. Act Oct. 28, 2004, P.L. 108-375, Div A, Title XIV, 118 Stat. 2094, provides:

"Sec. 1401. Preservation of title to sunken military craft and associated contents.

"Right, title, and interest of the United States in and to any United States sunken military craft--

"(1) shall not be extinguished except by an express divestiture of title by the United States; and

"(2) shall not be extinguished by the passage of time, regardless of when the sunken military craft sank.

"Sec. 1402. Prohibitions.

"(a) Unauthorized activities directed at sunken military craft. No person shall engage in or attempt to engage in any activity directed at a sunken military craft that disturbs, removes, or injures any sunken military craft, except--

"(1) as authorized by a permit under this title;

"(2) as authorized by regulations issued under this title; or

"(3) as otherwise authorized by law.

"(b) Possession of sunken military craft. No person may possess, disturb, remove, or injure any sunken military craft in violation of--

"(1) this section; or

"(2) any prohibition, rule, regulation, ordinance, or permit that applies under any other applicable law.

"(c) Limitations on application.

(1) Actions by United States. This section shall not apply to actions taken by, or at the direction of, the United States.

"(2) Foreign persons. This section shall not apply to any action by a person who is not a citizen, national, or resident alien of the United States, except in accordance with--

"(A) generally recognized principles of international law;

"(B) an agreement between the United States and the foreign country of which the person is a citizen; or

"(C) in the case of an individual who is a crew member or other individual on a foreign vessel or foreign aircraft, an agreement between the United States and the flag State of the foreign vessel or aircraft that applies to the individual.

"(3) Loan of sunken military craft. This section does not prohibit the loan of United States sunken military craft in accordance with regulations issued by the Secretary concerned.

"Sec. 1403. Permits.

"(a) In general. The Secretary concerned may issue a permit authorizing a person to engage in an activity otherwise prohibited by section 1402 with respect to a United States sunken military craft, for archaeological, historical, or educational purposes, in accordance with regulations issued by such Secretary that implement this section.

"(b) Consistency with other laws. The Secretary concerned shall require that any activity carried out under a permit issued by such Secretary under this section must be consistent with all requirements and restrictions that apply under any other provision of Federal law.

"(c) Consultation. In carrying out this section (including the issuance after the date of the enactment of this Act of regulations implementing this section), the Secretary concerned shall consult with the head of each Federal agency having authority under Federal law with respect to activities directed at sunken military craft or the locations of such craft.

"(d) Application to foreign craft. At the request of any foreign State, the Secretary of the Navy, in consultation with the Secretary of State, may carry out this section (including regulations promulgated pursuant to this section) with respect to any foreign sunken military craft of that foreign State located in United States waters.

"Sec. 1404. Penalties.

"(a) In general. Any person who violates this title, or any regulation or permit issued under this title, shall be liable to the United States for a civil penalty under this section.

"(b) Assessment and amount. The Secretary concerned may assess a civil penalty under this section, after notice and an opportunity for a hearing, of not more than \$ 100,000 for each violation.

"(c) Continuing violations. Each day of a continued violation of this title or a regulation or permit issued under this title shall constitute a separate violation for purposes of this section.

"(d) In rem liability. A vessel used to violate this title shall be liable in rem for a penalty under this section for such violation.

"(e) Other relief. If the Secretary concerned determines that there is an imminent risk of disturbance of, removal of, or injury to any sunken military craft, or that there has been actual disturbance of, removal of, or injury to a sunken military craft, the Attorney General, upon request of the Secretary concerned, may seek such relief as may be necessary to abate such risk or actual disturbance, removal, or injury and to return or restore the sunken military craft. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

"(f) Limitations. An action to enforce a violation of section 1402 or any regulation or permit issued under this title may not be brought more than 8 years after the date on which--

"(1) all facts material to the right of action are known or should have been known by the Secretary concerned; and

"(2) the defendant is subject to the jurisdiction of the appropriate district court of the United States or administrative forum.

"Sec. 1405. Liability for damages.

"(a) In general. Any person who engages in an activity in violation of section 1402 or any regulation or permit issued under this title that disturbs, removes, or injures any United States sunken military craft shall pay the United States enforcement costs and damages resulting from such disturbance, removal, or injury.

"(b) Included damages. Damages referred to in subsection (a) may include--

"(1) the reasonable costs incurred in storage, restoration, care, maintenance, conservation, and curation of any sunken military craft that is disturbed, removed, or injured in violation of section 1402 or any regulation or permit issued under this title; and

"(2) the cost of retrieving, from the site where the sunken military craft was disturbed, removed, or injured, any information of an archaeological, historical, or cultural nature.

"Sec. 1406. Relationship to other laws.

"(a) In general. Except to the extent that an activity is undertaken as a subterfuge for activities prohibited by this title, nothing in this title is intended to affect--

"(1) any activity that is not directed at a sunken military craft; or

"(2) the traditional high seas freedoms of navigation, including--

"(A) the laying of submarine cables and pipelines;

"(B) operation of vessels;

"(C) fishing; or

"(D) other internationally lawful uses of the sea related to such freedoms.

"(b) International law. This title and any regulations implementing this title shall be applied in accordance with generally recognized principles of international law and in accordance with the treaties, conventions, and other agreements to which the United States is a party.

"(c) Law of finds. The law of finds shall not apply to--

"(1) any United States sunken military craft, wherever located; or

"(2) any foreign sunken military craft located in United States waters.

"(d) Law of salvage. No salvage rights or awards shall be granted with respect to--

"(1) any United States sunken military craft without the express permission of the United States; or

"(2) any foreign sunken military craft located in United States waters without the express permission of the relevant foreign state.

"(e) Law of capture or prize. Nothing in this title is intended to alter the international law of capture or prize with respect to sunken military craft.

"(f) Limitation of liability. Nothing in sections 4281 through 4287 and 4289 of the Revised Statutes (46 U.S.C. App. 181 et seq. [46 USCS §§ 30501 et seq.]) or section 3 of the Act of February 13, 1893 (chapter 105; 27 Stat. 445; 46 U.S.C. App. 192 [46 USCS § 30706]), shall limit the liability of any person under this section.

"(g) Authorities of the Commandant of the Coast Guard. Nothing in this title is intended to preclude or limit the application of any other law enforcement authorities of the Commandant of the Coast Guard.

"(h) Prior delegations, authorizations, and related regulations. Nothing in this title shall invalidate any prior delegation, authorization, or related regulation that is consistent with this title.

"(i) Criminal law. Nothing in this title is intended to prevent the United States from pursuing criminal sanctions for plundering of wrecks, larceny of Government property, or violation of any applicable criminal law.

"Sec. 1407. Encouragement of agreements with foreign countries.

"The Secretary of State, in consultation with the Secretary of Defense, is encouraged to negotiate and conclude bilateral and multilateral agreements with foreign countries with regard to sunken military craft consistent with this title.

"Sec. 1408. Definitions.

"In this title:

"(1) Associated contents. The term 'associated contents' means--

"(A) the equipment, cargo, and contents of a sunken military craft that are within its debris field; and

"(B) the remains and personal effects of the crew and passengers of a sunken military craft that are within its debris field.

"(2) Secretary concerned. The term 'Secretary concerned' means--

"(A) subject to subparagraph (B), the Secretary of a military department; and

"(B) in the case of a Coast Guard vessel, the Secretary of the Department in which the Coast Guard is operating.

"(3) Sunken military craft. The term 'sunken military craft' means all or any portion of--

"(A) any sunken warship, naval auxiliary, or other vessel that was owned or operated by a government on military noncommercial service when it sank;

"(B) any sunken military aircraft or military spacecraft that was owned or operated by a government when it sank; and

"(C) the associated contents of a craft referred to in subparagraph (A) or (B),

if title thereto has not been abandoned or transferred by the government concerned.

"(4) United States contiguous zone. The term 'United States contiguous zone' means the contiguous zone of the United States under Presidential Proclamation 7219, dated September 2, 1999 [43 USCS § 1331 note].

"(5) United States internal waters. The term 'United States internal waters' means all waters of the United States on the landward side of the baseline from which the breadth of the United States territorial sea is measured.

"(6) United States territorial sea. The term 'United States territorial sea' means the waters of the United States territorial sea under Presidential Proclamation 5928, dated December 27, 1988 [43 USCS § 1331 note].

"(7) United States waters. The term 'United States waters' means United States internal waters, the United States territorial sea, and the United States contiguous zone."

Additional requirements for certain reports. Act May 11, 2005, P.L. 109-13, Div A, Title I, § 1024(c), 119 Stat. 253, provides:

"(1) Each semiannual report to Congress required under a provision of law referred to in paragraph (2) shall include, in addition to the matters specified in the applicable provision of law, the following:

"(A) A statement of the cumulative total of all amounts obligated, and of all amounts expended, as of the date of such report for Operation Enduring Freedom.

"(B) A statement of the cumulative total of all amounts obligated, and of all amounts expended, as of the date of such report for Operation Iraqi Freedom.

"(C) An estimate of the reasonably foreseeable costs for ongoing military operations to be incurred during the 12-month period beginning on the date of such report.

"(2) The provisions of law referred to in this paragraph are as follows:

"(A) Section 1120 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108-106; 117 Stat. 1219; 10 U.S.C. 113 note).

"(B) Section 9010 of the Department of Defense Appropriations Act, 2005 (Public Law 108-287; 118 Stat. 1008; 10 U.S.C. 113 note)."

Report regarding effect on military readiness of undocumented immigrants trespassing upon operational ranges. Act Jan. 6, 2006, P.L. 109-163, Div A, Title III, Subtitle F, § 354, 119 Stat. 3204, provides:

"(a) Report containing assessment and response plan. Not later than April 15, 2006, the Secretary of Defense shall submit to Congress a report containing--

"(1) an assessment of the impact on military readiness caused by undocumented immigrants whose entry into the United States involves trespassing upon operational ranges of the Department of Defense; and

"(2) a plan for the implementation of measures to prevent such trespass.

"(b) Preparation and elements of assessment. The assessment required by subsection (a)(1) shall be prepared by the Secretary of Defense. The assessment shall include the following:

"(1) A listing of the operational ranges adversely affected by the trespass of undocumented immigrants upon operational ranges.

"(2) A description of the types of range activities affected by such trespass.

"(3) A determination of the amount of time lost for range activities, and the increased costs incurred, as a result of such trespass.

"(4) An evaluation of the nature and extent of such trespass and means of travel.

"(5) An evaluation of the factors that contribute to the use by undocumented immigrants of operational ranges as a means to enter the United States.

"(6) A description of measures currently in place to prevent such trespass, including the use of barriers to vehicles and persons, military patrols, border patrols, and sensors.

"(c) Preparation and elements of plan. The plan required by subsection (a)(2) shall be prepared jointly by the Secretary of Defense and the Secretary of Homeland Security. The plan shall include the following:

"(1) The types of measures to be implemented to improve prevention of trespass of undocumented immigrants upon operational ranges, including the specific physical methods, such as barriers and increased patrols or monitoring, to be implemented and any legal or other policy changes recommended by the Secretaries.

"(2) The costs of, and timeline for, implementation of the plan.

"(d) Implementation reports. Not later than September 15, 2006, March 15, 2007, September 15, 2007, and March 15, 2008, the Secretary of Defense shall submit to Congress a report detailing the progress made by the Department of Defense, during the period covered by the report, in implementing measures recommended in the plan required by subsection (a)(2) to prevent undocumented immigrants from trespassing upon operational ranges. Each report shall include the number and types of mitigation measures implemented and the success of such measures in preventing such trespass.

"(e) Definitions. In this section, the terms 'operational range' and 'range activities' have the meaning given those terms in section 101(e) of title 10, United States Code."

Reports by officers and senior enlisted members of conviction of criminal law. Act Jan. 6, 2006, P.L. 109-163, Div A, Title III, Subtitle E, § 554, 119 Stat. 3264, provides:

"(a) Requirement for reports.

(1) In general. The Secretary of Defense shall prescribe in regulations a requirement that each covered member of the Armed Forces shall submit to an authority in the military department concerned designated pursuant to such regulations a timely report of any conviction of such member by any law enforcement authority of the United States for a violation of a criminal law of the United States, whether or not the member is on active duty at the time of the conduct that provides the basis for the conviction. The regulations shall apply uniformly throughout the military departments.

"(2) Covered members. In this section, the term 'covered member of the Armed Forces' means a member of the Army, Navy, Air Force, or Marine Corps who is on the active-duty list or the reserve active-status list and who is--

"(A) an officer; or

"(B) an enlisted member in a pay grade above pay grade E-6.

"(b) Law enforcement authority of the United States. For purposes of this section, a law enforcement authority of the United States includes--

"(1) a military or other Federal law enforcement authority;

"(2) a State or local law enforcement authority; and

"(3) such other law enforcement authorities within the United States as the Secretary shall specify in the regulations prescribed pursuant to subsection (a).

"(c) Criminal law of the United States.

(1) In general. Except as provided in paragraph (2), for purposes of this section, a criminal law of the United States includes--

"(A) any military or other Federal criminal law;

"(B) any State, county, municipal, or local criminal law or ordinance; and

"(C) such other criminal laws and ordinances of jurisdictions within the United States as the Secretary shall specify in the regulations prescribed pursuant to subsection (a).

"(2) Exception. For purposes of this section, a criminal law of the United States shall not include a law or ordinance specifying a minor traffic offense (as determined by the Secretary for purposes of such regulations).

"(d) Timeliness of reports. The regulations prescribed pursuant to subsection (a) shall establish requirements for the timeliness of reports under this section.

"(e) Forwarding of information. The regulations prescribed pursuant to subsection (a) shall provide that, in the event a military department receives information that a covered member of the Armed Forces under the jurisdiction of another military department has become subject to a conviction for which a report is required by this section, the Secretary of the military department receiving such information shall, in accordance with such procedures as the Secretary of Defense shall establish in such regulations, forward such information to the authority in the military department having jurisdiction over such member designated pursuant to such regulations.

"(f) Convictions. In this section, the term 'conviction' includes any plea of guilty or nolo contendere.

"(g) Deadline for regulations. The regulations required by subsection (a), including the requirement in subsection (e), shall go into effect not later than the end of the 180-day period beginning on the date of the enactment of this Act.

"(h) Applicability of requirement. The requirement under the regulations required by subsection (a) that a covered member of the Armed Forces submit notice of a conviction shall apply only to a conviction that becomes final after the date of the enactment of this Act."

Policy and procedures on assistance to severely wounded or injured service members. Act Jan. 6, 2006, P.L. 109-163, Div A, Title V, Subtitle F, § 563, 119 Stat. 3269, provides:

"(a) Comprehensive policy.

(1) Policy required. Not later than June 1, 2006, the Secretary of Defense shall prescribe a comprehensive policy for the Department of Defense on the provision of assistance to members of the Armed Forces who incur severe wounds or injuries in the line of duty (in this section referred to as 'severely wounded or injured servicemembers').

"(2) Consultation. The Secretary shall develop the policy required by paragraph (1) in consultation with the Secretaries of the military departments, the Secretary of Veterans Affairs, and the Secretary of Labor.

"(3) Incorporation of past experience and practice. The policy required by paragraph (1) shall be based on--

"(A) the experience and best practices of the military departments, including the Army Wounded Warrior Program, the Marine Corps Marine for Life Injured Support Program, the Air Force Palace HART program, and the Navy Wounded Marines and Sailors Initiative;

"(B) the recommendations of nongovernment organizations with demonstrated expertise in responding to the needs of severely wounded or injured servicemembers; and

"(C) such other matters as the Secretary of Defense considers appropriate.

"(4) Procedures and standards. The policy shall include guidelines to be followed by the military departments in the provision of assistance to severely wounded or injured servicemembers. The procedures and standards shall be uniform across the military departments except to the extent necessary to reflect the traditional practices or customs of a particular military department. The procedures and standards shall establish a minimum level of support and shall specify the duration of programs.

"(b) Elements of policy. The comprehensive policy developed under subsection (a) shall address the following matters:

"(1) Coordination with the Severely Injured Joint Support Operations Center of the Department of Defense.

"(2) Promotion of a seamless transition to civilian life for severely wounded or injured servicemembers who are or are likely to be separated on account of their wound or injury.

"(3) Identification and resolution of special problems or issues related to the transition to civilian life of severely wounded or injured servicemembers who are members of the reserve components.

"(4) The qualifications, assignment, training, duties, supervision, and accountability for the performance of responsibilities for the personnel providing assistance to severely wounded or injured servicemembers.

"(5) Centralized, short-term and long-term case-management procedures for assistance to severely wounded or injured servicemembers by each military department, including rapid access for severely wounded or injured servicemembers to case managers and counselors.

"(6) The provision, through a computer accessible Internet website and other means and at no cost to severely wounded or injured servicemembers, of personalized, integrated information on the benefits and financial assistance available to such members from the Federal Government.

"(7) The provision of information to severely wounded or injured servicemembers on mechanisms for registering complaints about, or requests for, additional assistance.

"(8) Participation of family members.

"(9) Liaison with the Department of Veterans Affairs and the Department of Labor in order to ensure prompt and accurate resolution of issues relating to benefits administered by those agencies for severely wounded or injured servicemembers.

"(10) Data collection regarding the incidence and quality of assistance provided to severely wounded or injured servicemembers, including surveys of such servicemembers and military and civilian personnel whose assigned duties include assistance to severely wounded or injured servicemembers.

"(c) Adoption by military departments. Not later than September 1, 2006, the Secretary of each military department shall prescribe regulations, or modify current regulations, on the policies and procedures of such military department on the provision of assistance to severely wounded or injured servicemembers in order to conform such policies and procedures to the policy prescribed under subsection (a)."

Improvement to Department of Defense capacity to respond to sexual assault affecting members of Armed Forces. Section 596(a), (b) of Act Jan. 6, 2006, P.L. 109-163, which formerly appeared as a note to this section, was transferred to 10 USCS § 1561 note.

Preservation of records pertaining to radioactive fallout from nuclear weapons testing. Act Jan. 6, 2006, P.L. 109-163, Div A, Title X, Subtitle F, § 1055, 119 Stat. 3438, provides:

"(a) Prohibition of destruction of certain records. The Secretary of Defense may not destroy any official record in the custody or control of the Department of Defense that contains information relating to radioactive fallout from nuclear weapons testing.

"(b) Preservation and publication of information. The Secretary of Defense shall identify, preserve, and make available any unclassified information contained in official records referred to in subsection (a)."

Safe delivery of mail in military mail system. Act Jan. 6, 2006, P.L. 109-163, Div A, Title X, Subtitle G, § 1071, 119 Stat. 3446, provides:

"(a) Plan for safe delivery of military mail.

(1) Plan required. The Secretary of Defense shall develop and implement a plan to ensure that the mail within the military mail system is safe for delivery. The plan shall provide for the screening of all mail within the military mail system in order to detect the presence of biological, chemical, or radiological weapons, agents, or pathogens or explosive devices before mail within the military mail system is delivered to its intended recipients.

"(2) Funding. The budget justification materials submitted to Congress with the budget of the President for fiscal year 2007 and each fiscal year thereafter shall include a description of the amounts required in such fiscal year to carry out the plan.

"(b) Report on safety of mail for delivery.

(1) Report required. Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the safety of mail within the military mail system for delivery.

"(2) Elements. The report shall include the following:

"(A) An assessment of any existing deficiencies in the military mail system in ensuring that mail within the military mail system is safe for delivery.

"(B) The plan required by subsection (a).

"(C) An estimate of the time and resources required to implement the plan.

"(D) A description of the delegation within the Department of Defense of responsibility for ensuring that mail within the military mail system is safe for delivery, including responsibility for the development, implementation, and oversight of improvements to the military mail system to ensure that mail within the military mail system is safe for delivery.

"(3) Form. The report shall be submitted in unclassified form, but may include a classified annex.

"(c) Mail within the military mail system defined.

(1) In general. In this section, the term 'mail within the military mail system' means--

"(A) any mail that is posted through the Military Post Offices (including Army Post Offices (APOs) and Fleet Post Offices (FPOs)), Department of Defense mail centers, military Air Mail Terminals, and military Fleet Mail Centers; and

"(B) any mail or package posted in the United States that is addressed to an unspecified member of the Armed Forces.

"(2) Inclusions and exception. The term includes any official mail posted by the Department of Defense. The term does not include any mail posted as otherwise described in paragraph (1) that has been screened for safety for delivery by the United States Postal Service before such posting."

War-related reporting requirements. Act Jan. 6, 2006, P.L. 109-163, Div A, Title XII, Subtitle C, § 1221, 119 Stat. 3462; Oct. 17, 2006, P.L. 109-364, Div A, Title XV, § 1518, 120 Stat. 2443; Oct. 28, 2009, P.L. 111-84, Div A, Title XII, Subtitle B, § 1233, 123 Stat. 2531, provides:

"(a) Report required for Operation Iraqi Freedom, Operation Enduring Freedom, and Operation Noble Eagle. The Secretary of Defense shall submit to the congressional defense committees, in accordance with this section, a report on procurement and equipment maintenance costs for each of Operation Iraqi Freedom, Operation Enduring Freedom, and Operation Noble Eagle and on facility infrastructure costs associated with each of Operation Iraqi Freedom and Operation Enduring Freedom. The report shall include the following:

"(1) Procurement. A specification of costs of procurement funding requested since fiscal year 2003, together with end-item quantities requested and the purpose of the request (such as replacement for battle losses, improved capability, increase in force size, restructuring of forces), shown by service.

"(2) Equipment maintenance. A cost comparison of the requirements for equipment maintenance expenditures during peacetime and for such requirements during wartime, as shown by the requirements in each of Operation Iraqi Freedom, Operation Enduring Freedom, and Operation Noble Eagle. The cost comparison shall include--

"(A) a description of the effect of war operations on the backlog of maintenance requirements over the period of fiscal years 2003 to the time of the report; and

"(B) an examination of the extent to which war operations have precluded maintenance from being performed because equipment was unavailable.

"(3) Operation Iraqi Freedom and Operation Enduring Freedom Infrastructure. A specification of the number of United States military personnel that can be supported by the facility infrastructure in Iraq and Afghanistan and in the neighboring countries from where Operation Iraq Freedom and Operation Enduring Freedom are supported.

"(b) Submission requirements. The report under subsection (a) shall be submitted not later than 180 days after the date of the enactment of this Act. The Secretary of Defense shall submit an updated report on procurement, equipment maintenance, and military construction costs, as specified in subsection (a), concurrently with any request made to Congress after the date of the enactment of this Act for war-related funding.

"(c) Submission to Congress and GAO of certain reports on costs. The Secretary of Defense shall submit to the Comptroller General, not later than 45 days after the end of each reporting month, the Department of Defense Supplemental and Cost of War Execution reports."

Annual report on Department of Defense costs to carry out United Nations resolutions. Act Jan. 6, 2006, P.L. 109-163, Div A, Title XII, Subtitle C, § 1224, 119 Stat. 3463, provides:

"(a) Requirement for annual report.

(1) Department of Defense costs. Not later than April 30 of each year, the Secretary of Defense shall submit to the congressional committees specified in paragraph (2) a report on Department of Defense costs during the preceding fiscal year to carry out United Nations resolutions.

"(2) Specified committees. The committees specified in this paragraph are--

"(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 International Relations, and the Committee on Appropriations of the House of Representatives.

"(b) Matters to be included. Each report under subsection (a) shall set forth the following:

"(1) All direct and indirect costs (including incremental costs) incurred by the Department of Defense during the preceding fiscal year in implementing or supporting any resolution adopted by the United Nations Security Council, including any such resolution calling for--

"(A) international sanctions;

"(B) international peacekeeping operations;

"(C) international peace enforcement operations;

"(D) monitoring missions;

"(E) observer missions; or

"(F) humanitarian missions.

"(2) An aggregate of all such Department of Defense costs by operation or mission and the total cost to United Nations members of each operation or mission.

"(3) All direct and indirect costs (including incremental costs) incurred by the Department of Defense during the preceding fiscal year in training, equipping, and otherwise assisting, preparing, providing resources for, and transporting foreign defense or security forces for implementing or supporting any resolution adopted by the United Nations Security Council, including any such resolution specified in paragraph (1).

"(4) All efforts made to seek credit against past United Nations expenditures.

"(5) All efforts made to seek compensation from the United Nations for costs incurred by the Department of Defense in implementing and supporting United Nations activities.

"(c) Coordination. The report under subsection (a) each year shall be prepared in coordination with the Secretary of State.

"(d) Form of report. Each report required by this section shall be submitted in unclassified form, but may include a classified annex."

Requirement for establishment of certain criteria applicable to global posture review. Act Jan. 6, 2006, P.L. 109-163, Div A, Title XII, Subtitle D, § 1233, 119 Stat. 3469, provides:

"(a) Criteria. As part of the Integrated Global Presence and Basing Strategy (IGPBS) developed by the Department of Defense that is referred to as the 'Global Posture Review', the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop criteria for assessing, with respect to each type of facility specified in subsection (c) that is to be located in a foreign country, the following factors:

"(1) The effect of any new basing arrangements on the strategic mobility requirements of the Department of Defense.

"(2) The ability of units deployed to overseas locations in areas in which United States Armed Forces have not traditionally been deployed to meet mobility response times required by operational planners.

"(3) The cost of deploying units to areas referred to in paragraph (2) on a rotational basis (rather than on a permanent basing basis).

"(4) The strategic benefit of rotational deployments through countries with which the United States is developing a close or new security relationship.

"(5) Whether the relative speed and complexity of conducting negotiations with a particular country is a discriminator in the decision to deploy forces within the country.

"(6) The appropriate and available funding mechanisms for the establishment, operation, and sustainment of specific Main Operating Bases, Forward Operating Bases, or Cooperative Security Locations.

"(7) The effect on military quality of life of the unaccompanied deployment of units to new facilities in overseas locations.

"(8) Other criteria as Secretary of Defense determines appropriate.

"(b) Analysis of alternatives to basing or operating locations. The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop a mechanism for analyzing alternatives to any particular overseas basing or operating location. Such a mechanism shall incorporate the factors specified in each of paragraphs (1) through (5) of subsection (a).

"(c) Minimal infrastructure requirements for overseas installations. The Secretary of Defense shall develop a description of minimal infrastructure requirements for each of the following types of facilities:

"(1) Facilities categorized as Main Operating Bases.

"(2) Facilities categorized as Forward Operating Bases.

"(3) Facilities categorized as Cooperative Security Locations.

"(d) Notification required. Not later than 30 days after an agreement is entered into between the United States and a foreign country to support the deployment of elements of the United States Armed Forces in that country, the Secretary of Defense shall submit to the congressional defense committees a written notification of such agreement. The notification under this subsection shall include the terms of the agreement, any costs to the United States resulting from the agreement, and a timeline to carry out the terms of the agreement.

"(e) Annual budget element. The Secretary of Defense shall submit to Congress, as an element of the annual budget request of the Secretary, information regarding the funding sources for the establishment, operation, and sustainment of individual Main Operating Bases, Forward Operating Bases, or Cooperative Security Locations.

"(f) Report. Not later than March 30, 2006, the Secretary of Defense shall submit to Congress a report on the matters specified in subsections (a) through (c)."

Military Severely Injured Center. Act Oct. 17, 2006, P.L. 109-364, Div A, Title V, Subtitle G, § 564, 120 Stat. 222, provides:

"(a) Center required. In support of the comprehensive policy on the provision of assistance to severely wounded or injured servicemembers required by section 563 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 119 Stat. 3269; 10 U.S.C. 113 note), the Secretary of Defense shall establish within the Department of Defense a center to augment and support the programs and activities of the military departments for the provision of such assistance, including the programs of the military departments referred to in subsection (c).

"(b) Designation. The center established under subsection (a) shall be known as the 'Military Severely Injured Center' (in this section referred to as the 'Center').

"(c) Programs of the military departments. The programs of the military departments referred to in this subsection are the following:

"(1) The Army Wounded Warrior Support Program.

"(2) The Navy Safe Harbor Program.

"(3) The Palace HART Program of the Air Force.

"(4) The Marine for Life Injured Support Program of the Marine Corps.

"(d) Activities of Center.

(1) In general. The Center shall carry out such programs and activities to augment and support the programs and activities of the military departments for the provision of assistance to severely wounded or injured servicemembers and their families as the Secretary of Defense, in consultation with the Secretaries of the military departments and the heads of other appropriate departments and agencies of the Federal Government (including the Secretary of Labor and the Secretary of Veterans Affairs), determines appropriate.

"(2) Database. The activities of the Center under this subsection shall include the establishment and maintenance of a central database. The database shall be transparent and shall be accessible for use by all of the programs of the military departments referred to in subsection (c).

"(e) Resources. The Secretary of Defense shall allocate to the Center such personnel and other resources as the Secretary of Defense, in consultation with the Secretaries of the military departments, considers appropriate in order to permit the Center to carry out effectively the programs and activities assigned to the Center under subsection (d)."

Repeal of provisions relating to quarterly reports on Department of Defense response to threat posed by improvised explosive devices. Act Oct. 17, 2006, P.L. 109-364, Div A, Title XIV, § 1402, 120 Stat. 2433, which formerly appeared as a note to this section, was repealed by Act Dec. 31, 2011, P.L. 112-81, Div A, Title X, Subtitle G, § 1062(d)(5), 125 Stat. 1585. Such note provided for quarterly reports on the Department of Defense response to the threat posed by IEDs.

Database of emergency response capabilities. Act Oct. 17, 2006, P.L. 109-364, Div A, Title XIV, § 1406, 120 Stat. 2436, provides:

"The Secretary of Defense shall maintain a database of emergency response capabilities that includes the following:

"(1) The types of emergency response capabilities that each State's National Guard, as reported by the States, may be able to provide in response to a domestic natural or manmade disaster, both to their home States and under State-to-State mutual assistance agreements.

"(2) The types of emergency response capabilities that the Department of Defense may be able to provide in support of the National Response Plan's Emergency Support Functions, and identification of the units that provide these capabilities."

Prompt global strike. Act Jan. 28, 2008, P.L. 110-181, Div A, Title II, Subtitle D, § 243, 122 Stat. 51, provides:

"(a) Research, development, and testing plan. The Secretary of Defense shall submit to the congressional defense committees a research, development, and testing plan for prompt global strike program objectives for fiscal years 2008 through 2013.

"(b) Plan for obligation and expenditure of funds.

(1) In general. The Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the congressional defense committees a plan for obligation and expenditure of funds available for prompt global strike for fiscal year 2008. The plan shall include correlations between each technology application being developed in fiscal year 2008 and the prompt global strike alternative or alternatives toward which the technology application applies.

"(2) Limitation. The Under Secretary shall not implement the plan required by paragraph (1) until at least 10 days after the plan is submitted as required by that paragraph."

Program to commemorate 50th anniversary of the Vietnam War. Act Jan. 28, 2008, P.L. 110-181, Div A, Title V, Subtitle I § 598, 122 Stat. 141, provides:

"(a) Commemorative program authorized. The Secretary of Defense may conduct a program to commemorate the 50th anniversary of the Vietnam War. In conducting the commemorative program, the Secretary shall coordinate, support, and facilitate other programs and activities of the Federal Government, State and local governments, and other persons and organizations in commemoration of the Vietnam War.

"(b) Schedule. The Secretary of Defense shall determine the schedule of major events and priority of efforts for the commemorative program in order to ensure achievement of the objectives specified in subsection (c).

"(c) Commemorative activities and objectives. The commemorative program may include activities and ceremonies to achieve the following objectives:

"(1) To thank and honor veterans of the Vietnam War, including personnel who were held as prisoners of war or listed as missing in action, for their service and sacrifice on behalf of the United States and to thank and honor the families of these veterans.

"(2) To highlight the service of the Armed Forces during the Vietnam War and the contributions of Federal agencies and governmental and non-governmental organizations that served with, or in support of, the Armed Forces.

"(3) To pay tribute to the contributions made on the home front by the people of the United States during the Vietnam War.

"(4) To highlight the advances in technology, science, and medicine related to military research conducted during the Vietnam War.

"(5) To recognize the contributions and sacrifices made by the allies of the United States during the Vietnam War.

"(d) Names and symbols. The Secretary of Defense shall have the sole and exclusive right to use the name "The United States of America Vietnam War Commemoration", and such seal, emblems, and badges incorporating such name as the Secretary may lawfully adopt. Nothing in this section may be construed to supersede rights that are established or vested before the date of the enactment of this Act.

"(e) Commemorative fund.

(1) Establishment and administration. If the Secretary establishes the commemorative program under subsection (a), the Secretary the Treasury shall establish in the Treasury of the United States an account to be known as the 'Department of Defense Vietnam War Commemoration Fund' (in this section referred to as the 'Fund'). The Fund shall be administered by the Secretary of Defense.

"(2) Use of Fund. The Secretary shall use the assets of the Fund only for the purpose of conducting the commemorative program and shall prescribe such regulations regarding the use of the Fund as the Secretary considers to be necessary.

"(3) Deposits. There shall be deposited into the Fund--

"(A) amounts appropriated to the Fund;

"(B) proceeds derived from the Secretary's use of the exclusive rights described in subsection (d);

"(C) donations made in support of the commemorative program by private and corporate donors; and

"(D) funds transferred to the Fund by the Secretary from funds appropriated for fiscal year 2008 and subsequent years for the Department of Defense.

"(4) Availability. Subject to subsection (g)(2), amounts deposited under paragraph (3) shall constitute the assets of the Fund and remain available until expended.

"(5) Budget request. The Secretary of Defense may establish a separate budget line for the commemorative program. In the budget justification materials submitted by the Secretary in support of the budget of the President for any fiscal year for which the Secretary establishes the separate budget line, the Secretary shall--

"(A) identify and explain any amounts expended for the commemorative program in the fiscal year preceding the budget request;

"(B) identify and explain the amounts being requested to support the commemorative program for the fiscal year of the budget request; and

"(C) present a summary of the fiscal status of the Fund.

"(f) Acceptance of voluntary services.

(1) Authority to accept services. Notwithstanding section 1342 of title 31, United States Code, the Secretary of Defense may accept from any person voluntary services to be provided in furtherance of the commemorative program. The Secretary of Defense shall prohibit the solicitation of any voluntary services if the nature or circumstances of such solicitation would compromise the integrity or the appearance of integrity of any program of the Department of Defense or of any individual involved in the program.

"(2) Reimbursement of incidental expenses. The Secretary may provide for reimbursement of incidental expenses incurred by a person providing voluntary services under this subsection. The Secretary shall determine which expenses are eligible for reimbursement under this paragraph.

"(g) Final report.

(1) Report required. Not later than 60 days after the end of the commemorative program, if established by the Secretary of Defense under subsection (a), the Secretary shall submit to Congress a report containing an accounting of--

"(A) all of the funds deposited into and expended from the Fund;

"(B) any other funds expended under this section; and

"(C) any unobligated funds remaining in the Fund.

"(2) Treatment of unobligated funds. Unobligated amounts remaining in the Fund as of the end of the commemorative period specified in subsection (b) shall be held in the Fund until transferred by law.

"(h) Limitation on expenditures. Total expenditures from the Fund, using amounts appropriated to the Department of Defense, may not exceed \$ 5,000,000 for fiscal year 2008 or for any subsequent fiscal year to carry out the commemorative program.

"(i) Funding. Of the amount authorized to be appropriated pursuant to section 301(5) [unclassified] for Defense-wide activities, \$ 1,000,000 shall be available for deposit in the Fund for fiscal year 2008 if the Fund is established under subsection (e)."

Standards required for entry to military installations in United States. Act Jan. 28, 2008, P.L. 110-181, Div A, Title X, Subtitle F, § 1069, 122 Stat. 326; Oct. 14, 2008, P.L. 110-417, [Div A,] Title X, Subtitle F, § 1059, 122 Stat. 4611; Oct. 28, 2009, P.L. 111-84, Div A, Title X, Subtitle F, § 1073(c)(11), 123 Stat. 2475 (effective as of 10/14/2008, as provided by § 1073(c) of such Act, which appears as 6 USCS § 121 note), provides:

"(a) Development of standards.

(1) Access standards for visitors. The Secretary of Defense shall develop access standards applicable to all military installations in the United States. The standards shall require screening standards appropriate to the type of installation involved, the security level, category of individuals authorized to visit the installation, and level of access to be granted, including--

"(A) protocols to determine the fitness of the individual to enter an installation; and

"(B) standards and methods for verifying the identity of the individual.

"(2) Additional criteria. The standards required under paragraph (1) may--

"(A) provide for expedited access to a military installation for Department of Defense personnel and employees and family members of personnel who reside on the installation;

"(B) provide for closer scrutiny of categories of individuals determined by the Secretary of Defense to pose a higher potential security risk; and

"(C) in the case of an installation that the Secretary determines contains particularly sensitive facilities, provide additional screening requirements, as well as physical and other security measures for the installation.

"(b) Use of technology. The Secretary of Defense is encouraged to procure and field existing identification screening technology and to develop additional technology only to the extent necessary to assist commanders of military installations in implementing the standards developed under this section at points of entry for such installations.

"(c) Deadlines.

(1) Development and implementation. The Secretary of Defense shall develop the standards required under this section by not later than February 1, 2009, and implement such standards by not later than October 1, 2010.

"(2) Submission to Congress. Not later than August 1, 2009, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives the standards developed pursuant to paragraph (1)."

Protection of certain individuals. Act Jan. 28, 2008, P.L. 110-181, Div A, Title X, Subtitle F, § 1074, 122 Stat. 330, provides:

"(a) Protection for Department leadership. The Secretary of Defense, under regulations prescribed by the Secretary and in accordance with guidelines approved by the Secretary and the Attorney General, may authorize qualified members of the Armed Forces and qualified civilian employees of the Department of Defense to provide physical protection and personal security within the United States to the following persons who, by nature of their positions, require continuous security and protection:

"(1) Secretary of Defense.

"(2) Deputy Secretary of Defense.

"(3) Chairman of the Joint Chiefs of Staff.

"(4) Vice Chairman of the Joint Chiefs of Staff.

"(5) Secretaries of the military departments.

"(6) Chiefs of the Services.

"(7) Commanders of combatant commands.

"(b) Protection for additional personnel.

(1) Authority to provide. The Secretary of Defense, under regulations prescribed by the Secretary and in accordance with guidelines approved by the Secretary and the Attorney General, may authorize qualified members of the Armed Forces and qualified civilian employees of the Department of Defense to provide physical protection and personal security within the United States to individuals other than individuals described in paragraphs (1) through (7) of subsection (a) if the Secretary determines that such protection and security are necessary because--

"(A) there is an imminent and credible threat to the safety of the individual for whom protection is to be provided; or

"(B) compelling operational considerations make such protection essential to the conduct of official Department of Defense business.

"(2) Personnel. Individuals authorized to receive physical protection and personal security under this subsection include the following:

"(A) Any official, military member, or employee of the Department of Defense.

"(B) A former or retired official who faces serious and credible threats arising from duties performed while employed by the Department for a period of up to two years beginning on the date on which the official separates from the Department.

"(C) A head of a foreign state, an official representative of a foreign government, or any other distinguished foreign visitor to the United States who is primarily conducting official business with the Department of Defense.

"(D) Any member of the immediate family of a person authorized to receive physical protection and personal security under this section.

"(E) An individual who has been designated by the President, and who has received the advice and consent of the Senate, to serve as Secretary of Defense, but who has not yet been appointed as Secretary of Defense.

"(3) Limitation on delegation. The authority of the Secretary of Defense to authorize the provision of physical protection and personal security under this subsection may be delegated only to the Deputy Secretary of Defense.

"(4) Requirement for written determination. A determination of the Secretary of Defense to provide physical protection and personal security under this subsection shall be in writing, shall be based on a threat assessment by an appropriate law enforcement, security, or intelligence organization, and shall include the name and title of the officer, employee, or other individual affected, the reason for such determination, the duration of the authorized protection and security for such officer, employee, or individual, and the nature of the arrangements for the protection and security.

"(5) Duration of protection.

(A) Initial period of protection. After making a written determination under paragraph (4), the Secretary of Defense may provide protection and security to an individual under this subsection for an initial period of not more than 90 calendar days.

"(B) Subsequent period. If, at the end of the period that protection and security is provided to an individual under subsection (A), the Secretary determines that a condition described in subparagraph (A) or (B) of paragraph (1) continues to exist with respect to the individual, the Secretary may extend the period that such protection and security is

provided for additional 60-day periods. The Secretary shall review such a determination at the end of each 60-day period to determine whether to continue to provide such protection and security.

"(C) Requirement for compliance with regulations. Protection and personal security provided under subparagraph (B) shall be provided in accordance with the regulations and guidelines referred to in paragraph (1).

"(6) Submission to Congress.

(A) In general. The Secretary of Defense shall submit to the congressional defense committees each determination made under paragraph (4) to provide protection and security to an individual and of each determination under paragraph (5)(B) to extend such protection and security, together with the justification for such determination, not later than 15 days after the date on which the determination is made.

"(B) Form of report. A report submitted under subparagraph (A) may be made in classified form.

"(C) Regulations and guidelines. The Secretary of Defense shall submit to the congressional defense committees the regulations and guidelines prescribed pursuant to paragraph (1) not less than 20 days before the date on which such regulations take effect.

"(c) Definitions. In this section:

"(1) Congressional defense committees. The term 'congressional defense committees' means the Committee on Appropriations and the Committee on Armed Services of the Senate and the Committee on Appropriations and the Committee on Armed Services of the House of Representatives.

"(2) Qualified members of the armed forces and qualified civilian employees of the Department of Defense. The terms 'qualified members of the Armed Forces' and 'qualified civilian employees of the Department of Defense' refer collectively to members or employees who are assigned to investigative, law enforcement, or security duties of any of the following:

"(A) The Army Criminal Investigation Command.

"(B) The Naval Criminal Investigative Service.

"(C) The Air Force Office of Special Investigations.

"(D) The Defense Criminal Investigative Service.

"(E) The Pentagon Force Protection Agency.

"(d) Construction.

(1) No additional law enforcement or arrest authority. Other than the authority to provide protection and security under this section, nothing in this section may be construed to bestow any additional law enforcement or arrest authority upon the qualified members of the Armed Forces and qualified civilian employees of the Department of Defense.

"(2) Posse comitatus. Nothing in this section shall be construed to abridge section 1385 of title 18, United States Code.

"(3) Authorities of other Departments. Nothing in this section may be construed to preclude or limit, in any way, the express or implied powers of the Secretary of Defense or other Department of Defense officials, or the duties and authorities of the Secretary of State, the Director of the United States Secret Service, the Director of the United States Marshals Service, or any other Federal law enforcement agency."

Authority to provide automatic identification system data on maritime shipping to foreign countries and international organizations. Act Jan. 28, 2008, P.L. 110-181, Div A, Title XII, Subtitle A, § 1208, 122 Stat. 367, provides:

"(a) Authority to provide data. The Secretary of Defense, with the concurrence of the Secretary of State, may authorize the Secretary of a military department or a commander of a combatant command to exchange or furnish automatic identification system data broadcast by merchant or private ships and collected by the United States to a foreign country or international organization pursuant to an agreement for the exchange or production of such data. Such data may be transferred pursuant to this section without cost to the recipient country or international organization.

"(b) Definitions. In this section:

"(1) Automatic identification system. The term 'automatic identification system' means a system that is used to satisfy the requirements of the Automatic Identification System under the International Convention for the Safety of Life at Sea, signed at London on November 1, 1974 (TIAS 9700).

"(2) Geographic combatant commander. The term 'commander of a combatant command' means a commander of a combatant command (as such term is defined in section 161(c) of title 10, United States Code) with a geographic area of responsibility."

Repeal of provisions relating to report on support from Iran for attacks against coalition forces in Iraq. Act Jan. 28, 2008, P.L. 110-181, Div A, Title XII, Subtitle B, § 1225, 122 Stat. 375, which formerly appeared as a note to this section, was repealed by Act Jan. 7, 2011, P.L. 111-383, Div A, Title XII, Subtitle C, § 1233(f)(2), 124 Stat. 4397. Such note provided for a report on support from Iran for attacks against coalition forces in Iraq.

Requirement for Secretary of Defense to prepare plan for response to natural disasters and terrorist events.

Act Jan. 28, 2008, P.L. 110-181, Div A, Title XVIII, Subtitle A, § 1814, 122 Stat. 498, provides:

"(a) Requirement for plan.

(1) In general. Not later than June 1, 2008, the Secretary of Defense, in consultation with the Secretary of Homeland Security, the Chairman of the Joint Chiefs of Staff, the commander of the United States Northern Command, and the Chief of the National Guard Bureau, shall prepare and submit to Congress a plan for coordinating the use of the National Guard and members of the Armed Forces on active duty when responding to natural disasters, acts of terrorism, and other man-made disasters as identified in the national planning scenarios described in subsection (e).

"(2) Update. Not later than June 1, 2010, the Secretary, in consultation with the persons consulted under paragraph (1), shall submit to Congress an update of the plan required under paragraph (1).

"(b) Information to be provided to Secretary. To assist the Secretary of Defense in preparing the plan, the National Guard Bureau, pursuant to its purpose as channel of communications as set forth in section 10501(b) of title 10, United States Code [10 USCS § 10501(b)], shall provide to the Secretary information gathered from Governors, adjutants general of States, and other State civil authorities responsible for homeland preparation and response to natural and man-made disasters.

"(c) Two versions. The plan shall set forth two versions of response, one using only members of the National Guard, and one using both members of the National Guard and members of the regular components of the Armed Forces.

"(d) Matters covered. The plan shall cover, at a minimum, the following:

"(1) Protocols for the Department of Defense, the National Guard Bureau, and the Governors of the several States to carry out operations in coordination with each other and to ensure that Governors and local communities are properly informed and remain in control in their respective States and communities.

"(2) An identification of operational procedures, command structures, and lines of communication to ensure a coordinated, efficient response to contingencies.

"(3) An identification of the training and equipment needed for both National Guard personnel and members of the Armed Forces on active duty to provide military assistance to civil authorities and for other domestic operations to respond to hazards identified in the national planning scenarios.

"(e) National planning scenarios. The plan shall provide for response to the following hazards:

"(1) Nuclear detonation, biological attack, biological disease outbreak/pandemic flu, the plague, chemical attack-blister agent, chemical attack-toxic industrial chemicals, chemical attack-nerve agent, chemical attack-chlorine tank explosion, major hurricane, major earthquake, radiological attack-radiological dispersal device, explosives attack-bombing using improvised explosive device, biological attack-food contamination, biological attack-foreign animal disease and cyber attack.

"(2) Any other hazards identified in a national planning scenario developed by the Homeland Security Council."

Determination of Department of Defense civil support requirements. Act Jan. 28, 2008, P.L. 110-181, Div A, Title XVIII, Subtitle A, § 1815(a)-(d), 122 Stat. 499, provides:

"(a) Determination of requirements. The Secretary of Defense, in consultation with the Secretary of Homeland Security, shall determine the military-unique capabilities needed to be provided by the Department of Defense to support civil authorities in an incident of national significance or a catastrophic incident.

"(b) Plan for funding capabilities.

(1) Plan. The Secretary of Defense shall develop and implement a plan, in coordination with the Secretaries of the military departments and the Chairman of the Joint Chiefs of Staff, for providing the funds and resources necessary to develop and maintain the following:

"(A) The military-unique capabilities determined under subsection (a).

"(B) Any additional capabilities determined by the Secretary to be necessary to support the use of the active components and the reserve components of the Armed Forces for homeland defense missions, domestic emergency responses, and providing military support to civil authorities.

"(2) Term of plan. The plan required under paragraph (1) shall cover at least five years.

"(c) Budget. The Secretary of Defense shall include in the materials accompanying the budget submitted for each fiscal year a request for funds necessary to carry out the plan required under subsection (b) during the fiscal year covered by the budget. The defense budget materials shall delineate and explain the budget treatment of the plan for each component of each military department, each combatant command, and each affected Defense Agency.

"(d) Definitions. In this section:

"(1) The term 'military-unique capabilities' means those capabilities that, in the view of the Secretary of Defense--

"(A) cannot be provided by other Federal, State, or local civilian agencies; and

"(B) are essential to provide support to civil authorities in an incident of national significance or a catastrophic incident.

"(2) The term 'defense budget materials', with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year."

Requirement for common ground stations and payloads for manned and unmanned aerial vehicle systems. Act Oct. 14, 2008, P.L. 110-417, [Div A,] Title I, Subtitle E, § 144, 122 Stat. 4382, provides:

"(a) Policy and acquisition strategy required. The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall establish a policy and an acquisition strategy for intelligence, surveillance, and reconnaissance payloads and ground stations for manned and unmanned aerial vehicle systems. The policy and acquisition strategy shall be applicable throughout the Department of Defense and shall achieve integrated research, development, test, and evaluation, and procurement commonality.

"(b) Objectives. The policy and acquisition strategy required by subsection (a) shall have the following objectives:

"(1) Procurement of common payloads by vehicle class, including--

"(A) signals intelligence;

"(B) electro optical;

"(C) synthetic aperture radar;

"(D) ground moving target indicator;

"(E) conventional explosive detection;

"(F) foliage penetrating radar;

"(G) laser designator;

"(H) chemical, biological, radiological, nuclear, explosive detection; and

"(I) national airspace operations avionics or sensors, or both.

"(2) Commonality of ground system architecture by vehicle class.

"(3) Common management of vehicle and payloads procurement.

"(4) Ground station interoperability standardization.

"(5) Maximum use of commercial standard hardware and interfaces.

"(6) Open architecture software.

"(7) Acquisition of technical data rights in accordance with section 2320 of title 10, United States Code.

"(8) Acquisition of vehicles, payloads, and ground stations through competitive procurement.

"(9) Common standards for exchange of data and metadata.

"(c) Affected systems. For the purposes of this section, the Secretary shall establish manned and unmanned aerial vehicle classes for all intelligence, surveillance, and reconnaissance programs of record based on factors such as vehicle weight, payload capacity, and mission.

"(d) Report. Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate a report containing--

"(1) the policy required by subsection (a); and

"(2) the acquisition strategy required by subsection (a)."

Implementation of information database on sexual assault incidents in the armed forces; database required, availability of database, implementation, reports. Section 563(a)-(d) of Div A of Act Oct. 14, 2008, P.L. 110-417, which formerly appeared as a note to this section, was transferred to 10 USCS § 1561 note.

Report on command and control structure for military forces operating in Afghanistan. Act Oct. 14, 2008, P.L. 110-417, [Div A,] Title XII, Subtitle B, § 1216, 122 Stat. 4633; Oct. 28, 2009, P.L. 111-84, Div A, Title XII, Subtitle B, § 1229, 123 Stat. 2528, provides:

"(a) Report required. Not later than 60 days after the date of the enactment of this Act, or December 1, 2008, whichever occurs later, the Secretary of Defense shall submit to the appropriate congressional committees a report on the command and control structure for military forces operating in Afghanistan.

"(b) Matters to Be included. The report required under subsection (a) shall include the following:

"(1) A detailed description of efforts by the Secretary of Defense, in coordination with senior leaders of NATO ISAF forces, including the commander of NATO ISAF forces, to modify the chain of command structure for military forces operating in Afghanistan to better coordinate and de-conflict military operations and achieve unity of command whenever possible in Afghanistan, and the results of such efforts, including--

"(A) any United States or NATO ISAF plan for improving the command and control structure for military forces operating in Afghanistan; and

"(B) any efforts to establish a headquarters in Afghanistan that is led by a commander--

"(i) with command authority over NATO ISAF forces and separate United States forces operating under Operation Enduring Freedom and charged with closely coordinating the efforts of such forces; and

"(ii) responsible for coordinating other United States and international security efforts in Afghanistan.

"(2) A description of how rules of engagement are determined and managed for United States forces operating under NATO ISAF or Operation Enduring Freedom, and a description of any key differences between rules of engagement for NATO ISAF forces and separate United States forces operating under Operation Enduring Freedom.

"(3) An assessment of how any modifications to the command and control structure for military forces operating in Afghanistan would impact coordination of military and civilian efforts in Afghanistan.

"(c) Update of report. The Secretary of Defense shall submit to the appropriate congressional committees an update of the report required under subsection (a) as warranted by any modifications to the command and control structure for military forces operating in Afghanistan as described in the report.

"(d) Form. The report required under subsection (a) and any update of the report required under subsection (c) shall be submitted in an unclassified form, but may include a classified annex, if necessary. Any update of the report required under subsection (c) may be included in the report required under section 1230 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 385) [unclassified].

"(e) Appropriate congressional committees defined. In this section, the term 'appropriate congressional committees' means--

"(1) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and

"(2) the Committee on Armed Services and the Committee on Foreign Relations of the Senate."

Military protective orders. Sec. 567(c) of Act Oct. 28, 2009, P.L. 111-84, which formerly appeared as a note to this section, was transferred to 10 USCS § 1561 note.

Reports on progress in completion of certain incident information management tools. Sec. 598 of Act Oct. 28, 2009, P.L. 111-84, which formerly appeared as a note to this section, was transferred to 10 USCS § 1561 note.

Policy and requirements to ensure the safety of facilities, infrastructure, and equipment for military operations. Act Oct. 28, 2009, P.L. 111-84, Div A, Title VIII, Subtitle A, § 807, 123 Stat. 2404, provides:

"(a) Policy. It shall be the policy of the Department of Defense that facilities, infrastructure, and equipment that are intended for use by military or civilian personnel of the Department in current or future military operations should be inspected for safety and habitability prior to such use, and that such facilities should be brought into compliance with generally accepted standards for the safety and health of personnel to the maximum extent practicable and consistent with the requirements of military operations and the best interests of the Department of Defense, to minimize the safety and health risk posed to such personnel.

"(b) Requirements. Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall--

"(1) ensure that each contract or task or delivery order entered into for the construction, installation, repair, maintenance, or operation of facilities for use by military or civilian personnel of the Department complies with the policy established in subsection (a);

"(2) ensure that contracts entered into prior to the date that is 60 days after the date of the enactment of this Act comply with such policy to the maximum extent practicable;

"(3) define the term 'generally accepted standards' with respect to fire protection, structural integrity, electrical systems, plumbing, water treatment, waste disposal, and telecommunications networks for the purposes of this section; and

"(4) provide such exceptions and limitations as may be needed to ensure that this section can be implemented in a manner that is consistent with the requirements of military operations and the best interests of the Department of Defense."

Defense Integrated Military Human Resources System development and transition. Act Oct. 28, 2009, P.L. 111-84, Div A, Title IX, Subtitle D, § 932, 123 Stat. 2433, provides:

"(a) In general. The Secretary of Defense shall establish a Defense Integrated Military Human Resources System development and transition Council to provide advice to the Secretary of Defense and the Secretaries of the military departments on the modernization of the integrated pay and personnel system for each military department and the collection of data generated by each such system into the enterprise information warehouse.

"(b) Council. The Council shall include the following members:

"(1) The Deputy Chief Management Officer of the Department of Defense.

"(2) The Director of the Business Transformation Agency.

"(3) The Under Secretary of Defense for Acquisition, Technology, and Logistics, or a designated representative.

"(4) The Under Secretary of Defense for Personnel and Readiness, or a designated representative.

"(5) One representative from each of the Army, Navy, Air Force, and Marine Corps who is a lieutenant general or vice admiral, or a civilian equivalent.

"(6) One representative of the National Guard Bureau who is a lieutenant general or vice admiral, or a civilian equivalent.

"(7) The Assistant Secretary of Defense for Networks and Information Integration, or a designated representative.

"(8) The Director of Operational Test and Evaluation, or a designated representative.

"(9) Such other individuals as may be designated by the Deputy Secretary of Defense, acting in the Deputy Secretary's capacity as the Chief Management Officer.

"(c) Meetings. The Council shall meet not less than twice a year, or more often as specified by the Deputy Secretary of Defense.

"(d) Duties. The Council shall have the following responsibilities:

"(1) Resolution of significant policy, programmatic, or budgetary issues impeding modernization or deployment of integrated personnel and pay systems for each military department, including issues relating to--

"(A) common interfaces, architectures, and systems engineering;

"(B) ensuring that developmental systems are consistent with current and future enterprise accounting and pay and personnel standards and practices; and

"(C) ensuring that developmental systems are consistent with current and future Department of Defense business enterprise architecture.

"(2) Coordination of implementation of the integrated personnel and pay system within defense organizations to ensure interoperability between all appropriate elements of the system.

"(3) Establishment of metrics to assess the following:

"(A) Business process re-engineering needed for successful deployment of the integrated pay and personnel system.

"(B) Interoperability between legacy, operational, and developmental pay and personnel systems.

"(C) Interface and systems architecture control and standardization.

"(D) Retirement of legacy systems.

"(E) Use of the enterprise information warehouse.

"(F) Any other relevant matters.

"(4) Such other responsibilities as the Secretary determines are appropriate.

"(e) Termination. This section shall not be in effect after September 30, 2013.

"(f) Report. Not later than March 1, 2010, the Secretary of Defense shall submit to the congressional defense committees a report on actions taken pursuant to this section."

Report on basing plans for certain United States geographic combatant commands. Act Oct. 28, 2009, P.L. 111-84, Div A, Title X, Subtitle E, § 1063, 123 Stat. 2469; Jan. 7, 2011, P.L. 111-383, Div A, Title X, Subtitle H, § 1075(d)(14), 124 Stat. 4373 (effective as of 10/28/2009 and as if included in Act Oct. 28, 2009 as enacted, as provided by § 1075(d) of the 2011 Act), provides:

"(a) Report requirement. Concurrent with the delivery of the report on the 2009 quadrennial defense review required by section 118 of title 10, United States Code, the Secretary of Defense shall submit to the congressional defense committees a report on the plan for basing of forces outside the United States.

"(b) Matters covered. The report required under subsection (a) shall contain a description of--

"(1) how the plan supports the United States national security strategy;

"(2) how the plan supports the security commitments undertaken by the United States pursuant to any international security treaty, including the North Atlantic Treaty, the Treaty of Mutual Cooperation and Security between the United States and Japan, and the Security Treaty Between Australia, New Zealand, and the United States of America;

"(3) how the plan addresses the current security environment in each geographic combatant command's area of responsibility, including United States participation in theater security cooperation activities and bilateral partnership, exchanges, and training exercises;

"(4) the impact that a permanent change in the basing of a unit currently stationed outside the United States would have on the matters described in paragraphs (1) through (3);

"(5) the impact the plan will have on the status of overseas base closure and realignment actions undertaken as part of a global defense posture realignment strategy and the status of development and execution of comprehensive master plans for overseas military main operating bases, forward operating sites, and cooperative security locations of the global defense posture of the United States;

"(6) any recommendations for additional closures or realignments of military installations outside of the United States; and

"(7) any comments resulting from an interagency review of the plan that includes the Department of State and other relevant Federal departments and agencies.

"(c) Notification requirement. The Secretary of Defense shall notify Congress at least 30 days before the permanent relocation of a unit stationed outside the United States as of the date of the enactment of this Act.

"(d) Definitions. In this section:

"(1) Unit. The term 'unit' has the meaning determined by the Secretary of Defense for purposes of this section.

"(2) Geographic combatant command. The term 'geographic combatant command' means a combatant command with a geographic area of responsibility that does not include North America."

Effective date and application of Oct. 28, 2009 amendments. Act Oct. 28, 2009, P.L. 111-84, Div A, Title XII, Subtitle C, § 1246(e), 123 Stat. 2545, provides:

"(1) In general. The amendments made by this section [amending 10 USCS §§ 113 note, 168 note] shall take effect on the date of the enactment of this Act, and shall apply with respect to reports required to be submitted under subsection (a) of section 1202 of the National Defense Authorization Act for Fiscal Year 2000 [note to this section], as so amended, on or after that date.

"(2) Strategy and updates for military-to-military contacts with People's Liberation Army. The requirement to include the strategy described in paragraph (11)(A) of section 1202(b) of the National Defense Authorization Act for Fiscal Year 2000, as so amended, in the report required to be submitted under section 1202(a) of such Act, as so amended, shall apply with respect to the first report required to be submitted under section 1202(a) of such Act on or after the date of the enactment of this Act. The requirement to include updates to such strategy shall apply with respect to each subsequent report required to be submitted under section 1202(a) of such Act on or after the date of the enactment of this Act."

Counter-improvised explosive device initiatives database. Act Jan. 7, 2011, P.L. 111-383, Div A, Title I, Subtitle C, § 124, 124 Stat. 4159, provides:

"(a) Comprehensive database.

(1) In general. The Secretary of Defense, acting through the Director of the Joint Improvised Explosive Device Defeat Organization, shall develop and maintain a comprehensive database containing appropriate information for coordinating, tracking, and archiving each counter-improvised explosive device initiative within the Department of Defense. The database shall, at a minimum, ensure the visibility of each counter-improvised explosive device initiative.

"(2) Use of information. Using information contained in the database developed under paragraph (1), the Secretary, acting through the Director of the Joint Improvised Explosive Device Defeat Organization, shall--

"(A) identify and eliminate redundant counter-improvised explosive device initiatives;

"(B) facilitate the transition of counter-improvised explosive device initiatives from funding under the Joint Improvised Explosive Device Defeat Fund to funding provided by the military departments; and

"(C) notify the appropriate personnel and organizations prior to a counter-improvised explosive device initiative being funded through the Joint Improvised Explosive Device Defeat Fund.

"(3) Coordination. In carrying out paragraph (1), the Secretary shall ensure that the Secretary of each military department coordinates and collaborates on development of the database to ensure its interoperability, completeness, consistency, and effectiveness.

"(b) Metrics. The Secretary of Defense, acting through the Director of the Joint Improvised Explosive Device Defeat Organization, shall--

"(1) develop appropriate means to measure the effectiveness of counter-improvised explosive device initiatives; and

"(2) prioritize the funding of such initiatives according to such means.

"(c) Counter-improvised explosive device initiative defined. In this section, the term 'counter-improvised explosive device initiative' means any project, program, or research activity funded by any component of the Department of Defense that is intended to assist or support efforts to counter, combat, or defeat the use of improvised explosive devices."

Program to commemorate 60th anniversary of the Korean War. Act Jan. 7, 2011, P.L. 111-383, Div A, Title V, Subtitle H, § 574, 124 Stat. 4223, provides:

"(a) Commemorative program authorized. The Secretary of Defense may establish and conduct a program to commemorate the 60th anniversary of the Korean War (in this section referred to as the 'commemorative program'). In conducting the commemorative program, the Secretary of Defense shall coordinate and support other programs and activities of the Federal Government, State and local governments, and other persons and organizations in commemoration of the Korean War.

"(b) Schedule. If the Secretary of Defense establishes the commemorative program, the Secretary shall determine the schedule of major events and priority of efforts for the commemorative program to achieve the commemorative objec-

tives specified in subsection (c). The Secretary of Defense may establish a committee to assist the Secretary in determining the schedule and conducting the commemorative program.

"(c) Commemorative activities and objectives. The commemorative program may include activities and ceremonies to achieve the following objectives:

"(1) To thank and honor veterans of the Korean War, including members of the Armed Forces who were held as prisoners of war or listed as missing in action, for their service and sacrifice on behalf of the United States.

"(2) To thank and honor the families of veterans of the Korean War for their sacrifices and contributions, especially families who lost a loved one in the Korean War.

"(3) To highlight the service of the Armed Forces during the Korean War and the contributions of Federal agencies and governmental and non-governmental organizations that served with, or in support of, the Armed Forces.

"(4) To pay tribute to the sacrifices and contributions made on the home front by the people of the United States during the Korean War.

"(5) To provide the people of the United States with a clear understanding and appreciation of the lessons and history of the Korean War.

"(6) To highlight the advances in technology, science, and medicine related to military research conducted during the Korean War.

"(7) To recognize the contributions and sacrifices made by the allies of the United States during the Korean War.

"(d) Use of the United States of America Korean War Commemoration and symbols. Subsection (c) of section 1083 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 111 Stat. 1918) [note to this section], as amended by section 1067 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 112 Stat. 2134) and section 1052 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 113 Stat. 764), shall apply to the commemorative program.

"(e) Commemorative fund.

(1) Establishment of new account. If the Secretary of Defense establishes the commemorative program, the Secretary the Treasury shall establish in the Treasury of the United States an account to be known as the 'Department of Defense Korean War Commemoration Fund' (in this section referred to as the 'Fund').

"(2) Administration and use of Fund. The Fund shall be available to, and administered by, the Secretary of Defense. The Secretary of Defense shall use the assets of the Fund only for the purpose of conducting the commemorative program and shall prescribe such regulations regarding the use of the Fund as the Secretary of Defense considers to be necessary.

"(3) Deposits. There shall be deposited into the Fund the following:

"(A) Amounts appropriated to the Fund.

"(B) Proceeds derived from the use by the Secretary of Defense of the exclusive rights described in subsection (c) of section 1083 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 111 Stat. 1918) [note to this section].

"(C) Donations made in support of the commemorative program by private and corporate donors.

"(4) Availability. Subject to paragraph (5), amounts in the Fund shall remain available until expended.

"(5) Treatment of unobligated funds; transfer. If unobligated amounts remain in the Fund as of September 30, 2013, the Secretary of the Treasury shall transfer the remaining amounts to the Department of Defense Vietnam War Commemorative Fund established pursuant to section 598(e) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 113 note). The transferred amounts shall be merged with, and available for the same purposes as, other amounts in the Department of Defense Vietnam War Commemorative Fund.

"(f) Acceptance of voluntary services.

(1) Authority to accept services. Notwithstanding section 1342 of title 31, United States Code, the Secretary of Defense may accept from any person voluntary services to be provided in furtherance of the commemorative program. The Secretary of Defense shall prohibit the solicitation of any voluntary services if the nature or circumstances of such solicitation would compromise the integrity or the appearance of integrity of any program of the Department of Defense or of any individual involved in the program.

"(2) Compensation for work-related injury. A person providing voluntary services under this subsection shall be considered to be a Federal employee for purposes of chapter 81 of title 5, United States Code [5 USCS §§ 8101 et seq.], relating to compensation for work-related injuries. The person shall also be considered a special governmental employee for purposes of standards of conduct and sections 202, 203, 205, 207, 208, and 209 of title 18, United States Code. A person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of the provision of voluntary services under this subsection.

"(3) Reimbursement of incidental expenses. The Secretary of Defense may provide for reimbursement of incidental expenses incurred by a person providing voluntary services under this subsection. The Secretary of Defense shall determine which expenses are eligible for reimbursement under this paragraph.

"(g) Report required. If the Secretary of Defense conducts the commemorative program, the Inspector General of the Department of Defense shall submit to Congress, not later than 60 days after the end of the commemorative program, a report containing an accounting of--

"(1) all of the funds deposited into and expended from the Fund;

"(2) any other funds expended under this section; and

"(3) any unobligated funds remaining in the Fund as of September 30, 2013, that are transferred to the Department of Defense Vietnam War Commemorative Fund pursuant to subsection (e)(5).

"(h) Limitation on expenditures. Using amounts appropriated to the Department of Defense, the Secretary of Defense may not expend more than \$ 5,000,000 to carry out the commemorative program."

Report on organizational structure and policy guidance of the Department of Defense regarding information operations. Act Jan. 7, 2011, P.L. 111-383, Title IX, Subtitle E, § 943, 124 Stat. 4341, provides:

"(a) Report required. Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the organizational structure and policy guidance of the Department of Defense with respect to information operations.

"(b) Review. In preparing the report required by subsection (a), the Secretary shall review the following:

"(1) The extent to which the current definition of 'information operations' in Department of Defense Directive 3600.1 is appropriate.

"(2) The location of the office within the Department of the lead official responsible for information operations of the Department, including assessments of the most effective location and the need to designate a principal staff assistant to the Secretary of Defense for information operations.

"(3) Departmental responsibility for the development, coordination, and oversight of Department policy on information operations and for the integration of such operations.

"(4) Departmental responsibility for the planning, execution, and oversight of Department information operations.

"(5) Departmental responsibility for coordination within the Department, and between the Department and other departments and agencies of the Federal Government, regarding Department information operations, and for the resolution of conflicts in the discharge of such operations, including an assessment of current coordination bodies and decisionmaking processes.

"(6) The roles and responsibilities of the military departments, combat support agencies, the United States Special Operations Command, and the other combatant commands in the development and implementation of information operations.

"(7) The roles and responsibilities of the defense intelligence agencies for support of information operations.

"(8) The role in information operations of the following Department officials:

"(A) The Assistant Secretary of Defense for Public Affairs.

"(B) The Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict.

"(C) The senior official responsible for information processing and networking capabilities.

"(9) The role of related capabilities in the discharge of information operations, including public affairs capabilities, civil-military operations capabilities, defense support of public diplomacy, and intelligence.

"(10) The management structure of computer network operations in the Department for the discharge of information operations, and the policy in support of that component.

"(11) The appropriate use, management, and oversight of contractors in the development and implementation of information operations, including an assessment of current guidance and policy directives pertaining to the uses of contractors for these purposes.

"(c) Form. The report required by subsection (a) shall be submitted in unclassified form, with a classified annex, if necessary.

"(d) Department of Defense directive. Upon the submittal of the report required by subsection (a), the Secretary shall prescribe a revised directive for the Department of Defense on information operations. The directive shall take into account the results of the review conducted for purposes of the report.

"(e) Information operations defined. In this section, the term 'information operations' means the information operations specified in Department of Defense Directive 3600.1, as follows:

"(1) Electronic warfare.

"(2) Computer network operations.

"(3) Psychological operations.

"(4) Military deception.

"(5) Operations security."

Biennial report on nuclear triad. Act Jan. 7, 2011, P.L. 111-383, Div A, Title X, Subtitle F, § 1054, 124 Stat. 4358, provides:

"(a) Report. Not later than March 1 of each even-numbered year, beginning March 1, 2012, the Secretary of Defense, in consultation with the Administrator for Nuclear Security, shall submit to the congressional defense committees a report on the nuclear triad.

"(b) Matters included. The report under subsection (a) shall include the following:

"(1) A detailed discussion of the modernization and sustainment plans for each component of the nuclear triad over the 10-year period beginning on the date of the report.

"(2) The funding required for each platform of the nuclear triad with respect to operation and maintenance, modernization, and replacement.

"(3) Any industrial capacities that the Secretary considers vital to ensure the viability of the nuclear triad.

"(c) Nuclear triad defined. In this section, the term 'nuclear triad' means the nuclear deterrent capabilities of the United States composed of ballistic missile submarines, land-based missiles, and strategic bombers.

Treatment of successor contingency operation to Operation Iraqi Freedom. Act Jan. 7, 2011, P.L. 111-383, Div A, Title X, Subtitle H, § 1077, 124 Stat. 4379, provides: "Any law applicable to Operation Iraqi Freedom shall apply in the same manner and to the same extent to the successor contingency operation known as Operation New Dawn, except as specifically provided in this Act, any amendment made by this Act, or any other law enacted after the date of the enactment of this Act."

Designation of Department of Defense senior official with principal responsibility for airship programs. Act Dec. 31, 2011, P.L. 112-81, Div A, Title IX, Subtitle A, § 903, 125 Stat. 1532, provides:

"Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall--

"(1) designate a senior official of the Department of Defense as the official with principal responsibility for the airship programs of the Department; and

"(2) set forth the responsibilities of that senior official with respect to such programs."

Authority to support operations and activities of the Office of Security Cooperation in Iraq. Act Dec. 31, 2011, P.L. 112-81, Div A, Title XII, Subtitle B, § 1215, 125 Stat. 1631; Jan. 2, 2013, P.L. 112-239, Div A, Title XII, Subtitle B, § 1211(a)-(c), 126 Stat. 1982, provides:

"(a) Authority. The Secretary of Defense may support United States Government transition activities in Iraq by providing funds for the following:

"(1) Operations and activities of the Office of Security Cooperation in Iraq.

"(2) Operations and activities of security assistance teams 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, transportation and personal security, and construction and renovation of facilities.

"(c) Limitation on amount. The total amount of funds provided under the authority in subsection (a) in fiscal year 2012 may not exceed \$ 524,000,000 and in fiscal year 2013 may not exceed \$ 508,000,000.

"(d) Source of funds. Funds for purposes of subsection (a) for fiscal year 2012 or fiscal year 2013 shall be derived from amounts available for fiscal year 2012 or 2013, as the case may be, for operation and maintenance for the Air Force.

"(e) Coverage of costs of OSCI 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, consistent with the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.), charges sufficient to recover the costs of operations and activities of security assistance teams in Iraq in connection with such sale.

"(f) Additional authority for activities of OSCI. During fiscal year 2013, the Secretary of Defense, with the concurrence of the Secretary of State, may authorize the Office of Security Cooperation in Iraq to conduct non-operational training activities in support of Iraqi Ministry of Defense and Counter Terrorism Service personnel in an institutional environment to address capability gaps, integrate processes relating to intelligence, air sovereignty, combined arms, logistics and maintenance, and to manage and integrate defense-related institutions.

"(g) Report. Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretary of State, submit to the congressional defense committees, the Committee on Foreign

Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a report on the activities of the Office of Security Cooperation in Iraq. The report shall include the following:

"(1) A description, in unclassified form (but with a classified annex if appropriate), of any capability gaps in the security forces of Iraq, including capability gaps relating to intelligence matters, protection of Iraq airspace, and logistics and maintenance.

"(2) A description of the manner in which the programs of the Office of Security Cooperation in Iraq, in conjunction with other United States programs such as the Foreign Military Financing program, the Foreign Military Sales program, and joint training exercises, will address the capability gaps described in paragraph (1) if the Government of Iraq requests assistance in addressing such capability gaps."

Strategy to counter improvised explosive devices. Act Jan. 3, 2012, P.L. 112-87, Title V, § 503, 125 Stat. 1896, provides:

"(a) Strategy.

(1) Establishment. The Director of National Intelligence and the Secretary of Defense shall establish a coordinated strategy utilizing all available personnel and assets for intelligence collection and analysis to identify and counter network activity and operations in Pakistan and Afghanistan relating to the development and use of improvised explosive devices.

"(2) Contents. The strategy established under paragraph (1) shall identify--

"(A) the networks that design improvised explosive devices, provide training on improvised explosive device assembly and employment, and smuggle improvised explosive device components into Afghanistan;

"(B) the persons and organizations not directly affiliated with insurgents in Afghanistan who knowingly enable the movement of commercial products and material used in improvised explosive device construction from factories and vendors in Pakistan into Afghanistan;

"(C) the financiers, financial networks, institutions, and funding streams that provide resources to the insurgency in Afghanistan; and

"(D) the links to military, intelligence services, and government officials who are complicit in allowing the insurgent networks in Afghanistan to operate.

"(b) Report and implementation. Not later than 120 days after the date of the enactment of this Act, the Director of National Intelligence and the Secretary of Defense shall--

"(1) submit to the congressional intelligence committees and the Committees on Armed Services of the House of Representatives and the Senate a report containing the strategy established under subsection (a); and

"(2) implement such strategy."

Commemoration of the 50th Anniversary of the Vietnam War. Pres. Proc. No. 8829 of May 25, 2012, 77 Fed. Reg. 32875, provides:

"By the President of the United States of America

"A Proclamation

"As we observe the 50th anniversary of the Vietnam War, we reflect with solemn reverence upon the valor of a generation that served with honor. We pay tribute to the more than 3 million servicemen and women who left their families to serve bravely, a world away from everything they knew and everyone they loved. From Ia Drang to Khe Sanh, from Hue to Saigon and countless villages in between, they pushed through jungles and rice paddies, heat and monsoon, fighting heroically to protect the ideals we hold dear as Americans. Through more than a decade of combat, over air, land, and sea, these proud Americans upheld the highest traditions of our Armed Forces.

"As a grateful Nation, we honor more than 58,000 patriots--their names etched in black granite--who sacrificed all they had and all they would ever know. We draw inspiration from the heroes who suffered unspeakably as prisoners of war, yet who returned home with their heads held high. We pledge to keep faith with those who were wounded and still carry the scars of war, seen and unseen. With more than 1,600 of our service members still among the missing, we pledge as a Nation to do everything in our power to bring these patriots home. In the reflection of The Wall, we see the military family members and veterans who carry a pain that may never fade. May they find peace in knowing their loved ones endure, not only in medals and memories, but in the hearts of all Americans, who are forever grateful for their service, valor, and sacrifice.

"In recognition of a chapter in our Nation's history that must never be forgotten, let us renew our sacred commitment to those who answered our country's call in Vietnam and those who awaited their safe return. Beginning on Memorial Day 2012, the Federal Government will partner with local governments, private organizations, and communities across America to participate in the Commemoration of the 50th Anniversary of the Vietnam War--a 13-year program to honor and give thanks to a generation of proud Americans who saw our country through one of the most challenging missions we have ever faced. While no words will ever be fully worthy of their service, nor any honor truly befitting their sacri-

fice, let us remember that it is never too late to pay tribute to the men and women who answered the call of duty with courage and valor. Let us renew our commitment to the fullest possible accounting for those who have not returned. Throughout this Commemoration, let us strive to live up to their example by showing our Vietnam veterans, their families, and all who have served the fullest respect and support of a grateful Nation.

"NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 28, 2012, through November 11, 2025, as the Commemoration of the 50th Anniversary of the Vietnam War. I call upon Federal, State, and local officials to honor our Vietnam veterans, our fallen, our wounded, those unaccounted for, our former prisoners of war, their families, and all who served with appropriate programs, ceremonies, and activities.

"IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth."

Designation of Department of Defense senior official for enterprise resource planning system data conversion. Act Jan. 2, 2013, P.L. 112-239, Div A, Title IX, Subtitle A, § 903, 126 Stat. 1866, provides:

"Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall--

"(1) designate a senior official of the Department of Defense as the official with principal responsibility for coordination and management oversight of data conversion for all enterprise resource planning systems of the Department; and

"(2) set forth the responsibilities of that senior official with respect to such data conversion."

Electronic warfare strategy of the Department of Defense; guidance and plan required. Act Jan. 2, 2013, P.L. 112-239, Div A, Title X, Subtitle G, § 1061(a), (b), 126 Stat. 1939, provides:

"(a) Guidance required. Not later than January 1, 2013, the Secretary of Defense shall review and update Department of Defense guidance related to electronic warfare to ensure that oversight roles and responsibilities within the Department related to electronic warfare policy and programs are clearly defined. Such guidance shall clarify, as appropriate, the roles and responsibilities related to the integration of electronic warfare matters and cyberspace operations.

"(b) Plan required. Not later than October 1, 2013, the Commander of the United States Strategic Command shall update and issue guidance regarding the responsibilities of the Command with regard to joint electronic warfare capabilities. Such guidance shall--

"(1) define the role and objectives of the Joint Electromagnetic Spectrum Control Center or any other center established in the Command to provide governance and oversight of electronic warfare matters; and

"(2) include an implementation plan outlining tasks, metrics, and timelines to establish such a center."

United States participation in Headquarters Eurocorps. Act Jan. 2, 2013, P.L. 112-239, Div A, Title XII, Subtitle F, § 1275, 126 Stat. 2027, provides:

"(a) Participation authorized. The Secretary of Defense may, with the concurrence of the Secretary of State, authorize the participation of members of the Armed Forces as members of the staff of Headquarters Eurocorps for the purpose of supporting the North Atlantic Treaty Organization (NATO) activities of the NATO Rapid Deployable Corps Eurocorps.

"(b) Memorandum of understanding.

(1) Requirement. The participation of members of the Armed Forces as members of the staff of Headquarters Eurocorps shall be in accordance with the terms of one or more memoranda of understanding entered into by the Secretary of Defense, with the concurrence of the Secretary of State, and Headquarters Eurocorps.

"(2) Cost-sharing arrangements. If Department of Defense facilities, equipment, or funds are used to support Headquarters Eurocorps, the memoranda of understanding under paragraph (1) shall provide details of any cost-sharing arrangement or other funding arrangement.

"(c) Limitation on number of members participating as staff. Not more than two members of the Armed Forces may participate as members of the staff of Headquarters Eurocorps, until the Secretary of Defense submits to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the following:

"(1) A certification by the Secretary of Defense that the participation of more than two members of the Armed Forces in Headquarters Eurocorps is in the national interests of the United States.

"(2) A description of the benefits of the participation of the additional members proposed by the Secretary.

"(3) A description of the plans for the participation of the additional members proposed by the Secretary, including the grades and posts to be filled.

"(4) A description of the costs associated with the participation of the additional members proposed by the Secretary.

"(d) Notice on participation of number of members above certain ceiling. Not more than 10 members of the Armed Forces may participate as members of the staff of Headquarters Eurocorps unless the Secretary of Defense submits to

the Committees on Armed Services of the Senate and the House of Representatives a notice that the number of members so participating will exceed 10 members.

"(e) Availability of appropriated funds.

(1) Availability. Funds appropriated to the Department of Defense for operation and maintenance are available as follows:

"(A) To pay the United States' share of the operating expenses of Headquarters Eurocorps.

"(B) To pay the costs of the participation of members of the Armed Forces participating as members of the staff of Headquarters Eurocorps, including the costs of expenses of such participants.

"(2) Limitation. No funds may be used under this section to fund the pay or salaries of members of the Armed Forces who participate as members of the staff of the Headquarters, North Atlantic Treaty Organization (NATO) Rapid Deployable Corps under this section.

"(f) Headquarters Eurocorps defined. In this section, the term 'Headquarters Eurocorps' refers to the multinational military headquarters, established on October 1, 1993, which is one of the High Readiness Forces (Land) associated with the Allied Rapid Reaction Corps of NATO."

Identification requirements for access to military installations. Act Jan. 2, 2013, P.L. 112-239, Div B, Title XXVIII, Subtitle B, § 2812, 126 Stat. 2150, provides:

"(a) Procedural requirements for identification verification. Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall publish procedural requirements regarding access to military installations in the United States by individuals, including individuals performing work under a contract awarded by the Department of Defense. The procedural requirements may vary between military installations, or parts of installations, depending on the nature of the installation, the nature of the access granted, and the level of security required.

"(b) Issues addressed. The procedures required by subsection (a) shall address, at a minimum, the following:

"(1) The forms of identification to be required to permit entry.

"(2) The measures to be used to verify the authenticity of such identification and identify individuals who seek unauthorized access to a military installation through the use of fraudulent identification or other means.

"(3) The measures to be used to notify Department of Defense security personnel of any attempt to gain unauthorized access to a military installation."

Continuation of requirement for prior matching of disbursements to particular obligations in fiscal year 2013. Act March 26, 2013, P.L. 113-6, Div C, Title VIII, § 8067, 127 Stat. 313, provides: "Section 8106 of the Department of Defense Appropriations Act, 1997 (titles I through VIII of the matter under subsection 101(b) of Public Law 104-208; 110 Stat. 3009-111; 10 U.S.C. 113 note) shall continue in effect to apply to disbursements that are made by the Department of Defense in fiscal year 2013."

Similar provisions were contained in Acts Aug. 9, 2000, P.L. 106-259, Title VIII, § 8137, 114 Stat. 704; Jan. 10, 2002, P.L. 107-117, Div A, Title VIII, § 8118, 115 Stat. 2273; Oct. 23, 2002, P.L. 107-248, Title VIII, § 8098, 116 Stat. 1559; Sept. 30, 2003, P.L. 108-87, Title VIII, § 8092, 117 Stat. 1094; Aug. 5, 2004, P.L. 108-287, Title VIII, § 8091, 118 Stat. 992; Dec. 30, 2005, P.L. 109-148, Div A, Title VIII, § 8083, 119 Stat. 2717; Sept. 29, 2006, P.L. 109-289, Div A, Title VIII, § 8074, 120 Stat. 1291; Nov. 13, 2007, P.L. 110-116, Div A, Title VIII, § 8076, 121 Stat. 1332; Sept. 30, 2008, P.L. 110-329, Div C, Title VIII, § 8073, 122 Stat. 3637; Dec. 19, 2009, P.L. 111-118, Div A, Title VIII, § 8073, 123 Stat. 3445; April 15, 2011, P.L. 112-10, Div A, Title VIII, § 8070, 125 Stat. 73; Dec. 23, 2011, P.L. 112-74, Div A, Title VIII, § 8068, 125 Stat. 822.

NOTES:

Code of Federal Regulations:

Department of Defense--Nonprocurement debarment and suspension, 2 CFR 1125.10 et seq.

United States Nuclear Regulatory Commission--Nonprocurement debarment and suspension, 2 CFR 2000.10 et seq.

Office of the Secretary of Defense--Military commission instructions, 32 CFR 10.1 et seq.

Office of the Secretary of Defense--Responsibilities of the chief prosecutor, prosecutors, and assistant prosecutors, 32 CFR 12.1 et seq.

Office of the Secretary of Defense--Responsibilities of the chief defense counsel, detailed defense counsel, and civilian defense counsel, 32 CFR 13.1 et seq.

Office of the Secretary of Defense--Qualification of civilian defense counsel, 32 CFR 14.1 et seq.

Office of the Secretary of Defense--Reporting relationships for military commission personnel, 32 CFR 15.1 et seq.

Office of the Secretary of Defense--Sentencing, 32 CFR 16.1 et seq.

Office of the Secretary of Defense--Administrative procedures, 32 CFR 17.1 et seq.

Office of the Secretary of Defense--DoD grants and agreements--general matters, 32 CFR 21.100 et seq.
Office of the Secretary of Defense--DoD grants and agreements--awards and administration, 32 CFR 22.100 et seq.
Office of the Secretary of Defense--New restrictions on lobbying, 32 CFR 28.100 et seq.
Office of the Secretary of Defense--Administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations, 32 CFR 32.1 et seq.
Office of the Secretary of Defense--Uniform administrative requirements for grants and cooperative agreements to State and local governments, 32 CFR 33.1 et seq.
Office of the Secretary of Defense--Administrative requirements for grants and agreements with for-profit organizations, 32 CFR 34.1 et seq.
Office of the Secretary of Defense--Technology investment agreements, 32 CFR 37.100 et seq.
Office of the Secretary of Defense--Sexual Assault Prevention and Response (SAPR) Program, 32 CFR 103.1 et seq.
Office of the Secretary of Defense--Indebtedness of military personnel, 32 CFR 112.1 et seq.
Office of the Secretary of Defense--Indebtedness procedures of military personnel, 32 CFR 113.1 et seq.
Office of the Secretary of Defense--Revitalizing base closure communities and addressing impacts of realignment, 32 CFR 174.1 et seq.
Office of the Secretary of Defense--Defense support of civil authorities (DSCA), 32 CFR 185.1 et seq.
Office of the Secretary of Defense--The DoD Civilian Equal Employment Opportunity (EEO) program, 32 CFR 191.1 et seq.
Office of the Secretary of Defense--Administration and support of basic research by the Department of Defense, 32 CFR 272.1 et seq.
Office of the Secretary of Defense--Defense Finance and Accounting Service (DFAS), 32 CFR 352a.1 et seq.
Department of the Navy--Release of official information in litigation and testimony by Department of the Navy personnel as witnesses, 32 CFR 725.1 et seq.

Related Statutes & Rules:

Annual rate of compensation of Secretary, 5 USCS § 5312.
Reports to Congressional committees, policies and procedures on recall to active duty of Ready Reserve members, 10 USCS § 12302.
National Security Agency employment, delegation of authority for terminating, notwithstanding subsec. (d) of this section, 50 USCS § 833.
This section is referred to in 10 USCS §§ 117, 153, 487, 667, 2501, 3038, 5143, 5144, 8038, 10504; 22 USCS § 2595a; 50 USCS § 1523; 50 USCS Appx §§ 2077, 2152.

Research Guide:

Am Jur:

53 Am Jur 2d, Military and Civil Defense § 4.

Law Review Articles:

Zamir. Administrative Control of Administrative Action: The Exceptions. 51 NYU L Rev 587, 1976.

Interpretive Notes and Decisions:

1. Generally 2. Particular directives of Secretary

1. Generally

Secretary of War [now Secretary of Army] was regular constitutional organ of President for administration of military establishment of United States, and rules and orders publicly promulgated through him had to be received as acts of executive, and as such, were binding upon all within sphere of his legal and constitutional authority. *United States v Eliason* (1842) 41 US 291, 16 Pet 291, 10 L Ed 968, 2 AFTR 2195.

2. Particular directives of Secretary

Neither President by executive order nor Congress in National Security Act of 1947, as amended, and Armed Service Procurement Act of 1947 (10 USCS §§ 2304, 2306), has authorized Department of Defense to create industrial security clearance program under which affected persons may lose their jobs and may be restrained in following their chosen professions on basis of fact determinations concerning their fitness for clearance made in proceedings in which they are denied traditional procedural safeguards of confrontation and cross-examination. *Greene v McElroy* (1959) 360 US 474, 79 S Ct 1400, 3 L Ed 2d 1377, 37 CCH LC P 65644.

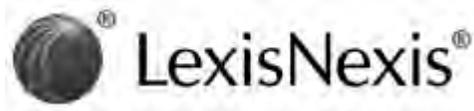
Right of person in Armed Forces to be classified as conscientious objector after induction is based on Department of Defense Directive No. 1300.6 (May 10, 1968), issued by Secretary of Defense pursuant to his authority under 10 USCS § 133, directive's purpose being to provide uniform procedures for utilization of conscientious objectors in Armed Forces and consideration of requests for discharge on grounds of conscientious objection. *Parisi v Davidson* (1972) 405 US 34, 31 L Ed 2d 17, 92 S Ct 815.

Directive issued by Secretary of Defense establishing insurance requirements on automobiles parked or driven on military reservations and qualification requirements for agents soliciting insurance on military reservations was within his authority. *Royal Standard Ins. Co. v McNamara* (1965, CA8 Ark) 344 F2d 240.

Determination by particular military department whether it is practicable and equitable under facts and circumstances of particular case to discharge conscientious objector, once enlisted or illegally inducted into armed forces, is ultimately vested by statute, directive issued by Secretary of Defense under 10 USCS § 133 [now § 113] and regulation with discretion of military itself. *United States ex rel. O'Hare v Eichstaedt* (1967, ND Cal) 285 F Supp 476.

Unpublished Opinions

Unpublished: Under 10 USCS § 113, Secretary of Department of Defense delegated to Under Secretary for Personnel and Readiness authority to regulate in area of readiness and training, and while current Departmental directive was not in effect when Under Secretary issued Dep't Def. Directive 1334.01 regarding wearing of uniforms, its provisions were consistent with those that governed at time and Under Secretary was vested with sufficient statutory and regulatory authority to issue, in his own right, that regulation. *United States v Simmons* (2011, NMCCA) 2011 CCA LEXIS 164.



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*** Current through PL 113-22, approved 7/25/13 ***

TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART I. ORGANIZATION AND GENERAL MILITARY POWERS
CHAPTER 2. DEPARTMENT OF DEFENSE

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10 USCS § 111

§ 111. Executive department

(a) The Department of Defense is an executive department of the United States.

(b) The Department is composed of the following:

- (1) The Office of the Secretary of Defense.
- (2) The Joint Chiefs of Staff.
- (3) The Joint Staff.
- (4) The Defense Agencies.
- (5) Department of Defense Field Activities.
- (6) The Department of the Army.
- (7) The Department of the Navy.
- (8) The Department of the Air Force.
- (9) The unified and specified combatant commands.

(10) Such other offices, agencies, activities, and commands as may be established or designated by law or by the President.

(11) All offices, agencies, activities, and commands under the control or supervision of any element named in paragraphs (1) through (10).

(c) If the President establishes or designates an office, agency, activity, or command in the Department of Defense of a kind other than those described in paragraphs (1) through (9) of subsection (b), the President shall notify Congress not later than 60 days thereafter.

HISTORY:

(Added Sept. 7, 1962, P.L. 87-651, Title II, § 202, 76 Stat. 517; Oct. 1, 1986, P.L. 99-433, Title I, § 101(a)(2) in part, (b), 100 Stat. 994, 995.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Section	Source (USCS)	Source (Statutes at Large)
131	5:171(a) (less last 10 words), (b).	July 26, 1947, ch. 343, Sec. 201(a) (less last 10 words), (b); restated Aug. 10, 1949, ch. 412, Sec. 4 (1st (less last 10 words) and 2d pars.), 63 Stat. 579.

The words "There is established", in 5 U.S.C. 171(a), are omitted as executed. 5 U.S.C. 171(b) (1st 26 words) is omitted as covered by the definitions of "department" and "military departments" in section 101(5) and (7), respectively, of this title. 5 U.S.C. 171(b) (27th through 49th words) is omitted as executed. 5 U.S.C. 171(b) (last 18 words) is omitted as surplusage.

Amendments:

1986. Act Oct. 1, 1986 redesignated this section, formerly 10 USCS § 131, as 10 USCS § 111, and in this section as redesignated, designated the existing provisions as subsec. (a); and added subsecs. (b) and (c).

Short titles:

Act Oct. 1, 1986, P.L. 99-433, § 1, 100 Stat. 993, provides: "This Act may be cited as the 'Goldwater-Nichols Department of Defense Reorganization Act of 1986'."

Transfer of functions:

For transfer of functions, personnel, assets, and liabilities of the Department of Defense, including the functions of the Secretary of Defense relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see 6 USCS §§ 121(g)(2), 183(2), 551(d), 552(d), and 557, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, which appears as 6 USCS § 542 note.

Missions and functions of elements of Department of Defense as specified in classified annex to Act Sept. 23, 1996, P.L. 104-201, and related personnel, assets, and balances of appropriations and authorizations of appropriations, transferred to National Imagery and Mapping Agency, see §§ 1111 and 1113 of Act Sept. 23, 1996, P.L. 104-201, which appear as 10 USCS § 441 notes.

Other provisions:

Reorganization Plan No. 6 of 1953, effective June 30, 1953, 18 Fed. Reg. 3743, 67 Stat. 638, provides:

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 30, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see 5 USCS §§ 901 et seq.].

Department of Defense

§ 1. Transfers of functions

(a) All functions of the Munitions Board, the Research and Development Board, the Defense Supply Management Agency, and the Director of Installations are hereby transferred to the Secretary of Defense.

(b) The selection of the Director of the Joint Staff by the Joint Chiefs of Staff, and his tenure, shall be subject to the approval of the Secretary of Defense.

(c) The selection of the members of the Joint Staff by the Joint Chiefs of Staff, and their tenure, shall be subject to the approval of the Chairman of the Joint Chiefs of Staff.

(d) The functions of the Joint Chiefs of Staff with respect to managing the Joint Staff and the Director thereof are hereby transferred to the Chairman of the Joint Chiefs of Staff.

§ 2. Abolition of agencies and functions

(a) There are hereby abolished the Munitions Board, the Research and Development Board, and the Defense Supply Management Agency.

(b) The offices of Chairman of the Munitions Board, Chairman of the Research and Development Board, Director of the Defense Supply Management Agency, Deputy Director of the Defense Supply Management Agency, and Director of Installations are hereby abolished.

(c) The Secretary of Defense shall provide for winding up any outstanding affairs of the said abolished agency, boards, and offices, not otherwise provided for in this reorganization plan.

(d) The function of guidance to the Munitions Board in connection with strategic and logistic plans as required by section 213(c) of the National Security Act of 1947, as amended [former 5 USC § 171h(c)], is hereby abolished.

§ 3. Assistant Secretaries of Defense

[Repealed by Act Aug. 6, 1958, P.L. 85-599, § 10(b), 72 Stat. 521. This section authorized the appointment of six additional Assistant Secretaries and prescribed their duties and compensation. For the effective date of repeal, see 10 USCS § 3014 note.]

§ 4. General Counsel

[Repealed by Act Sept. 7, 1962, P.L. 87-651, Title III, § 307C, 76 Stat. 526. This Section authorized appointment of a General Counsel for the Department of Defense. For similar provisions, see 10 USCS § 139.]

§ 5. Performance of functions

[Repealed by Act Sept. 7, 1962, P.L. 87-651, Title III, § 307C, 76 Stat. 526. This section authorized the Secretary of Defense from time to time to make such provisions as he deemed appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of any function of the Secretary. For similar provisions, see 10 USCS § 113.]

§ 6. Miscellaneous provisions

(a) The Secretary of Defense may from time to time effect such transfers within the Department of Defense of any of the records, property, and personnel affected by this reorganization plan, and such transfers of unexpended balances (available or to be made available for use in connection with any affected function or agency) of appropriations, allocations, and other funds of such Department, as he deems necessary to carry out the provisions of this reorganization plan.

(b) Nothing herein shall affect the compensation of the Chairman of the Military Liaison Committee (63 Stat. 762).

Defense Manpower Commission. Act Nov. 16, 1973, P.L. 93-155, Title VII, §§ 701-708, 87 Stat. 609-611, provided that the Commission be established; provided for its composition, duties, powers, compensation, staff, appropriations, and use of the General Services Administration; and directed that interim reports to the President and to Congress be submitted and that the Commission terminate 60 days after its final report which was to be submitted not more than 24 months after the appointment of the Commission.

Study and investigation of the Air Force Reserve and the Air National Guard. Act Nov. 16, 1973, P.L. 93-155, Title VIII, § 810, 87 Stat. 618, provided that the Secretary of Defense study the relative status of the Air Force Reserve and the Air National Guard of the United States; measure the effects on costs and combat capability as well as other advantages and disadvantages of (1) merging the Reserve into the Guard, (2) merging the Guard into the Reserve, and (3) retaining the status quo; and consider the modernization needs and manpower problems of both; and also directed that a report of such study be submitted to the President and to the Congress no later than Jan. 31, 1975.

Ex. Or. No. 12049 superseded. Ex. Or. No. 12049 of March 27, 1978, 43 Fed. Reg. 13363, as amended by Ex. Or. No. 12107 of Dec. 28, 1978, 44 Fed. Reg. 1055; Ex. Or. No. 12608 of Sept. 9, 1987, § 15, 52 Fed. Reg. 34617, which formerly appeared as a note to this section, was superseded by Ex. Or. 12788 of Jan. 15, 1992, 57 Fed. Reg. 2213, which appears as 10 USCS § 2391 note. The superseded order provided for the design and establishment of a Defense Economic Adjustment Program.

Provisions as to annual report on NATO readiness repealed. Act Nov. 9, 1979, P.L. 96-107, Title VIII, § 808, 93 Stat. 814, formerly classified as a note to this section, was repealed by Act Oct. 12, 1982, P.L. 97-295, § 6(b) in part, 96 Stat. 1315. Such section provided for an annual report on NATO readiness. For provisions as to the construction of repeals by § 6(b) of Act Oct. 12, 1982, see Act Oct. 12, 1982, P.L. 97-295, § 6, 96 Stat. 1314, which appears as 10 USCS § 101 note. For similar provisions, see 10 USCS § 117.

Declaration of Congressional policy. Act Oct. 1, 1986, P.L. 99-433, § 3, 100 Stat. 993, provides:

"In enacting this Act [this note, among other things; for full classification, consult USCS Tables volumes], it is the intent of Congress, consistent with the congressional declaration of policy in section 2 of the National Security Act of 1947 (50 U.S.C. 401)--

"(1) to reorganize the Department of Defense and strengthen civilian authority in the Department;

"(2) to improve the military advice provided to the President, the National Security Council, and the Secretary of Defense;

"(3) to place clear responsibility on the commanders of the unified and specified combatant commands for the accomplishment of missions assigned to those commands;

"(4) to ensure that the authority of the commanders of the unified and specified combatant commands is fully commensurate with the responsibility of those commanders for the accomplishment of missions assigned to their commands;

"(5) to increase attention to the formulation of strategy and to contingency planning;

"(6) to provide for more efficient use of defense resources;

"(7) to improve joint officer management policies; and

"(8) otherwise to enhance the effectiveness of military operations and improve the management and administration of the Department of Defense."

Commission on Roles and Missions of the Armed Forces. Act Nov. 30, 1993, P.L. 103-160, Div A, Title IX, Subtitle E, §§ 951-960, 107 Stat. 1738; Oct. 5, 1994, P.L. 103-337, Div A, Title IX, Subtitle C, § 923(a)(1), (2), (b)-(d), 108 Stat. 2830, provide:

"Sec. 951. Findings.

"Congress makes the following findings:

"(1) The current allocation of roles and missions among the Armed Forces evolved from the practice during World War II to meet the Cold War threat and may no longer be appropriate for the post-Cold War era.

"(2) Many analysts believe that a realignment of those roles and mission is essential for the efficiency and effectiveness of the Armed Forces, particularly in light of lower budgetary resources that will be available to the Department of Defense in the future.

"(3) The existing process of a triennial review of roles and missions by the Chairman of the Joint Chiefs of Staff pursuant to provisions of law enacted by the Goldwater- Nichols Department of Defense Reorganization Act of 1986 [Act Nov. 5, 1990, P.L. 101-510, 103 Stat. 1485; for full classification, consult USCS Tables volumes] has not produced the comprehensive review envisioned by Congress.

"(4) It is difficult for any organization, and may be particularly difficult for the Department of Defense, to reform itself without the benefit and authority provided by external perspectives and analysis.

"Sec. 952. Establishment of Commission.

"(a) Establishment. There is hereby established a commission to be known as the Commission on Roles and Missions of the Armed Forces (hereinafter in this subtitle referred to as the 'Commission').

"(b) Composition and qualifications.

(1) The Commission shall be composed of eleven members. Members of the Commission shall be appointed by the Secretary of Defense.

"(2) The Commission shall be appointed from among private United States citizens with appropriate and diverse military, organizational, and management experiences and historical perspectives.

"(3) The Secretary shall designate one of the members as chairman of the Commission.

"(c) Period of appointment; vacancies. Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

"(d) Initial organizational requirements.

(1) The Secretary shall make all appointments to the Commission within 45 days after the date of the enactment of this Act.

"(2) The Commission shall convene its first meeting within 30 days after the first date on which all members of the Commission have been appointed. At that meeting, the Commission shall develop an agenda and a schedule for carrying out its duties.

"Sec. 953. Duties of Commission.

"(a) In general. The Commission shall--

"(1) review the efficacy and appropriateness for the post-Cold War era of the current allocations among the Armed Forces of roles, missions, and functions;

"(2) evaluate and report on alternative allocations of those roles, missions, and functions; and

"(3) make recommendations for changes in the current definition and distribution of those roles, missions, and functions.

"(b) Review of potential military operations. The Commission shall review the types of military operations that may be required in the post-Cold War era, taking into account the requirements for success in various types of operations. As part of such review, the Commission shall take into consideration the official strategic planning of the Department of Defense. The types of operations to be considered by the Commission as part of such review shall include the following:

"(1) Defense of the United States.

"(2) Warfare against other national military forces.

"(3) Participation in peacekeeping, peace enforcement, and other nontraditional activities.

"(4) Action against nuclear, chemical, and biological weapons capabilities in hostile hands.

"(5) Support of law enforcement.

"(6) Other types of operations as specified by the chairman of the Commission.

"(c) Commission to define broad mission areas and key support requirements. As a result of the review under subsection (b), the Commission shall define broad mission areas and key support requirements for the United States military establishment as a whole.

"(d) Development of conceptual framework for organizational allocations. The Commission shall develop a conceptual framework for the review of the organizational allocation among the Armed Forces of military roles, missions, and functions. In developing that framework, the Commission shall consider--

"(1) static efficiency (such as duplicative overhead and economies of scale);

"(2) dynamic effectiveness (including the benefits of competition and the effect on innovation);

"(3) interoperability, responsiveness, and other aspects of military effectiveness in the field;

"(4) gaps in mission coverage and so-called orphan missions that are inadequately served by existing organizational entities;

"(5) division of responsibility on the battlefield;

"(6) exploitation of new technology and operational concepts;

"(7) the degree of disruption that a change in roles and missions would entail;

"(8) the experience of other nations; and

"(9) the role of the Army National Guard of the United States, the Air National Guard of the United States, and the other reserve components.

"(e) Recommendations concerning military roles and missions. Based upon the conceptual framework developed under subsection (d) to evaluate possible changes to the existing allocation among the Armed Forces of military roles, missions, and functions, the Commission shall recommend--

"(1) the functions for which each military department should organize, train, and equip forces;

"(2) the missions of combatant commands; and

"(3) the roles that Congress should assign to the various military elements of the Department of Defense, including the Army National Guard of the United States, the Air National Guard of the United States, and the other reserve components.

"(f) Recommendations concerning civilian elements of Department of Defense. The Commission may address the roles, missions, and functions of civilian portions of the Department of Defense and other national security agencies to the extent that changes in these areas are collateral to changes considered in military roles, missions, and functions.

"(g) Recommendations concerning process for future changes. The Commission shall also recommend a process for continuing to adapt the roles, missions, and functions of the Armed Forces to future changes in technology and in the international security environment.

"(h) Recommendations concerning reserve components. The Commission shall also address the roles, missions, and functions of the Army National Guard of the United States, the Air National Guard of the United States, and the other reserve components within the total force of the Armed Forces, particularly in light of lower budgetary resources that will be available to the Department of Defense in the future.

"(i) Recommendations concerning programs and force structure. The Commission may also recommend changes that would better align programs and force structure with projected missions and threats.

"Sec. 954. Reports.

"(a) Implementation plan. Not later than three months after the date on which all members of the Commission have been appointed, the Commission shall transmit to the Committees on Armed Services of the Senate and House of Representatives a report setting forth its plan for the work of the Commission. The plan shall be developed following dis-

cussions with the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and the chairmen of those committees.

"(b) Commission report. The Commission shall, not later than one year after the date of its first meeting, submit to the committees named in subsection (a) and to the Secretary of Defense and the Chairman of the Joint Chiefs of Staff a report setting forth the activities, findings, and recommendations of the Commission, including any recommendations for legislation that the Commission considers advisable.

"(c) Action by Secretary of Defense. The Secretary of Defense, after consultation with the Chairman of the Joint Chiefs of Staff, shall submit comments on the Commission's report to the committees referred to in subsection (b) not later than 90 days following receipt of the report.

"Sec. 955. Powers.

"(a) Hearings. The Commission or, at its direction, any panel or member of the Commission, may, for the purpose of carrying out the provisions of this subtitle, hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths to the extent that the Commission or any panel or member considers advisable.

"(b) Information. The Commission may secure directly from the Department of Defense and any other Federal department or agency any information that the Commission considers necessary to enable the Commission to carry out its responsibilities under this subtitle. Upon request of the chairman of the Commission, the head of such department or agency shall furnish such information expeditiously to the Commission.

"Sec. 956. Commission procedures.

"(a) Meetings. The Commission shall meet at the call of the chairman.

"(b) Quorum.

(1) Seven members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

"(2) The Commission shall act by resolution agreed to by a majority of the members of the Commission.

"(c) Panels. The Commission may establish panels composed of less than the full membership of the Commission for the purpose of carrying out the Commission's duties. The actions of each such panel shall be subject to the review and control of the Commission. Any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

"(d) Authority of individuals to act for Commission. Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take under this subtitle.

"Sec. 957. Personnel matters; expert services.

"(a) Pay of members. Each member of the Commission shall be paid at a rate equal to the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without pay in addition to that received for their services as officers or employees of the United States.

"(b) Travel expenses. The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code [5 USCS §§ 5701 et seq.], while away from their homes or regular places of business in the performance of services for the Commission.

"(c) Staff.

(1) The chairman of the Commission may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, appoint a staff director and such additional personnel as may be necessary to enable the Commission to perform its duties. The appointment of a staff director shall be subject to the approval of the Commission.

"(2) The chairman of the Commission may fix the pay of the staff director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code [5 USCS §§ 5100 et seq., 5331 et seq.], relating to classification of positions and General Schedule pay rates, except that the rate of pay fixed under this paragraph for the staff director may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title and the rate of pay for other personnel may not exceed the maximum rate payable for grade GS-15 of the General Schedule [5 USCS § 5332].

"(d) Detail of government employees. Upon request of the chairman of the Commission, the head of any Federal department or agency may detail, on a nonreimbursable basis, any personnel of that department or agency to the Commission to assist it in carrying out its duties.

"(e) Procurement of temporary and intermittent services. The chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not ex-

ceed the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

"(f) FFRDC support.

(1) Upon the request of the chairman of the Commission, the Secretary of Defense shall make available to the Commission, without reimbursement, the services of any federally funded research and development center that is covered by a sponsoring agreement of the Department of Defense. The cost of the services made available under this subsection may not exceed \$ 20,000,000.

"(2) Notwithstanding any other provision of law, any analytic support or related services provided by such a center to the Commission shall not be subject to any overall ceiling established by this or any other Act on the activities or budgets of such centers.

"Sec. 958. Miscellaneous administrative provisions.

"(a) Postal and printing services. The Commission may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(b) Miscellaneous administrative and support services. The Secretary of Defense shall furnish the Commission, on a reimbursable basis, any administrative and support services requested by the Commission.

"(c) Gifts. The Commission may accept, use, and dispose of gifts or donations of services or property.

"(d) Travel. To the maximum extent practicable, the members and employees of the Commission shall travel on military aircraft, military ships, military vehicles, or other military conveyances when travel is necessary in the performance of a responsibility of the Commission, except that no such aircraft, ship, vehicle, or other conveyance may be scheduled primarily for the transportation of any such member or employee when the cost of commercial transportation is less expensive.

"Sec. 959. Payment of Commission expenses.

"The compensation, travel expenses, and per diem allowances of members and employees of the Commission shall be paid out of funds available to the Department of Defense for the payment of compensation, travel allowances, and per diem allowances, respectively, of civilian employees of the Department of Defense. The other expenses of the Commission shall be paid out of funds available to the Department of Defense for the payment of similar expenses incurred by that Department.

"Sec. 960. Termination of the Commission.

"The Commission shall terminate on the last day of the sixteenth month that begins after the date of its first meeting, but not earlier than 30 days after the date of the Secretary of Defense's submission of comments on the Commission's report."

Termination of Department of Defense reporting requirements determined by Secretary of Defense to be unnecessary or incompatible with efficient management of the Department of Defense. Act Nov. 30, 1993, P.L. 103-160, Div A, Title XI, Subtitle F, § 1151, 107 Stat. 1758, provides:

"(a) Termination of report requirements. Unless otherwise provided by a law enacted after the date of the enactment of this Act, each provision of law requiring the submittal to Congress (or any committee of Congress) of any report specified in the list submitted under subsection (b) shall, with respect to that requirement, cease to be effective on October 30, 1995.

"(b) Preparation of list.

(1) The Secretary of Defense shall submit to Congress a list of each provision of law that, as of the date specified in subsection (c), imposes upon the Secretary of Defense (or any other officer of the Department of Defense) a reporting requirement described in paragraph (2). The list of provisions of law shall include a statement or description of the report required under each such provision of law.

"(2) Paragraph (1) applies to a requirement imposed by law to submit to Congress (or specified committees of Congress) a report on a recurring basis, or upon the occurrence of specified events, if the Secretary determines that the continued requirement to submit that report is unnecessary or incompatible with the efficient management of the Department of Defense.

"(3) The Secretary shall submit with the list an explanation, for each report specified in the list, of the reasons why the Secretary considers the continued requirement to submit the report to be unnecessary or incompatible with the efficient management of the Department of Defense.

"(c) Submission of list. The list under subsection (a) shall be submitted not later than April 30, 1994.

"(d) Scope of section. For purposes of this section, the term 'report' includes a certification, notification, or other characterization of a communication.

"(e) Interpretation of section. This section does not require the Secretary of Defense to review each report required of the Department of Defense by law."

Armed Forces Commission on Roles and Missions; additional members. Act Oct. 5, 1994, P.L. 103-337, Div A, Title IX, Subtitle C, § 923(a)(3), (4), 108 Stat. 2830, provides:

"(3) The additional members of the Commission on Roles and Missions of the Armed Forces authorized by the amendment made by paragraph (1) [amending § 952(b)(1) of Act Nov. 30, 1994, P.L. 103-160, which appears as a note to this section] shall be appointed by the Secretary of Defense not later than 30 days after the date of the enactment of this Act.

"(4) At least one of the additional members of the Commission appointed pursuant to the amendment made by paragraph (1) [amending § 952(b)(1) of Act Nov. 30, 1994, P.L. 103-160, which appears as a note to this section] shall have previous military experience and management experience with the reserve components."

Redesignation of Advanced Research Projects Agency. Act Feb. 10, 1996, P.L. 104-106, Div A, Title IX, Subtitle A, § 908, 110 Stat. 406, provides:

"(a) Redesignation. The agency in the Department of Defense known as the Advanced Research Projects Agency shall after the date of the enactment of this Act be designated as the Defense Advanced Research Projects Agency.

"(b) References. Any reference in any law, regulation, document, record, or other paper of the United States or in any provision of this Act to the Advanced Research Projects Agency shall be considered to be a reference to the Defense Advanced Research Projects Agency."

Mission of the White House Communications Agency. Act Sept. 23, 1996, P.L. 104-201, Div A, Title IX, Subtitle A, § 912, 110 Stat. 9623; Jan. 6, 2006, P.L. 109-163, Div A, Title IX, Subtitle A, § 906, 119 Stat. 3402, provides:

"(a) Telecommunications support and audiovisual support services. The Secretary of Defense shall ensure that the activities of the White House Communications Agency in providing support services on a nonreimbursable basis for the President from funds appropriated for the Department of Defense for any fiscal year are limited to the provision of telecommunications support and audiovisual support services to the President and Vice President and to related elements (as defined in regulations of that agency and specified by the President with respect to particular individuals within those related elements).

"(b) Other support. Support services other than telecommunications and audiovisual support services described in subsection (a) may be provided by the Department of Defense for the President through the White House Communications Agency on a reimbursable basis.

"(c) White House Communications Agency. For purposes of this section, the term 'White House Communications Agency' means the element of the Department of Defense within the Defense Communications Agency that is known on the date of the enactment of this Act as the White House Communications Agency and includes any successor agency."

Force structure review. Act Sept. 23, 1996, P.L. 104-201, Div A, Title IX, Subtitle B, §§ 921-926, 110 Stat. 2623, provide:

"Sec. 921. Short title.

"This subtitle may be cited as the 'Military Force Structure Review Act of 1996'.

"Sec. 922. Findings.

"Congress makes the following findings:

"(1) Since the collapse of the Soviet Union in 1991, the United States has conducted two substantial assessments of the force structure of the Armed Forces necessary to meet United States defense requirements.

"(2) The assessment by the Bush Administration (known as the 'Base Force' assessment) and the assessment by the Clinton Administration (known as the 'Bottom-Up Review') were intended to reassess the force structure of the Armed Forces in light of the changing realities of the post-Cold War world.

"(3) Both assessments served an important purpose in focusing attention on the need to reevaluate the military posture of the United States, but the pace of global change necessitates a new, comprehensive assessment of the defense strategy of the United States and the force structure of the Armed Forces required to meet the threats to the United States in the twenty-first century.

"(4) The Bottom-Up Review has been criticized on several points, including--

"(A) the assumptions underlying the strategy of planning to fight and win two nearly simultaneous major regional conflicts;

"(B) the force levels recommended to carry out that strategy; and

"(C) the funding proposed for such recommended force levels.

"(5) In response to the recommendations of the Commission on Roles and Missions of the Armed Forces, the Secretary of Defense endorsed the concept of conducting a quadrennial review of the defense program at the beginning of each newly elected Presidential administration, and the Department intends to complete the first such review in 1997.

"(6) The review is to involve a comprehensive examination of defense strategy, the force structure of the active, guard, and reserve components, force modernization plans, infrastructure, and other elements of the defense program and policies in order to determine and express the defense strategy of the United States and to establish a revised defense program through the year 2005.

"(7) In order to ensure that the force structure of the Armed Forces is adequate to meet the challenges to the national security interests of the United States in the twenty-first century, to assist the Secretary of Defense in conducting the review referred to in paragraph (5), and to assess the appropriate force structure of the Armed Forces through the year 2010 and beyond (if practicable), it is important to provide for the conduct of an independent, nonpartisan review of the force structure that is more comprehensive than prior assessments of the force structure, extends beyond the quadrennial defense review, and explores innovative and forward-thinking ways of meeting such challenges.

"Sec. 923. Quadrennial Defense Review.

"(a) Requirement in 1997. The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall complete in 1997 a review of the defense program of the United States intended to satisfy the requirements for a Quadrennial Defense Review as identified in the recommendations of the Commission on Roles and Missions of the Armed Forces. The review shall include a comprehensive examination of the defense strategy, force structure, force modernization plans, infrastructure, budget plan, and other elements of the defense program and policies with a view toward determining and expressing the defense strategy of the United States and establishing a revised defense program through the year 2005.

"(b) Involvement of National Defense Panel.

(1) The Secretary shall apprise the National Defense Panel established under section 924, on an ongoing basis, of the work undertaken in the conduct of the review.

"(2) Not later than March 14, 1997, the Chairman of the National Defense Panel shall submit to the Secretary the Panel's assessment of work undertaken in the conduct of the review as of that date and shall include in the assessment the recommendations of the Panel for improvements to the review, including recommendations for additional matters to be covered in the review.

"(c) Assessments of review. Upon completion of the review, the Chairman of the Joint Chiefs of Staff and the Chairman of the National Defense Panel, on behalf of the Panel, shall each prepare and submit to the Secretary such Chairman's assessment of the review in time for the inclusion of the assessment in its entirety in the report under subsection (d).

"(d) Report. Not later than May 15, 1997, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a comprehensive report on the review. The report shall include the following:

"(1) The results of the review, including a comprehensive discussion of the defense strategy of the United States and the force structure best suited to implement that strategy.

"(2) The threats examined for purposes of the review and the scenarios developed in the examination of such threats.

"(3) The assumptions used in the review, including assumptions relating to the cooperation of allies and mission-sharing, levels of acceptable risk, warning times, and intensity and duration of conflict.

"(4) The effect on the force structure of preparations for and participation in peace operations and military operations other than war.

"(5) The effect on the force structure of the utilization by the Armed Forces of technologies anticipated to be available by the year 2005, including precision guided munitions, stealth, night vision, digitization, and communications, and the changes in doctrine and operational concepts that would result from the utilization of such technologies.

"(6) The manpower and sustainment policies required under the defense strategy to support engagement in conflicts lasting more than 120 days.

"(7) The anticipated roles and missions of the reserve components in the defense strategy and the strength, capabilities, and equipment necessary to assure that the reserve components can capably discharge those roles and missions.

"(8) The appropriate ratio of combat forces to support forces (commonly referred to as the 'tooth-to-tail' ratio) under the defense strategy, including, in particular, the appropriate number and size of headquarter units and Defense Agencies for that purpose.

"(9) The air-lift and sea-lift capabilities required to support the defense strategy.

"(10) The forward presence, pre-positioning, and other anticipatory deployments necessary under the defense strategy for conflict deterrence and adequate military response to anticipated conflicts.

"(11) The extent to which resources must be shifted among two or more theaters under the defense strategy in the event of conflict in such theaters.

"(12) The advisability of revisions to the Unified Command Plan as a result of the defense strategy.

"(13) Any other matter the Secretary considers appropriate.

"Sec. 924. National Defense Panel.

"(a) Establishment. Not later than December 1, 1996, the Secretary of Defense shall establish a nonpartisan, independent panel to be known as the National Defense Panel (in this section referred to as the 'Panel'). The Panel shall have the duties set forth in this section.

"(b) Membership. The Panel shall be composed of a chairman and eight other individuals appointed by the Secretary, in consultation with the chairman and ranking member of the Committee on Armed Services of the Senate and the chairman and ranking member of the Committee on National Security of the House of Representatives, from among individuals in the private sector who are recognized experts in matters relating to the national security of the United States.

"(c) Duties. The Panel shall--

"(1) conduct and submit to the Secretary the assessment of the review under section 923 that is required by subsection (b)(2) of that section;

"(2) conduct and submit to the Secretary the comprehensive assessment of the review that is required by subsection (c) of that section upon completion of the review; and

"(3) conduct the assessment of alternative force structures for the Armed Forces required under subsection (d).

"(d) Alternative force structure assessment.

(1) The Panel shall submit to the Secretary an independent assessment of a variety of possible force structures of the Armed Forces through the year 2010 and beyond, including the force structure identified in the report on the review under section 923(d). The purpose of the assessment is to develop proposals for an 'above the line' force structure of the Armed Forces and to provide the Secretary and Congress recommendations regarding the optimal force structure to meet anticipated threats to the national security of the United States through the time covered by the assessment.

"(2) In conducting the assessment, the Panel shall examine a variety of potential threats (including near-term threats and long-term threats) to the national security interests of the United States, including the following:

"(A) Conventional threats across a spectrum of conflicts.

"(B) The proliferation of weapons of mass destruction and the means of delivering such weapons, and the illicit transfer of technology relating to such weapons.

"(C) The vulnerability of United States technology to nontraditional threats, including information warfare.

"(D) Domestic and international terrorism.

"(E) The emergence of a major potential adversary having military capabilities similar to those of the United States.

"(F) Any other significant threat, or combination of threats, identified by the Panel.

"(3) For purposes of the assessment, the Panel shall develop a variety of scenarios requiring a military response by the United States, including the following:

"(A) Scenarios developed in light of the threats examined under paragraph (2).

"(B) Scenarios developed in light of a continuum of conflicts ranging from a conflict of lesser magnitude than the conflict described in the Bottom-Up Review to a conflict of greater magnitude than the conflict so described.

"(4) As part of the assessment, the Panel shall also--

"(A) develop recommendations regarding a variety of force structures for the Armed Forces that permit the forward deployment of sufficient air, land, and sea-based forces to provide an effective deterrent to conflict and to permit a military response by the United States to the scenarios developed under paragraph (3);

"(B) to the extent practicable, estimate the funding required by fiscal year, in constant fiscal year 1997 dollars, to organize, equip, and support the forces contemplated under the force structures assessed in the assessment; and

"(C) comment on each of the matters also to be included by the Secretary in the report required by section 923(d).

"(e) Report.

(1) Not later than December 1, 1997, the Panel shall submit to the Secretary a report setting forth the activities and the findings and recommendations of the Panel under subsection (d), including any recommendations for legislation that the Panel considers appropriate.

"(2) Not later than December 15, 1997, the Secretary shall, after consultation with the Chairman of the Joint Chiefs of Staff, submit to the committees referred to in subsection (b) a copy of the report under paragraph (1), together with the Secretary's comments on the report.

"(f) Information from Federal agencies. The Panel may secure directly from the Department of Defense and any of its components and from any other Federal department and agency such information as the Panel considers necessary to carry out its duties under this section. The head of the department or agency concerned shall ensure that information requested by the Panel under this subsection is promptly provided.

"(g) Personnel matters.

(1) Each member of the Panel shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Panel.

"(2) The members of the Panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code [5 USCS §§ 5701 et seq.], while away from their homes or regular places of business in the performance of services for the Panel.

"(3)

(A) The chairman of the Panel may, without regard to the civil service laws and regulations, appoint and terminate an executive director, and a staff of not more than four additional individuals, if the Panel determines that an executive director and staff are necessary in order for the Panel to perform its duties effectively. The employment of an executive director shall be subject to confirmation by the Panel.

"(B) The chairman may fix the compensation of the executive director without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code [5 USCS §§ 5331 et seq.], relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

"(4) Any Federal Government employee may be detailed to the Panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. The Secretary shall ensure that sufficient personnel are detailed to the Panel to enable the Panel to carry out its duties effectively.

"(5) To the maximum extent practicable, the members and employees of the Panel shall travel on military aircraft, military ships, military vehicles, or other military conveyances when travel is necessary in the performance of a duty of the Panel, except that no such aircraft, ship, vehicle, or other conveyance may be scheduled primarily for the transportation of any such member or employee when the cost of commercial transportation is less expensive.

"(h) Administrative provisions.

(1) The Panel may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(2) The Secretary shall furnish the Panel any administrative and support services requested by the Panel.

"(3) The Panel may accept, use, and dispose of gifts or donations of services or property.

"(i) Payment of panel expenses. The compensation, travel expenses, and per diem allowances of members and employees of the Panel shall be paid out of funds available to the Department of Defense for the payment of compensation, travel allowances, and per diem allowances, respectively, of civilian employees of the Department. The other expenses of the Panel shall be paid out of funds available to the Department for the payment of similar expenses incurred by the Department.

"(j) Termination. The Panel shall terminate 30 days after the date on which the Panel submits its report to the Secretary under subsection (e).

"Sec. 925. Postponement of deadlines.

"If the Presidential election in 1996 results in the election of a new President, each deadline set forth in this subtitle shall be postponed by three months.

"Sec. 926. Definitions.

"In this subtitle:

"(1) The term 'above the line' force structure of the Armed Forces' means the force structure (including numbers, strengths, and composition and major items of equipment) for the Armed Forces at the following unit levels:

"(A) In the case of the Army, the division.

"(B) In the case of the Navy, the battle group.

"(C) In the case of the Air Force, the wing.

"(D) In the case of the Marine Corps, the expeditionary force.

"(E) In the case of special operations forces of the Army, Navy, or Air Force, the major operating unit.

"(F) In the case of the strategic forces, the ballistic missile submarine fleet, the heavy bomber force, and the intercontinental ballistic missile force.

"(2) The term 'Commission on Roles and Missions of the Armed Forces' means the Commission on Roles and Missions of the Armed Forces established by subtitle E of title IX of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 107 Stat. 1738; 10 U.S.C. 111 note).

"(3) The term 'military operation other than war' means any operation other than war that requires the utilization of the military capabilities of the Armed Forces, including peace operations, humanitarian assistance operations and activities, counter-terrorism operations and activities, disaster relief activities, and counter-drug operations and activities.

"(4) The term 'peace operations' means military operations in support of diplomatic efforts to reach long-term political settlements of conflicts and includes peacekeeping operations and peace enforcement operations."

Applicability of certain pay authorities to members of specified independent study organizations. Act Nov. 18, 1997, P.L. 105-85, Div A, Title X, Subtitle G, § 1081, 111 Stat. 1916, provides:

"(a) Applicability of certain pay authorities.

(1) An individual who is a member of a commission or panel specified in subsection (b) and is an annuitant otherwise covered by section 8344 or 8468 of title 5, United States Code, by reason of membership on the commission or panel is not subject to the provisions of that section with respect to such membership.

"(2) An individual who is a member of a commission or panel specified in subsection (b) and is a member or former member of a uniformed service is not subject to the provisions of subsections (b) and (c) of section 5532 of such title with respect to membership on the commission or panel.

"(b) Specified entities. Subsection (a) applies--

"(1) effective as of September 23, 1996, to members of the National Defense Panel established by section 924 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 110 Stat. 2626) [note to this section]; and

"(2) effective as of October 9, 1996, to members of the Commission on Servicemembers and Veterans Transition Assistance established by section 701 of the Veterans' Benefits Improvements Act of 1996 (Public Law 104-275; 110 Stat. 3346; 38 U.S.C. 545 note)."

Prohibition on restriction of Armed Forces under Kyoto Protocol to the United Nations Framework Convention on Climate Change. Act Oct. 17, 1998, P.L. 105-261, Div A, Title XII, Subtitle D, § 1232, 112 Stat. 2155, provides:

"(a) In general. Notwithstanding any other provision of law, no provision of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, or any regulation issued pursuant to such protocol, shall restrict the training or operations of the United States Armed Forces or limit the military equipment procured by the United States Armed Forces.

"(b) Waiver. A provision of law may not be construed as modifying or superseding the provisions of subsection (a) unless that provision of law--

"(1) specifically refers to this section; and

"(2) specifically states that such provision of law modifies or supersedes the provisions of this section.

"(c) Matters not affected. Nothing in this section shall be construed to preclude the Department of Defense from implementing any measure to achieve efficiencies or for any other reason independent of the Kyoto Protocol."

Commission on National Military Museum. Act Oct. 5, 1999, P.L. 106-65, Div B, Title XXIX, 113 Stat. 881; Dec. 28, 2001, P.L. 107-107, Div A, Title X, Subtitle E, § 1048(g)(9), 115 Stat. 1228 (effective 10/5/99, and as if included in Act Oct. 5, 1999 as enacted, as provided by § 1048(g) of the 2001 Act), provides:

"Sec. 2901. Establishment.

"(a) Establishment. There is hereby established a commission to be known as the 'Commission on the National Military Museum' (in this title referred to as the 'Commission').

"(b) Composition.

(1) The Commission shall be composed of 11 voting members appointed from among individuals who have an expertise in military or museum matters as follows:

"(A) Five shall be appointed by the President.

"(B) Two shall be appointed by the Speaker of the House of Representatives, in consultation with the chairman of the Committee on Armed Services of the House of Representatives.

"(C) One shall be appointed by the minority leader of the House of Representatives, in consultation with the ranking member of the Committee on Armed Services of the House of Representatives.

"(D) Two shall be appointed by the majority leader of the Senate, in consultation with the chairman of the Committee on Armed Services of the Senate.

"(E) One shall be appointed by the minority leader of the Senate, in consultation with the ranking member of the Committee on Armed Services of the Senate.

"(2) The following shall be nonvoting members of the Commission:

"(A) The Secretary of Defense.

"(B) The Secretary of the Army.

"(C) The Secretary of the Navy.

"(D) The Secretary of the Air Force.

"(E) The Secretary of Transportation.

"(F) The Secretary of the Smithsonian Institution.

"(G) The Chairman of the National Capital Planning Commission.

"(H) The Chairperson of the Commission of Fine Arts.

"(c) Chairman. The President shall designate one of the individuals first appointed to the Commission under subsection (b)(1)(A) as the chairman of the Commission.

"(d) Period of appointment; vacancies. Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall be filled in the same manner as the original appointment.

"(e) Initial organization requirements.

(1) All appointments to the Commission shall be made not later than 90 days after the date of the enactment of this Act.

"(2) The Commission shall convene its first meeting not later than 60 days after the date as of which all members of the Commission have been appointed.

"Sec. 2902. Duties of Commission.

"(a) Study of National Military Museum. The Commission shall conduct a study in order to make recommendations to Congress regarding an authorization for the construction of a national military museum in the National Capital Area.

"(b) Study elements. In conducting the study, the Commission shall do the following:

"(1) Determine whether existing military museums, historic sites, and memorials in the United States are adequate--

"(A) to provide in a cost-effective manner for display of, and interaction with, adequately visited and adequately preserved artifacts and representations of the Armed Forces and of the wars in which the United States has been engaged;

"(B) to honor the service to the United States of the active and reserve members of the Armed Forces and the veterans of the United States;

"(C) to educate current and future generations regarding the Armed Forces and the sacrifices of members of the Armed Forces and the Nation in furtherance of the defense of freedom; and

"(D) to foster public pride in the achievements and activities of the Armed Forces.

"(2) Determine whether adequate inventories of artifacts and representations of the Armed Forces and of the wars in which the United States has been engaged are available, either in current inventories or in private or public collections, for loan or other provision to a national military museum.

"(3) Develop preliminary proposals for--

"(A) the dimensions and design of a national military museum in the National Capital Area;

"(B) the location of the museum in that Area; and

"(C) the approximate cost of the final design and construction of the museum and of the costs of operating the museum.

"(c) Additional duties. If the Commission determines to recommend that Congress authorize the construction of a national military museum in the National Capital Area, the Commission shall also, as a part of the study under subsection (a), do the following:

"(1) Recommend not fewer than three sites for the museum ranked by preference.

"(2) Propose a schedule for construction of the museum.

"(3) Assess the potential effects of the museum on the environment, facilities, and roadways in the vicinity of the site or sites where the museum is proposed to be located.

"(4) Recommend the percentages of funding for the museum to be provided by the United States, State and local governments, and private sources, respectively.

"(5) Assess the potential for fundraising for the museum during the 20-year period following the authorization of construction of the museum.

"(6) Assess and recommend various governing structures for the museum, including a governing structure that places the museum within the Smithsonian Institution.

"(d) Requirements for location on Navy Annex property. In the case of a recommendation under subsection (c)(1) to authorize construction of a national military museum on the Navy Annex property authorized for reservation for such purpose by section 2881(b) [unclassified], the design of the national military museum on such property shall be subject to the following requirements:

"(1) The design shall be prepared in consultation with the Superintendent of Arlington National Cemetery.

"(2) The design may not provide for access by vehicles to the national military museum through Arlington National Cemetery.

"Sec. 2903. Report.

"The Commission shall, not later than 12 months after the date of its first meeting, submit to Congress a report on its findings and conclusions under this title, including any recommendations under section 2902.

"Sec. 2904. Powers.

"(a) Hearings. The Commission or, at its direction, any panel or member of the Commission, may, for the purpose of carrying out the provisions of this title, hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths to the extent that the Commission or any panel or member considers advisable.

"(b) Information. The Commission may secure directly from the Department of Defense and any other Federal department or agency information that the Commission considers necessary to enable the Commission to carry out its responsibilities under this title.

"Sec. 2905. Commission procedures.

"(a) Meetings. The Commission shall meet at the call of the chairman.

"(b) Quorum.

(1) Six of the members appointed under section 2901(b)(1) shall constitute a quorum other than for the purpose of holding hearings.

"(2) The Commission shall act by resolution agreed to by a majority of the members of the Commission.

"(c) Commission. The Commission may establish panels composed of less than full membership of the Commission for the purpose of carrying out the Commission's duties. The actions of each such panel shall be subject to the review and control of the Commission. Any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

"(d) Authority of individuals to act for Commission. Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take under this title.

"Sec. 2906. Personnel matters.

"(a) Pay of members. Members of the Commission appointed under section 2901(b)(1) shall serve without pay by reason of their work on the Commission.

"(b) Travel expenses. The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code [5 USCS § 5701 et seq.], while away from their homes or regular places of business in the performance of services for the Commission.

"(c) Staff.

(1) The chairman of the Commission may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, appoint a staff director and such additional personnel as may be necessary to enable the Commission to perform its duties. The appointment of a staff director shall be subject to the approval of the Commission.

"(2) The chairman of the Commission may fix the pay of the staff director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code [5 USCS §§ 5100 et seq., 5331 et seq.], relating to classification of positions and General Schedule pay rates, except that the rate of pay fixed under this paragraph for the staff director may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title and the rate of pay for other personnel may not exceed the maximum rate payable for grade GS-15 of the General Schedule.

"(d) Detail of Government employees. Upon request of the chairman of the Commission, the head of any Federal department or agency may detail, on a nonreimbursable basis, any personnel of that department or agency to the Commission to assist it in carrying out its duties.

"(e) Procurement of temporary and intermittent services. The chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not ex-

ceed the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

"Sec. 2907. Miscellaneous administrative provisions.

"(a) Postal and printing services. The Commission may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the United States.

"(b) Miscellaneous administrative and support services. The Secretary of Defense shall furnish the Commission, on a reimbursable basis, any administrative and support services requested by the Commission.

"Sec. 2908. Funding.

"(a) In general. Funds for activities of the Commission shall be provided from amounts appropriated for the Department of Defense for operation and maintenance for Defense-wide activities for fiscal year 2000.

"(b) Request. Upon receipt of a written certification from the chairman of the Commission specifying the funds required for the activities of the Commission, the Secretary of Defense shall promptly disburse to the Commission, from such amounts, the funds required by the Commission as stated in such certification.

"(c) Availability of certain funds. Of the funds available for activities of the Commission under this section, \$ 2,000,000 shall be available for the activities, if any, of the Commission under section 2902(c).

"Sec. 2909. Termination of commission.

"The Commission shall terminate 60 days after the date of the submission of its report under section 2903."

Commission on Review of Overseas Military Facility Structure of the United States. Act Nov. 22, 2003, P.L. 108-132, § 128, 117 Stat. 1382; Oct. 13, 2004, P.L. 108-324, Div A, § 127, 118 Stat. 1229, provides:

"(a) Commission on Review of Overseas Military Facility Structure of the United States.

(1) There is established the Commission on the Review of the Overseas Military Facility Structure of the United States (in this section referred to as the 'Commission').

"(2)

(A) The Commission shall be composed of eight members of whom--

"(i) two shall be appointed by the Majority Leader of the Senate;

"(ii) two shall be appointed by the Minority Leader of the Senate;

"(iii) two shall be appointed by the Speaker of the House of Representatives; and

"(iv) two shall be appointed by the Minority Leader of the House of Representatives.

"(B) Individuals appointed to the Commission shall have significant experience in the national security or foreign policy of the United States.

"(C) Appointments of the members of the Commission shall be made not later than 45 days after the date of the enactment of this Act.

"(3) Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

"(4) Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

"(5) The Commission shall meet at the call of the Chairman.

"(6) A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

"(7) The Commission shall select a Chairman and Vice Chairman from among its members.

"(b) Duties.

(1) The Commission shall conduct a thorough study of matters relating to the military facility structure of the United States overseas.

"(2) In conducting the study, the Commission shall--

"(A) assess the number of forces required to be forward based outside the United States;

"(B) examine the current state of the military facilities and training ranges of the United States overseas for all permanent stations and deployed locations, including the condition of land and improvements at such facilities and ranges and the availability of additional land, if required, for such facilities and ranges;

"(C) identify the amounts received by the United States, whether in direct payments, in-kind contributions, or otherwise, from foreign countries by reason of military facilities of the United States overseas;

"(D) assess whether or not the current military basing and training range structure of the United States overseas is adequate to meet the current and future mission of the Department of Defense, including contingency, mobilization, and future force requirements;

"(E) assess the feasibility and advisability of the closure or realignment of military facilities of the United States overseas, or of the establishment of new military facilities of the United States overseas; and

"(F) consider or assess any other issue relating to military facilities of the United States overseas that the Commission considers appropriate.

"(3)

(A) Not later than August 15, 2005, the Commission shall submit to the President and Congress a report which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

"(B) In addition to the matters specified in subparagraph (A), the report shall also include a proposal by the Commission for an overseas basing strategy for the Department of Defense in order to meet the current and future mission of the Department.

"(c) Powers.

(1) The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this section.

"(2) The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

"(3) Upon request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support necessary for the Commission to carry out its duties under this section.

"(4) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(5) The Commission may accept, use, and dispose of gifts or donations of services or property.

"(d) Personnel Matters.

(1) Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission under this section. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

"(2)

(A) Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code [5 USCS §§ 5701 et seq.], while away from their homes or regular places of business in the performance of services for the Commission under this section.

"(B) Members and staff of the Commission may receive transportation on military aircraft to and from the United States, and overseas, for purposes of the performance of the duties of the Commission to the extent that such transportation will not interfere with the requirements of military operations.

"(3)

(A) The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties under this section. The employment of an executive director shall be subject to confirmation by the Commission.

"(B) The Commission may employ a staff to assist the Commission in carrying out its duties. The total number of the staff of the Commission, including an executive director under subparagraph (A), may not exceed 12.

"(C) The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code [5 USCS §§ 5101 et seq. and 5331 et seq.], relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

"(4) Any employee of the Department of Defense, the Department of State, or the General Accounting Office [Government Accountability Office] may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

"(5) The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

"(e) Security.

(1) Members and staff of the Commission, and any experts and consultants to the Commission, shall possess security clearances appropriate for their duties with the Commission under this section.

"(2) The Secretary of Defense shall assume responsibility for the handling and disposition of any information relating to the national security of the United States that is received, considered, or used by the Commission under this section.

"(f) Termination. The Commission shall terminate 45 days after the date on which the Commission submits its report under subsection (b).

"(g) Funding.

(1) Of the amount appropriated by this Act, \$ 3,000,000 shall be available to the Commission to carry out this section.

"(2) The amount made available by paragraph (1) shall remain available, without fiscal year limitation, until September 2005."

Interagency policy coordination. Act Jan. 28, 2008, P.L. 110-181, Div A, Title IX, Subtitle F, § 952, 122 Stat. 291, provides:

"(a) Plan required. Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall develop and submit to Congress a plan to improve and reform the Department of Defense's participation in and contribution to the interagency coordination process on national security issues.

"(b) Elements. The elements of the plan shall include the following:

"(1) Assigning either the Under Secretary of Defense for Policy or another official to be the lead policy official for improving and reforming the interagency coordination process on national security issues for the Department of Defense, with an explanation of any decision to name an official other than the Under Secretary and the relative advantages and disadvantages of such decision.

"(2) Giving the official assigned under paragraph (1) the following responsibilities:

"(A) To be the lead person at the Department of Defense for the development of policy affecting the national security interagency process.

"(B) To serve, or designate a person to serve, as the representative of the Department of Defense in Federal Government forums established to address interagency policy, planning, or reforms.

"(C) To advocate, on behalf of the Secretary, for greater interagency coordination and contributions in the execution of the National Security Strategy and particularly specific operational objectives undertaken pursuant to that strategy.

"(D) To make recommendations to the Secretary of Defense on changes to existing Department of Defense regulations or laws to improve the interagency process.

"(E) To serve as the coordinator for all planning and training assistance that is--

"(i) designed to improve the interagency process or the capabilities of other agencies to work with the Department of Defense; and

"(ii) provided by the Department of Defense at the request of other agencies.

"(F) To serve as the lead official in Department of Defense for the development of deployable joint interagency task forces.

"(c) Factors to be considered. In drafting the plan, the Secretary of Defense shall also consider the following factors:

"(1) How the official assigned under subsection (b)(1) shall provide input to the Secretary of Defense on an ongoing basis on how to incorporate the need to coordinate with other agencies into the establishment and reform of combatant commands.

"(2) How such official shall develop and make recommendations to the Secretary of Defense on a regular or an ongoing basis on changes to military and civilian personnel to improve interagency coordination.

"(3) How such official shall work with the combatant command that has the mission for joint warfighting experimentation and other interested agencies to develop exercises to test and validate interagency planning and capabilities.

"(4) How such official shall lead, coordinate, or participate in after-action reviews of operations, tests, and exercises to capture lessons learned regarding the functioning of the interagency process and how those lessons learned will be disseminated.

"(5) The role of such official in ensuring that future defense planning guidance takes into account the capabilities and needs of other agencies.

"(d) Recommendation on changes in law. The Secretary of Defense may submit with the plan or with any future budget submissions recommendations for any changes to law that are required to enhance the ability of the official assigned under subsection (b)(1) in the Department of Defense to coordinate defense interagency efforts or to improve the ability of the Department of Defense to work with other agencies.

"(e) Annual report. If an official is named by the Secretary of Defense under subsection (b)(1), the official shall annually submit to Congress a report, beginning in the fiscal year following the naming of the official, on those actions taken by the Department of Defense to enhance national security interagency coordination, the views of the Department of Defense on efforts and challenges in improving the ability of agencies to work together, and suggestions on changes needed to laws or regulations that would enhance the coordination of efforts of agencies.

"(f) Definition. In this section, the term 'interagency coordination', within the context of Department of Defense involvement, means the coordination that occurs between elements of the Department of Defense and engaged Federal Government agencies for the purpose of achieving an objective.

"(g) Construction. Nothing in this provision shall be construed as preventing the Secretary of Defense from naming an official with the responsibilities listed in subsection (b) before the submission of the report required under this section."

Military activities in cyberspace. Act Dec. 31, 2011, P.L. 112-81, Div A, Title IX, Subtitle F, § 954, 125 Stat. 1551, provides:

"Congress affirms that the Department of Defense has the capability, and upon direction by the President may conduct offensive operations in cyberspace to defend our Nation, Allies and interests, subject to--

"(1) the policy principles and legal regimes that the Department follows for kinetic capabilities, including the law of armed conflict; and

"(2) the War Powers Resolution (50 U.S.C. 1541 et seq.)."

NOTES:

Related Statutes & Rules:

This section is referred to in 10 USCS § 2304.

Research Guide:

Am Jur:

53 Am Jur 2d, Military and Civil Defense § 4.

Interpretive Notes and Decisions:

Arrestees' Bivens claims failed on summary judgment because Army investigators had qualified immunity based on their observation of arrestees removing government goods in plain view from warehouse to private residence, investigators' conduct was objective and reasonable, and 18 USCS § 1385 was inapplicable in that investigators had arrest powers under P.R. Laws Ann. tit. 34, app. II, R. 11, and 10 USCS § 111(b)(6). *Aviles v Dep't of Army* (2009, DC Puerto Rico) 666 F Supp 2d 224.

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Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less**§ 752.401 Coverage.**

(a) *Adverse actions covered.* This subpart applies to the following actions:

- (1) Removals;
- (2) Suspensions for more than 14 days, including indefinite suspensions;
- (3) Reductions in grade;
- (4) Reductions in pay; and
- (5) Furloughs of 30 days or less.

(b) *Actions excluded.* This subpart does not apply to:

(1) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1215;

(2) The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is to the grade held immediately before becoming a supervisor or manager;

(3) A reduction-in-force action under 5 U.S.C. 3502;

(4) A reduction in grade or removal under 5 U.S.C. 4303;

(5) An action against an administrative law judge under 5 U.S.C. 7521;

(6) A suspension or removal under 5 U.S.C. 7532;

(7) Actions taken under any other provision of law which excepts the action from subchapter II of chapter 75 of title 5, United States Code;

(8) Action that entitles an employee to grade retention under part 536 of this chapter, and an action to terminate this entitlement;

(9) A voluntary action by the employee;

(10) Action taken or directed by the Office of Personnel Management under part 731 of this chapter;

(11) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(12) Action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the agency informed the employee that it was to be of limited duration;

(13) Cancellation of a promotion to a position not classified prior to the promotion;

(14) Placement of an employee serving on an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment; or

(15) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation, including a reduction necessary to comply with the amendments made by Public Law 108–411, regarding pay-setting under the General Schedule and Federal Wage System and regulations implementing those amendments.

(c) *Employees covered.* This subpart covers:

(1) A career or career conditional employee in the competitive service who is not serving a probationary or trial period;

(2) An employee in the competitive service who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who is a preference eligible in an Executive agency as defined at section 105 of title 5, United States Code, the U.S. Postal Service, or the Postal Regulatory Commission and who has completed 1 year of current continuous service in the same or similar positions;

(4) A Postal Service employee covered by Public Law 100–90 who has completed 1 year of current continuous service in the same or similar positions and who is either a supervisory or management employee or an employee engaged in personnel work in other than a purely nonconfidential clerical capacity;

(5) An employee in the excepted service who is a nonpreference eligible in an Executive agency as defined at section 105 of title 5, United States Code, and who has completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less;

(6) An employee with competitive status who occupies a position in Schedule B of part 213 of this chapter;

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(7) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and who still occupies that position;

(8) An employee of the Department of Veterans Affairs appointed under section 7401(3) of title 38, United States Code; and

(9) An employee of the Government Printing Office.

(d) *Employees excluded.* This subpart does not apply to:

(1) An employee whose appointment is made by and with the advice and consent of the Senate;

(2) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by the President for a position that the President has excepted from the competitive service; the Office of Personnel Management for a position that the Office has excepted from the competitive service (Schedule C); or the President or the head of an agency for a position excepted from the competitive service by statute;

(3) A Presidential appointee;

(4) A reemployed annuitant;

(5) A technician in the National Guard described in section 8337(h)(1) of title 5, United States Code, who is employed under section 709(a) of title 32, United States Code;

(6) A Foreign Service member as described in section 103 of the Foreign Service Act of 1980;

(7) An employee of the Central Intelligence Agency or the Government Accountability Office;

(8) An employee of the Veterans Health Administration (Department of Veterans Affairs) in a position which has been excluded from the competitive service by or under a provision of title 38, United States Code, unless the employee was appointed to the position under section 7401(3) of title 38, United States Code;

(9) A nonpreference eligible employee with the U.S. Postal Service, the Postal Regulatory Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or any other intelligence compo-

ment of the Department of Defense (as defined in section 1614 of title 10, United States Code), or an intelligence activity of a military department covered under subchapter I of chapter 83 of title 10, United States Code;

(10) An employee described in section 5102(c)(11) of title 5, United States Code, who is an alien or noncitizen occupying a position outside the United States;

(11) A nonpreference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service, unless he or she meets the requirements of paragraph (c)(5) of this section;

(12) An employee whose agency or position has been excluded from the appointing provisions of title 5, United States Code, by separate statutory authority in the absence of any provision to place the employee within the coverage of chapter 75 of title 5, United States Code; and

(13) An employee in the competitive service serving a probationary or trial period, unless he or she meets the requirements of paragraph (c)(2) of this section.

§ 752.402 Definitions.

In this subpart—

Current continuous employment means a period of employment or service immediately preceding an adverse action without a break in Federal civilian employment of a workday.

Day means a calendar day.

Furlough means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

Grade means a level of classification under a position classification system.

Indefinite suspension means the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

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Pay means the rate of basic pay fixed by law or administrative action for the position held by the employee, that is, the rate of pay before any deductions and exclusive of additional pay of any kind.

Similar positions means positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

Suspension means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for more than 14 days.

§ 752.403 Standard for action.

(a) An agency may take an adverse action, including a performance-based adverse action or an indefinite suspension, under this subpart only for such cause as will promote the efficiency of the service.

(b) An agency may not take an adverse action against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.404 Procedures.

(a) *Statutory entitlements.* An employee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7513(b).

(b) *Notice of proposed action.* (1) An employee against whom an action is proposed is entitled to at least 30 days' advance written notice unless there is an exception pursuant to paragraph (d) of this section. The notice must state the specific reason(s) for the proposed action, and inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice.

(2) When some but not all employees in a given competitive level are being furloughed, the notice of proposed action must state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

(3) Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed will remain in a duty status in his or her regular position during the advance notice period. In

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those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:

(i) Assigning the employee to duties where he or she is no longer a threat to safety, the agency mission, or to Government property;

(ii) Allowing the employee to take leave, or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented himself or herself from the worksite without requesting leave;

(iii) Curtailing the notice period when the agency can invoke the provisions of paragraph (d)(1) of this section; or

(iv) Placing the employee in a paid, nonduty status for such time as is necessary to effect the action.

(c) *Employee's answer.* (1) An employee may answer orally and in writing except as provided in paragraph (c)(2) of this section. The agency must give the employee a reasonable amount of official time to review the material relied on to support its proposed action, to prepare an answer orally and in writing, and to secure affidavits, if the employee is in an active duty status. The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer, within such time as would be reasonable, but not less than 7 days.

(2) The agency will designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides for such hearing in its regulations. Under 5 U.S.C. 7513(c), the agency may, in its regulations, provide a hearing in place of or in addition to the opportunity for written and oral answer.

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(3) If the employee wishes the agency to consider any medical condition which may contribute to a conduct, performance, or leave problem, the employee must be given a reasonable time to furnish medical documentation (as defined in §339.104 of this chapter) of the condition. Whenever possible, the employee will supply such documentation within the time limits allowed for an answer.

(d) *Exceptions.* (1) Section 7513(b) of title 5, U.S. Code, authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension, including indefinite suspension. This notice exception is commonly referred to as the "crime provision." This provision may be invoked even in the absence of judicial action.

(2) The advance written notice and opportunity to answer are not required for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

(e) *Representation.* Section 7513(b)(3) of title 5, U.S. Code, provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(f) *Agency review of medical information.* When medical information is supplied by the employee pursuant to paragraph (c)(3) of this section, the agency may, if authorized, require a medical examination under the criteria of §339.301 of this chapter, or otherwise, at its option, offer a medical examination in accordance with the criteria of §339.302 of this chapter. If the employee has the requisite years of service under the Civil Service Retirement System or the Federal Employees' Retirement System, the agency must provide infor-

mation concerning disability retirement. The agency must be aware of the affirmative obligations of the provisions of 29 CFR 1614.203, which require reasonable accommodation of a qualified individual with a disability.

(g) *Agency decision.* (1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the employee or his or her representative, or both, made to a designated official and any medical documentation reviewed under paragraph (f) of this section.

(2) The notice must specify in writing the reasons for the decision and advise the employee of any appeal or grievance rights under §752.405 of this part. The agency must deliver the notice of decision to the employee on or before the effective date of the action.

(h) *Applications for disability retirement.* Section 831.1204(e) of this chapter provides that an employee's application for disability retirement need not delay any other appropriate personnel action. Section 831.1205 and §844.202 of this chapter set forth the basis under which an agency must file an application for disability retirement on behalf of an employee.

§ 752.405 Appeal and grievance rights.

(a) *Appeal rights.* Under the provisions of 5 U.S.C. 7513(d), an employee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) *Grievance rights.* As provided at 5 U.S.C. 7121(e)(1), if a matter covered by this subpart falls within the coverage of an applicable negotiated grievance procedure, an employee may elect to file a grievance under that procedure or appeal to the Merit Systems Protection Board under 5 U.S.C. 7701, but not both. Sections 7114(a)(5) and 7121(b)(1)(C) of title 5, U.S. Code, and the terms of an applicable collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a matter under this subpart through the negotiated grievance procedure.

§ 752.406 Agency records.

The agency must maintain copies of, and will furnish to the Merit Systems

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Protection Board and to the employee upon his or her request, the following documents:

- (a) Notice of the proposed action;
- (b) Employee's written reply, if any;
- (c) Summary of the employee's oral reply, if any;
- (d) Notice of decision; and
- (e) Any order effecting the action, together with any supporting material.

Subpart E [Reserved]

Subpart F—Regulatory Requirements for Taking Adverse Action Under the Senior Executive Service

§ 752.601 Coverage.

(a) *Adverse actions covered.* This subpart applies to suspensions for more than 14 days and removals from the civil service as set forth in 5 U.S.C. 7542.

(b) *Actions excluded.* (1) An agency may not take a suspension action of 14 days or less.

(2) This subpart does not apply to actions taken under 5 U.S.C. 1215, 3592, 3595, or 7532.

(c) *Employees covered.* This subpart covers the following appointees:

- (1) A career appointee—
 - (i) Who has completed the probationary period in the Senior Executive Service;
 - (ii) Who is not required to serve a probationary period in the Senior Executive Service; or
 - (iii) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.

(2) A limited term or limited emergency appointee—

(i) Who received the limited appointment without a break in service in the same agency as the one in which the employee held a career or career-conditional appointment (or an appointment of equivalent tenure as determined by the Office of Personnel Management) in a permanent civil service position outside the Senior Executive Service; and

(ii) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.

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(d) *Employees excluded.* This subpart does not cover an appointee who is serving as a reemployed annuitant.

§ 752.602 Definitions.

In this subpart—

Career appointee, limited term appointee, and limited emergency appointee have the meaning given in 5 U.S.C. 3132(a).

Day means calendar day.

Suspension has the meaning given in 5 U.S.C. 7501(2).

§ 752.603 Standard for action.

(a) An agency may take an adverse action under this subpart only for reasons of misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(b) An agency may not take an adverse action under this subpart on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.604 Procedures.

(a) *Statutory entitlements.* An appointee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7543(b).

(b) *Notice of proposed action.* (1) An appointee against whom an action is proposed is entitled to at least 30 days' advance written notice unless there is an exception pursuant to paragraph (d) of this section. The notice must state the specific reason(s) for the proposed action, and inform the appointee of his or her right to review the material that is relied on to support the reasons for action given in the notice.

(2) Under ordinary circumstances, an appointee whose removal has been proposed will remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where the agency determines that the appointee's continued presence in the work place during the notice period may pose a threat to the appointee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:

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in application of paragraph (d)(1) of this section.

(4) When an employee's saved rate becomes equal to or lower than the maximum payable rate of basic pay for the grade or level of the employee's position, the employee is entitled to the maximum payable rate, and saved pay under this section ceases to apply.

(e) When an employee receiving a saved rate established under this section is covered by a pay system that provides different basic pay schedules based on geographic location (such as the General Schedule pay system), the saved rate must be adjusted in conjunction with a change in the employee's official worksite consistent with the geographic conversion rule for retained rates under 5 CFR 536.303(b).

(f) A saved rate established under this section must be terminated if—

(1) The employee has a break in service of 1 workday or more;

(2) The employee is demoted based on unacceptable performance or conduct or at the employee's request; or

(3) The employee becomes entitled to a rate of basic pay that is equal to or higher than the saved rate.

(g) If an employee is receiving a saved rate established under this section on May 1, 2005 (when section 301 of Pub. L. 108-411 took effect), any locality payment under 5 U.S.C. 5304 formerly paid in addition to the employee's saved rate no longer applies as of that date. Any locality-adjusted saved rate in effect and payable on April 30, 2005, must be converted to an equal saved rate effective on May 1, 2005. If the employee received no locality payment because of a pay limitation, no conversion under this paragraph is required.

[70 FR 31286, May 31, 2005, as amended at 73 FR 66151, Nov. 7, 2008]

Subpart H—Furloughs in the Senior Executive Service

AUTHORITY: 5 U.S.C. 3133 and 3136.

SOURCE: 48 FR 11925, Mar. 2, 1983, unless otherwise noted.

§ 359.801 Agency authority.

This subpart sets the conditions under which an agency may furlough

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career appointees in the Senior Executive Service. The furlough of a non-career, limited term, or limited emergency appointee is not subject to this subpart. The furlough of a reemployed annuitant holding a career appointment also is not subject to the subpart.

§ 359.802 Definitions.

For the purpose of this subpart, *furlough* means the placing of an appointee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

§ 359.803 Competition.

Any furlough for more than 30 calendar days, or for more than 22 workdays if the furlough does not cover consecutive calendar days, shall be made under competitive procedures established by the agency. The procedures shall be made known to the SES members in the agency.

[48 FR 11925, Mar. 2, 1983, as amended at 60 FR 6389, Feb. 2, 1995]

§ 359.804 Length of furlough.

A furlough may not extend more than one year. It may be made only when the agency intends to recall the appointee within one year.

§ 359.805 Appeals.

A career appointee who has been furloughed and who believes this subpart or the agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations.

§ 359.806 Notice.

(a) An appointee is entitled to a 30 days' advance written notice of a furlough. The full notice period may be shortened, or waived, only in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities.

(b) The written notice shall advise the appointee of:

(1) The reason for the agency decision to take the furlough action.

(2) The expected duration of the furlough and the effective dates;

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(3) The basis for selecting the appointee for furlough when some but not all Senior Executive Service appointees in a given organizational unit are being furloughed;

(4) The reason if the notice period is less than 30 days;

(5) The place where the appointee may inspect the regulations and records pertinent to the action; and

(6) The appointee's appeal rights, including the time limit for the appeal and the location of the Merit Systems Protection Board office to which the appeal should be sent.

§ 359.807 Records.

The agency shall preserve all records relating to an action under this subpart for at least one year from the effective date of the action.

Subpart I—Removal of Noncareer and Limited Appointees and Reemployed Annuitants**§ 359.901 Coverage.**

(a) This subpart covers the removal from the SES of—

- (1) A noncareer appointee;
- (2) A limited emergency or a limited term appointee; and
- (3) A reemployed annuitant holding any type of appointment under the SES.

(b) Coverage does not include, however, a limited emergency or a limited term appointee who is being removed for disciplinary reasons and who is covered by 5 CFR 752.601(c)(2).

§ 359.902 Conditions of removal.

(a) *Authority.* The agency may remove an appointee subject to this subpart at any time.

(b) *Notice.* The agency shall notify the appointee in writing before the effective date of the removal.

(c) *Placement rights.* An appointee covered by this subpart is not entitled to the placement rights provided for career appointees under subpart G of this part.

(d) *Appeals.* Actions taken under this subpart are not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

PART 362—PRESIDENTIAL MANAGEMENT FELLOWS PROGRAM**Subpart A—Definitions**

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- 362.201 Agency programs.
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362.210 Transition.

AUTHORITY: E.O. 13318 of Nov. 21, 2003, 3 CFR, 2003 Comp., p. 265.

SOURCE: 70 FR 28780, May 19, 2005, unless otherwise noted.

Subpart A—Definitions**§ 362.101 Definitions.**

For purposes of this part,
An *agency* means a component within the Executive Office of the President, or an Executive department, Government corporation, or independent establishment as defined in 5 U.S.C. 101, 103, and 104, respectively.

An *Executive Resources Board (ERB)* has the same meaning as specified in § 317.501(a) of this chapter; in those agencies that are not required to have an ERB pursuant to that section, it means the senior agency official or officials who have been given executive resource management and oversight responsibility by the agency head.

A *Presidential Management Fellow* or *Fellow* is an individual appointed, at the GS-9, GS-11, or GS-12 level (or equivalent), in the excepted service under § 213.3102(1) of this chapter, or under an agency-specific authority if the agency is excepted from the competitive service. The individual must have completed a graduate course of study at a qualifying college or university, received the nomination of the dean or academic director, successfully