



LEGISLATIVE  
AFFAIRS

THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, DC 20301-1300

SEP 04 2009

The Honorable Ike Skelton  
Chairman  
Committee on Armed Services  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

The first package of Department of Defense appeals for the Fiscal Year 2010 Defense Authorization Bill includes the top priority issues of the Department for your consideration. Additional appeals will be forwarded as soon as they are completed.

Thank you for your strong and continued support of the Department.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth L. King".

Elizabeth L. King  
Assistant Secretary of Defense  
(Legislative Affairs)

Attachment:  
As stated

cc: The Honorable Howard P. "Buck" McKeon  
Ranking Member

**FY 2010**

**Department of Defense**

**Priority Appeals**

**Defense Authorization Bill**

**Conference**



**Package 1**

**September 4, 2009**

**Office of the Assistant Secretary of Defense**  
**for Legislative Affairs**

**FY10 NDAA Priority Appeals -- Package 1**

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**FY10 NDAA Priority Appeals -- Package 1**

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46	Establishment of DoD School of Nursing	H.R. 2647, sec. 933	
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51	Temporary Authority for Monthly Special Pay for Members of the Armed Forces Subject to Continuing Active Duty or Service under Stop Loss Authorities		S. 1390, sec. 618
52	Compliance with Naval Aviation Safety Requirements Futenma Replacement Facility	H.R. 2647, sec. 2836	
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**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Future Naval Surface Combatants

**Appeal Citation:** S. 1390, sec. 113; S.Rpt. 111-35, p. 13

**Language/Provision:** Senate Section 113 prevents the Navy from obligating any funds for building surface combatants after 2011 until the Navy conducts particular analyses, and completes certain tasks that should be required at the beginning of major defense acquisition programs (MDAP). The House contains no similar provision.

**DoD Position/Impact:** The Department opposes the Senate provision because there is an established process for approval of major acquisitions which the Department will continue to follow. Certain sections of these new requirements are unnecessary and inappropriately onerous to the acquisition process. The Department opposes these provisions and requests that they be removed in favor of the current existing process within the Department for major acquisition programs. If the language must remain, the Department recommends that the following provisions be redacted as stated:

First, the Department recommends combining of paragraphs (a) (2), (a) (4), and (a) (6) to “The Joint Requirements Oversight Council shall review and validate any changes to requirements for surface combatants after fiscal year 2011 including underlying assumptions regarding the threat.”

Second, paragraph (b) needs to be clarified to be consistent with the Navy’s documented Open Architecture Plan for Surface Combatants. The Navy is fully committed to transitioning surface combat systems to an open architecture that adheres to a government-controlled objective architecture. The complexity of this endeavor cannot be overstated. However, by rigorously adhering to an open acquisition model and total systems engineering approach, the Navy will increase commonality, innovation, competition and capability fielding across the Surface Fleet. The Navy is moving towards competition for select pieces of the combat system and in some cases, competition will be limited vice full and open. Suggest that paragraph (b) be clarified to read: “...Not later than the date upon which the President submits to Congress the budget for fiscal year 2012 (as so submitted), the Secretary of the Navy shall submit to the congressional defense committees a report on the progress of the Navy’s efforts to attain open architecture for surface combatants that will include the plan for full and open competition on combat systems development efforts until the open architecture business model is fully implemented....”

Third, paragraph (d) as written does not consider the fiscal and schedule implications to in-service and new construction platforms. Recommend paragraph (d) be rewritten to say, “(d) Potential Technology Applications for Future Surface Combatants and Fleet Modernization – (1) IN GENERAL - Not later than 120 days after the date of the enactment of this Act, the Secretary of the Navy shall report the Navy’s plan to leverage technologies developed for DDG 1000, DDG 51, and CG 47 classes on forward and back fit surface combatants as well as other Navy vessels. The report should consider requirements, cost, and schedule implications.”

The Department urges removal of these additional constraints. If not, the Department requests consideration of the above clarifications so that Section 113 is in-line with existing processes for major acquisition programs.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Restriction on Obligation of Funds Pending Receipt of Selected Acquisition Reports (SARs) for Seven Army Programs

**Appeal Citation:** H.R. 2647, sec. 215

**Language/Provision:** Section 215 of H.R. 2647 limits seven Army programs to 50 percent (Future Combat Systems, Warfighter Information Network – Tactical, Stryker, Joint Air-to-Ground Missile, Bradley Base Sustain, Abrams Tank Improvement, and Javelin) of their total obligational authority for FY 2010 Research, Development, Test, and Evaluation (RDT&E) until they submit FY 2009 SARs as required by section 2432 of title 10, USC.

**DoD Position/Impact:** With the changeover in the Administration, the FY 2010 President's Budget did not contain updated outyear funding information upon which to prepare annual SARs for FY 2009. Including the yet to be defined outyears is critical to developing the SARs. The Department plans to submit annual SARs for all reporting programs in conjunction with the FY 2011 President's Budget (as of December 2009).

For the FCS program, the Department has cancelled the FCS acquisition and is transitioning to a modernization plan that will consist of a number of separate, but integrated acquisition programs. These programs do not have baselines in place to develop SARs against in the timeframe specified in the language. An FY 2009 FCS SAR would be a final SAR reflecting the program cancellation. Imposing a 50% limitation on RDT&E funding obligation authority would restrict the Army from fully funding efforts to quickly get needed technologies to the Soldier.

For the Stryker program, this provision would restrict the Army from funding modernization efforts that include system performance specifications, conducting trade studies, developing concept designs, undergo modeling and simulation and conduct technical demonstrations. The overall impact would be to delay the acquisition timeline to achieve Milestone B, (currently projected for 4QFY2011) and ultimately Milestone C (currently projected for 4QFY2015) at a time when the Army has determined that the Stryker Family of Vehicles will remain in the Army force structure for the foreseeable future and concurs that modernization is required to mitigate current size, weight and power issues. Additionally, this restriction would also delay corrections to the Stryker Mobile Gun System (MGS). Both impacts described above ultimately impact and delay providing the Soldier with the best possible product.

For the WIN-T program, this puts considerable risk in the ability to execute the required Increment 3 development. The WIN-T Increment 3 effort supports the radio and antenna technology needed to support the network's air tier networking capability. This air tier component reduces reliance on costly and limited Satellite resources while effectively increasing throughput and speed and significantly reducing network vulnerabilities. This decrement further would cause risk to Increment 2 meeting its test dates in Fiscal Year 11 based on the development efforts within the scope of the Increment 3 effort that support WIN-T Increment 2. Furthermore, OSD has recently verified that there would be no December SAR submissions in FY09. Based on the Increment 3 Acquisition Decision Memorandum of 18 May 09 and the schedule for annual SARs, the first submission of an Increment 3 SAR would occur in April 2010. A delay of 50 percent of funds until March 2010 would significantly impact the ability to maintain development efforts in support of both Increment 2 and 3, as described above.

It should be noted that the Javelin program is more than 90% complete and submitted a final SAR in accordance 10 USC §2432 as of the December 2007 reporting period, while the Joint Air to Ground Missile, Abrams Tank Improvement, and Bradley Base Sustain programs have not been initiated. Initial SARs for these programs are planned for submission after Milestone B approval in FY 2011, FY 2013, and FY 2013, respectively. It is premature to submit SARs for these programs at this time.

The Department opposes the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Limitation on Availability of Funds for Acquisition or Deployment of Missile Defenses in Europe

**Appeal Citation:** H.R. 2647, sec. 223

**Language/Provision:** House sec. 223 would continue prohibitions previously enacted in FY08 and FY09 on the obligation or expenditure of funds for acquisition or deployment of a long-range missile defense system to Europe until specified conditions are met. RDT&E activities, site surveys, and planning and design for construction are among the activities permitted prior to the conditions specified in FY08 and FY09 being met.

Sec. 223 would, however, go beyond the FY08 and FY09 restrictions in one significant respect. Where the FY08 and FY09 restrictions prohibited the obligation or expenditure of funds for the acquisition (other than long lead procurement) or deployment of the operational missiles for Europe until SECDEF, after receiving the views of DOT&E, submits a certification that the proposed interceptor to be deployed has demonstrated, through successful, operationally realistic flight testing, a high probability of working in an operationally effective manner, sec. 223 would now require the same certification be made with respect to the radars to be deployed.

The Senate included no similar provision.

**DoD Position/Impact:** The insertion of radars in the sec. 223 requirement for demonstration through operationally realistic flight testing would add an unnecessary statutory impediment to deployment of one of the more mature technologies in the Ballistic Missile Defense System.

In addition, insertion of radars in the sec. 223 requirement for demonstration through operationally realistic flight testing would result in substantial delays if the provision were interpreted to require demonstration of radar performance through flight testing in the European locations to which they are proposed to be deployed.

The House provision would, if enacted, jeopardize the ability of the United States to timely deploy a defensive capability to protect Europe and the United States.

The Department urges that the House provision (sec. 223) not be enacted.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Procurement of Future Combat Systems Spin Out Early Infantry Brigade Combat Team Equipment

**Appeal Citation:** H.R. 2647, sec. 112

**Language/Provision:** House section 112 would require the Department of Defense to limit its procurement of one brigade set of Future Combat Systems Spin Out Early Infantry Brigade Combat Team equipment in order to allow for adequate testing prior to full-rate production. There is an exception for meeting operational need statements.

**DoD Position/Impact:** The Department opposes House Section 112. The limitation of Low Rate Initial Production (LRIP) adversely impacts the production base and would increase the unit cost of the FCS Spin Out and create a break in production affecting the ability to field this needed technology to deploying Infantry Brigade Combat Teams (IBCTs). The Army request for an LRIP of three Brigade Sets of Early IBCT Spin Out capability is supportable under USC Title 10 Subtitle A Part IV Chapter 141 section 2400, which allows for quantities exceeding ten percent to establish an initial production base for the system being procured; and to permit an orderly increase in the production rate for the system sufficient to lead to full-rate production upon the successful completion of operational testing. The break in production that this language would create does not allow for an orderly increase nor allow for the establishment of the initial production base. The break in production would also increase the overall cost to the taxpayer by not actually ramping up production of the Early IBCT Spin Out until after LRIP.

The Department urges exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Restriction on Obligation of Funds for Future Combat Systems Program Pending Receipt of Report

**Appeal Citation:** H.R. 2647, sec. 216

**Language/Provision:** House section 216 would restrict the obligation of 75 percent of fiscal year 2010 Future Combat Systems research and development funds pending receipt of the milestone review report required by section 214(c) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364). Current law only restricts procurement funding.

**DoD Position/Impact:** The Department opposes House Section 216. The language restricts the obligation of 75% of the FCS RDTE funding pending the receipt of a milestone review report called out in the 2007 National Defense Authorization Act (NDAA). The Defense Acquisition Board (DAB) called out in the 2007 NDAA was to decide whether the Future Combat System program was to continue. This event was scheduled for August 2009 and was considered a Go/No Go decision point for the program in 2006 when this legislation was enacted. The decision to continue the FCS Core program was made by the Secretary of Defense on 6 April 2009 and codified in the Office of the Secretary of Defense (OSD) Acquisition Decision Memorandum (ADM) dated 23 June 2009. These actions by OSD prior to August 2009 led to the cancellation of this DAB. The language in house Section 216 would withhold 75% of RDTE funding for the FCS Spin Out program based on an event that has been canceled and is not needed. If this language is retained, it will increase the overall cost of the FCS Spin Out by unnecessarily delaying the program. This would leave the Army unable to execute the President's guidance to conduct the needed development to field these capabilities to our soldiers.

The Department urges exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Integrated Air and Missile Defense System Project

**Appeal Citation:** H.R. 2647, sec. 221

**Language/Provision:** The House provision would limit the obligation of funding for the Integrated Air and Missile Defense (IAMD) System project until the Secretary of Defense certifies to the congressional defense committees that he has executed a review of the IAMD project and determined the project is an affordable, executable project; determined that the project meets a current required capability; and concluded that no other project could be executed, at less cost, that would be capable of fulfilling the required capability.

**DoD Position/Impact:** The Department opposes the House provision that would result in a schedule slip to the existing program. The Defense Acquisition Executive plans to conduct an IAMD Milestone B and certify the program not later than September 2009. These actions should satisfy the House concerns.

The Department urges exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Clarification of Land Acquisition Authority

**Appeal Citation:** H.R. 2647, sec. 2813

**Language/Provision:** House section 2813 would clarify the authority of Military Departments to acquire low-cost interests in land and interests in land when the need is urgent.

The Senate bill contains no similar provision.

**DoD Position/Impact:** The Department opposes section 2813 because it does not appear necessary. Current law (10 USC 2664(a)) states, “No Military Department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law.” 10 USC 2663(c)-(d) already expressly authorizes the Secretary of a Military Department to acquire low cost (not more than \$750,000) real property interests, and it also expressly authorizes the Secretary of a Military Department to acquire real property interests when the need is urgent. Accordingly, the Department believes that the authority of Military Departments to acquire low-cost interests in land and interests in land when the need is urgent is already clear. This section would create unnecessary ambiguity about prior authority of the Military Departments to acquire such real property interests before its enactment.

The Department urges exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Decontamination and Use of Former Bombardment Area on Island of Culebra

**Appeal Citation:** H.R. 2647, sec. 2815

**Language/Provision:** House Section 2815 repeals section 204(c) of the Military Construction Authorization Act, 1974, Pub. L. 93-166: "*Section 204 of the Military Construction Authorization Act, 1974 (Public Law 93-166; 87 Stat. 668) is amended by striking subsection (c)*".

The Senate bill does not include a similar provision.

**DoD Position/Impact:** Section 2815 of HR 2647 repeals section 204(c) of the Military Construction Authorization Act, 1974, Pub. L. 93-166. The Department opposes section 2815 because repeal of section 204(c) would set a negative precedent for dealing with past and future land conveyances, negating the value of land use controls arrived at as part of a reuse of property. Repeal of section 204(c) would also allow commercial development of critical habitats currently required to be maintained as parkland, altering the agreement reached between the United States and the Commonwealth of Puerto Rico when this transfer took place.

Section 204(c) of Pub. L. 93-166 was part of the authorization to relocate various military training facilities, including live-fire ranges, from the island of Culebra to the island of Vieques. As part of that authorization, section 204(c) provides "the present bombardment area on the island of Culebra shall not be utilized for any purpose that would require decontamination at the expense of the United States. Any lands sold, transferred, or otherwise disposed of by the United States as a result of the relocation of the operations referred to in subsection (a) may be sold, transferred, or otherwise disposed of only for public park or public recreational purposes."

The deed, granted by the Department of the Interior on behalf of the United States, that eventually conveyed the bombardment area to the Commonwealth of Puerto Rico for use as parkland included these conditions. The language of the deed can be interpreted as relying upon the statute, such that if the statute is repealed, the deed conditions would be cancelled.

The bombardment area is currently maintained in a natural state in accordance with agreements between the Department of the Interior and the Commonwealth. The former bombardment area became part of the Culebra National Wildlife Refuge in 1975, and provides critical habitat to several threatened and endangered species.

The language of section 204(c) ensures that the land is only used for parkland. Repeal of section 204(c) would require destruction of the parkland and critical habitat through the removal of ordnance.

The sheer volume of ordnance and scale of the area involved in Naval training activities up until 1970, as well as obstacles posed by heavy vegetation, however, would limit the Department's ability to locate all the ordnance and render the property safe for reuse for other than parkland. Repeal of this law would allow the Commonwealth to sell the land for non-park purposes, such as commercial development. With the repeal, the Department would be required to divert hundreds of millions of dollars from other Formerly Used Defense Sites projects funded through the Defense Environmental Restoration Account to remove the munitions.

The Department urges exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Base Realignment and Closure (BRAC 2005)

**Appeal Citation:** H.R. 2647, sec. 2722; S. 1390, sec. 2707

**Language/Provision:** Section 2722 of the House version of the bill authorizes the Department to build a new reserve center and associated facilities adjacent to or in the vicinity of Pease Air National Guard Base. The Senate Bill contains a similar provision, Section 2707, which appears to attempt to authorize the Department to spend BRAC funds to construct a reserve center in the vicinity of Pease Air National Guard Base, outside of the BRAC process, although the language is unclear in some respects.

**DoD Position/Impact:** The Administration objects to Section 2722, a provision that authorizes the Department of Defense to act contrary to the BRAC 2005 recommendation to close Paul Doble Army Reserve Center in Portsmouth, New Hampshire. The BRAC 2005 recommendation closes the Paul Doble Army Reserve Center and relocates units to a new Armed Forces Reserve Center (AFRC) "adjacent to Pease Air National Guard Base, NH if the Army is able to acquire suitable land for the construction of the facilities." Section 2722 authorizes the Department to locate a new Reserve Center "in the vicinity of", rather than adjacent to Pease Air National Guard Base. The Administration opposes any legislative effort to alter the BRAC recommendations that resulted from the carefully crafted congressional authorized BRAC process. If the Department is unable to acquire suitable land for the construction of the new AFRC adjacent to Pease Air National Guard Base, the terms of the recommendation would operate to terminate the requirement to close Paul Doble Army Reserve Center. If the Department were to determine it still advantageous to proceed with construction of a new AFRC, the appropriate approach would be to pursue a new AFRC "in the vicinity" through the normal MILCON process. Section 2707 of the Senate Bill would appear to be an attempt to authorize construction and funding for the reserve center once the Department determined that the terms of the recommendation had operated to terminate the requirements of the recommendation. In this respect the Department prefers the Senate provision, however believes to be effective it needs to be modified to read as follows:

“The Secretary of the Army may use funds appropriated pursuant to the authorization of appropriations in section 2703 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4715) for the purpose of constructing an Armed Forces Reserve Center in the vicinity of Pease Air National Guard Base at a location determined by the Secretary to be in the best interest of national security and in the public interest.”

The Department urges exclusion of the House provision (Section 2722) and adoption of the Senate provision, as modified above.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Military Construction for Guam

**Appeal Citation:** H.Rpt. 111-166, p. 507; S. 1390, sec. 4501

**Appropriations:** Military Construction, Navy and Marine Corps

**Summary:** The Senate reduces Navy Military Construction implementation funding by \$211.0 million for construction on Guam. The House reduces the Navy Military Construction implementation funding by \$40.0 million for construction on Guam.

<u>Item</u>	<u>Budget Authority</u> (Dollars in Millions)			
	<u>Budget</u>	<u>House</u>	<u>Senate</u>	<u>Appeal</u>
Navy MILCON	378.0	338.0	167.0	378.0

**DoD Position/Impact:** The Department opposes the \$211.0 million reduction for Navy construction on Guam. Realignment of portions of the Okinawa-based U.S. Marine Corps forward presence to Guam is a key element of the transformation of the U.S.-Japan Alliance and an enduring US presence in the western Pacific. The Realignment also integrates Guam into the U.S. basing strategy, taking advantage of Guam's unique strategic location. The Government of Japan has demonstrated its commitment to the Realignment Roadmap and Guam International Agreement by appropriating \$336.0 million to transfer to the United States to help fund Guam development in Japan's current fiscal year. The failure of the United States Congress to authorize and appropriate a comparable amount for FY 2010 will place the Japanese \$6.0 billion financial commitment to Guam at high risk. Furthermore, delays resulting from deferral of funding requirements into future years or reductions to the program, will only serve to increase the total cost of the Realignment to the United States. The Department looks forward to working with Congress to provide additional details on program implementation to address concerns identified in the report.

The Department urges support of the President's budget request.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Base Realignment and Closure (BRAC) 2005 Funding Reduction

**Appeal Citation:** H.R. 2647, sec. 2703

**Appropriations:** Military Construction

**Summary:** The House reduces BRAC 2005 implementation funding by \$350.0 million. The Senate fully funds the Department's request.

<u>Item</u>	<u>Budget Authority</u> (Dollars in Millions)			
	<u>Budget</u>	<u>House</u>	<u>Senate</u>	<u>Appeal</u>
BRAC 2005	7,749.5	7,129.5	7,749.5	7,749.5

**DoD Position/Impact:** The Department opposes the \$350.0 million funding reduction as reported by the House for implementing recommendations of the 2005 Base Realignment and Closure (BRAC) Commission. This reduction would slow BRAC implementation and thus delay achievement of the mission improvements provided by BRAC changes, costing the DoD more money over the long-term. This is especially harmful to the Department's ability to implement all the recommendations by September 15, 2011, as required by law. Delaying the completion of base closures and realignments also would hinder community efforts to quickly reuse DoD facilities and mitigate the economic impact of BRAC actions.

The BRAC implementation plan must proceed now, without the impediments imposed through any funding reductions. Aside from the above, the Department must position its infrastructure to support emerging missions. A well supported, capabilities-based force structure has infrastructure that is best sized and placed to support emerging mission needs and national security. Any delay in BRAC implementation delays realization of a transformed, fully supported, warfighter.

The Department urges support of the Senate position.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Leases of Real Property to the United States

**Appeal Citation:** H.R. 2647, sec. 2811

**Language/Provision:** House section 2811 would impose a new requirement that any lease of real property to the United States for use by DoD with annual rental costs more than \$750,000 must be specifically authorized by law.

The Senate bill contains no similar provision.

**DoD Position/Impact:** The Department opposes section 2811 because it would degrade the Department's ability to respond to emergent space requirements. This section is inconsistent with well-established Congressional oversight of General Services Administration (GSA) leases which includes leases GSA executes to meet DoD requirements. It would interfere with leases already planned for execution, including leases needed to implement Base Realignment and Closure (BRAC) recommendations before the statutory deadline. It would severely constrain the Department's ability to respond to rapidly changing space requirements, including in foreign countries where leasing is a critical tool, because initial lease solicitation could not commence until specific lease authority was programmed, budgeted and enacted. The Department already provides a 30 day prior notice to Congress before executing similar leases, and the Department believes this existing reporting mechanism provides the Congress with appropriate awareness and oversight of such leases before execution.

The Department urges exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Limitation on Obligation of Funds for the Joint Improvised Explosive Device Defeat Organization (JIEDDO), Pending Report to Congress

**Appeal Citation:** H.R. 2647, sec. 1504; H.Rpt. 111-166, pp. 484-85

**Language/Provision:** House section 1504 would limit the amount of funds that JIEDDO may obligate until the committee is provided JIEDDO's detailed budget and program information. The Committee states that of the remaining unobligated funds no more than 50 percent may be obligated until JIEDDO submits to the congressional defense committees a report containing the following information regarding projects funded for fiscal years 2008, 2009, and 2010:

- (1) A description of the purpose, funding, and schedule of the project.
- (2) A description of related projects.
- (3) An acquisition strategy.

**DoD Position/Impact:** The Department opposes the House provision and objects to the 50 percent obligation limitation proposed against JIEDDO for all unobligated resources, because the provision places undue and inappropriate administrative burdens on the organization that will substantially interfere with JIEDDO's mission to rapidly respond to warfighter needs and field counter-IED solutions to warfighters as quickly as possible. While the proposed limitations may make sense for traditional acquisition programs, JIEDDO's focus on responding to warfighter and Combatant Commanders' needs requires more flexibility.

IEDs are the number one cause of fatalities and casualties among U.S. and coalition forces in Iraq and Afghanistan. Due to the agility and rapid ability of U.S. enemies to leverage existing technologies, JIEDDO is continuously responding to the Joint Urgent Operational Needs of our Combatant Commanders. JIEDDO provides U.S. forces with critical solutions to counter IEDs as weapons of strategic influence.

Given that the preponderance of counter-IED requirements are not known until shortly before obligation, and that existing reporting requirements already prevent JIEDDO from obligating funds until Congressional notification is completed, the Department believes an additional limitation is not necessary and adds an unnecessary layer of bureaucracy. Staff members are already provided copies of all Military Interdepartmental Purchase Requests; and additional notifications will only serve to unnecessarily burden the JIEDDO mission. The Department appreciates continued Congressional support and is committed to improving JIEDDO's ability to better project continuing and enduring costs as their budget formulation processes mature.

The Department urges the removal of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Limitations on Retirement of C-5 Aircraft

**Appeal Citation:** H.R. 2647, sec. 134; S. 1390, sec. 121

**Language/Provision:** Senate section 121 would restrict the Secretary of the Air Force from proceeding with a decision to retire C-5A aircraft in any number that would reduce the total number of such aircraft in the active inventory below 111 until “(1) the Air Force has modified a C-5A aircraft to the configuration referred to as the Reliability Enhancement and Reengining Program configuration, as planned under the C-5 System Development and Demonstration program as of May 1, 2003”; and “(2) the Director of Operational Test and Evaluation of the Department of Defense (A) conducts an operational evaluation of that aircraft, as so modified”; and “(B) provides to the Secretary of Defense and the congressional defense committees an operational assessment.” Additional Limitations of Retirement of Aircraft - requires that the retirement of a C-5 aircraft will not reduce the total strategic airlift force structure below 324 strategic airlift aircraft.

House section 134 would require the Secretary of the Air Force, in coordination with the Director of the Air National Guard, to submit to the congressional defense committees a report on the proposed force structure and basing of strategic airlift aircraft at least 120 days prior to retiring a C-5 aircraft.

**DoD Position/Impact:** The Department opposes the Senate position because airlift fleet size requirements should be based on capability, not aircraft numbers. Retirement limitations and restrictions hamper the Department’s ability to manage the strategic airlift fleet. In addition, the requirement to maintain aircraft in Type 1000 storage restricts access to key components and increases the Air Force’s storage costs.

The Department urges adoption of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Al Musanah Air Base, Oman

**Appeal Citation:** S. 1390, sec. 4501; S.Rpt. 111-35, p. 223

**Appropriation:** Military Construction, Air Force

**Summary:** The Senate does not recommend an authorization of appropriation for the Air Force military construction projects at Al Musanah Air Base, Oman. The Senate is concerned about the lack of an appropriate long-term agreement with the Omani Government, a base master plan, consideration by the host nation, and a commitment of DoD funds in future budgets due to the absence of a future-years defense plan. The House supports the President's budget request.

<u>Item</u>	<u>Budget Authority</u>			
	<u>(Dollars in Millions)</u>			
	<u>Budget</u>	<u>House</u>	<u>Senate</u>	<u>Appeal</u>
War Reserve Material Compound, Al Musanah, OM	47.0	47.0	0.0	47.0
Airlift Ramp and Fuel Facilities, Al Musanah, OM	69.0	69.0	0.0	69.0

**DoD Position/Impact:** The Department opposes the Senate position reducing funding for projects at Al Musanah AB, Oman. Al Musanah is a strategic location in the Southern Arabian Gulf and the Central Command Area of Responsibility and is uniquely situated for contingency and emergency operations. It also represents an option if access is denied to other locations in the region. The Omanis are currently investing approximately \$200.0 million for joint-use facilities and infrastructure (i.e., runway and control tower).

The Bases Access Agreement (BAA) is valid through 2010 and CENTCOM is confident that the new BAA will be validated in 2010. The Master Plan for Al Musanah was provided to the committees in June 2009.

These projects provide critical support to the Warfighter. Failure to fund these projects will deprive the United States of an opportunity to establish a presence at this flexible, expandable, strategically located air field for contingency and emergency operations and disperses War Readiness and Maintenance operations.

The Department urges support of the House position.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Strategic Airlift Retirements

**Appeal Citation:** H.R. 2647, sec. 135, H.Rpt. 111-166, p. 126; S. 1390, sec. 121, S.Rpt. 111-35, p. 14

**Summary:** H.R. 2647, sec. 135 raises the number of required strategic airlift tails from 299, as codified in subsection (g)(1) of section 8062, United States Code, to 316. S. 1390, sec. 121 prohibits retirement of C-5 aircraft until the Director of Operational Test and Evaluation reports on C-5M operational assessment and the Secretary of the Air Force reports on the rationale for retiring C-5A aircraft including, among other criteria, an assessment of costs and benefits. Also, subsection (d)(3)(B) of section 121 references a total strategic airlift aircraft force structure of 324 strategic airlift aircraft.

**DoD Position/Impact:** The Department opposes both of these provisions because they prohibit retirement of strategic airlift aircraft. The Department assesses aircraft requirement based on capability, not aircraft numbers. A restriction not tied to an airlift requirement will drive unnecessary costs and reduce the efficiency of the overall fleet. The restriction impairs the Department's ability to manage the fleet and respond to combatant commanders' request for forces.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Prohibition on Retirement of Legacy Fighter Aircraft

**Appeal Citation:** H.R. 2647, sec. 1047

**Language/Provision:** House section 1047 would prohibit the Secretary of the Air Force from retiring additional legacy fighter aircraft, announced in the Combat Air Forces restructuring plan on May 18, 2009, until the Secretary submits a report to the Senate Committee on Armed Services and the House Committee on Armed Services. This section would require the report to include: a detailed plan describing how the Secretary will fill the force structure and capability gaps resulting from the retirement actions; a description of the follow-on missions for each affected base, along with an explanation of the criteria used for selecting the affected bases and the particular fighters chosen for retirement; the plan of action for reassignment of the individual Air Force active, Reserve, and National Guard personnel affected by the potential aircraft retirements; and an estimation of the cost avoidance and how the funds would be invested during the Future Years Defense Program should the restructuring plan move forward. With the exception of the 5 fighters originally programmed for retirement, this section would prohibit additional legacy fighters from being retired until 90 days after the Secretary submits his report. In addition, no Air Force personnel affected by the restructuring plan would be reassigned until the report is submitted.

The Senate did not include a similar provision.

**DoD Position/Impact:** The Department opposes provisions of the bill that restrict aircraft retirements. The Air Force has provided its analysis supporting accelerated aircraft retirements with the legislative branch. Force structure reductions accompanied by modifications and other enablers provide a smaller, but more flexible, lethal, and capable force. The Air Force has provided a base-by-base summary of the restructuring, including mission end states, and has identified the critical mission areas that the available manpower billets will be re-programmed to.

The current restrictions will impair the Department's ability to manage its fleet and manpower to accomplish national priority missions. Delays to the plan will require other delays to the training pipeline for new and emerging missions such as unmanned intelligence, surveillance, and reconnaissance (ISR), as well as the processing, exploitation, and dissemination (PED) of information collected by these new ISR assets. These two new mission areas are indispensable and already late-to-need in accomplishing our goals in overseas contingency operations (OCO). The proposed fighter force restructuring and reductions are part of a global resource allocation process that makes strategic sense.

The Department urges removal of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Road and Infrastructure Improvements, Fort Belvoir, VA, for National Museum for the United States Army (NMUSA)

**Appeal Citation:** S. 1390, sec. 2101; S. Rpt. 111-35, pp. 213-14

**Appropriation:** Military Construction, Army

**Summary:** The Senate denied authorization for this project, citing status of fundraising for the museum being insufficient to begin construction immediately following site preparation. The Senate also alleges that the current plan and timeline will build segments of the museum, but not a complete and usable facility. The House supported the request.

<u>Item</u>	<u>Budget Authority</u>			
	<u>(Dollars in Millions)</u>			
	<u>Budget</u>	<u>House</u>	<u>Senate</u>	<u>Appeal</u>
Road & Infrastructure Improvements, Fort Belvoir	20.0	20.0	0.0	20.0

**DoD Position/Impact:** The Department opposes the Senate reduction because there will be inadequate road and infrastructure at Fort Belvoir to support the National Museum for the United States Army (NMUSA).

Award of the Road and Infrastructure Improvements project is planned for second quarter fiscal year (FY) 2010 with completion in FY 2011. Construction of the NMUSA is planned to begin in FY 2011, prior to completion of the road and infrastructure project. If the Road and Infrastructure Improvements project is not provided in FY 2010, construction of the NMUSA will not be possible as the road affording access, including construction access, will not be in place; clearing and grading of the site will not have occurred, and supporting utilities will not be available. Deferral of the project will delay construction start and opening of the Army Museum. The Army Historical Foundation's current fundraising projections support a complete and usable facility with construction beginning in FY2011.

In addition, there is a considerable cost savings if construction of the 7,000 linear feet of 16-inch potable waterline, which is part of this project is accomplished concurrent with widening of Gunston Road – which is part of FY 2010 BCA PN 68038, Infrastructure, Incr 3. Concurrent construction would also eliminate the considerable disruption that would occur if the waterline were constructed later as the newly widened Gunston Road would have to be partially closed to allow for excavation and waterline placement within the roadway to minimize impacts to environmental sensitive areas.

The Department urges conferees to support the House position.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Training Ranges

**Appeal Citation:** H.R. 2647, sec. 2101; H.Rpt. 111-166, p. 512; S. 1390, sec. 4501; S.Rpt. 111-35, p. 213

**Appropriation:** Military Construction Army

**Summary:** Senate recommends eliminating authorization for three Grow the Army (GTA) ranges, totaling \$11.0 million at Forts Stewart and Carson because of the Army's decision not to station the 46th Brigade Combat Team (BCT) at Fort Stewart and the 47th BCT at Fort Carson. The committee believes these projects exceed the new requirement.

<u>Item</u>	<u>Budget Authority</u>			
	<u>(Dollars in Millions)</u>			
	<u>Budget</u>	<u>House</u>	<u>Senate</u>	<u>Appeal</u>
Fort Stewart				
Automated Sniper Field Fire Range	3.4	3.4	0.0	3.4
Fort Carson				
Modified Record Fire Range	4.5	4.5	0.0	4.5
Urban Assault Course	3.1	3.1	0.0	3.1

**DoD Position/Impact:** The Department opposes the Senate reduction because it would leave the Army with a shortage of adequate training ranges to support the GTA BCT and other units stationed at Forts Stewart and Carson. The requirement for these ranges remains despite cancellation of the 46th and 47th BCTs. The ranges at each of these installations support growth BCTs and other units which are driving the requirement for these ranges at the scope requested.

At Fort Stewart, the Army requires one standard design Automated Sniper Field Fire Range (ASFFR). Currently there exists one inadequate ASFFR. Without the requested range the assigned BCT units and others will not be able to train to standard.

At Fort Carson, the Army requires two standard design Modified Record Fire Ranges (MRFR) and two standard design Urban Assault Courses (UAC). Currently there exists no MRFR and one UAC. Without the requested ranges the assigned BCT units and others will continue to not be able to train to standard and the installation will lack capacity to support their training needs.

The Department urges the conferees to support the House position.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Command & Battle Facility, Increment 1, Wiesbaden, Germany

**Appeal Citation:** H.R. 2647, sec. 2101; H. Rpt. 111-166, p. 8; S. 1390, sec. 2101; S. Rpt. 111-35, pp. 8, 214

**Appropriations:** Military Construction

**Summary:** The House proposes rescinding \$85.3 million in authorization of appropriations for prior year savings in Military Construction, which although unspecified in the bill and report, the Department has been told that this reduction includes \$59.5 million from FY 2009 Military Construction, Army for the Command & Battle Facility at Wiesbaden, Germany.

The Senate proposes rescinding \$59.5 million in authorization of appropriations for the Command and Battle Facility at Wiesbaden, Germany. The Committee notes that the Army did not request the second increment of funding in FY10 pending the results of the Quadrennial Defense Review (QDR).

<u>Item</u>	<u>Budget Authority</u> (Dollars in Millions)			
	<u>Budget</u>	<u>House</u>	<u>Senate</u>	<u>Appeal</u>
Prior Year Savings	-	-59.5	-59.5	0.0

**DoD Position/Impact:** The Department opposes this rescission of the authorization of appropriations because it would leave the Army widely dispersed in separate, inefficient locations in Germany. The consolidation of 7<sup>th</sup> Army Headquarters in Wiesbaden, Germany is critical because it is the final part of a three part plan developed/approved/executed over the last 5 years in conjunction with the Department's original Installation Global Presence Basing Strategy that determined that Wiesbaden is an optimal location to consolidate the 7<sup>th</sup> Army HQs and its supporting intelligence and signal organizations. It reduces four current installations comprised of 45 sites, while improving 7<sup>th</sup> Army operational capabilities. The first two parts of the plan are 65% complete with a number of collateral actions that would, if delayed or reversed, be both wasteful and costly. Additionally, by FY 2013, annual recurring savings are \$112.0 million so that the move to Wiesbaden pays-back in less than three years (FY 2016) and savings continue thereafter.

The decision to consolidate was reviewed and approved during the QDR, and the Army has bids for the project that could be awarded as early as September 2009.

The Department urges the conferees to not rescind authorization of appropriations for this FY 2009 project.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Energy Monitoring/Management for MILCON and Army Family Housing

**Appeal Citation:** H.R. 2647, sec. 2841; H.Rpt. 111-166, p. 548

**Language/Provision:** House section 2841 would require the Department of Defense to adopt a single specification for an energy management and monitoring system for use in military construction projects. The Secretary of a military service could waive this requirement if determining that inclusion in a military construction project is not cost effective over the life cycle of the project. The Senate included no similar provision.

**DoD Position/Impact:** The Department opposes the House provision because requiring a single specification across all of DOD is not realistic.

The Department's energy management and monitoring system technology is a great management tool for managing energy consumption. However, requiring a single specification, DoD-wide, is not practicable or workable. This particular section focuses on military construction and family housing projects, but to be effective, energy management and monitoring systems in general should be applied installation-wide on existing structures as well as new. Most installations already have Energy Monitoring and Control Systems (EMCS), and requiring a single specification for future systems could cause compatibility problems as well as unnecessary additional costs to comply with this provision either to retrofit/change systems or maintain multiple systems. In addition, the single specification (once established) would need to be constantly changed as the technology improves the potential capabilities.

The Department opposes the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Charter for the National Reconnaissance Office

**Appeal Citation:** H.R. 2647, sec. 1024

**Language/Provision:** House section 1024 requires the Director of National Intelligence and the Secretary of Defense to jointly submit a revised charter for the National Reconnaissance Office (NRO). This section stipulates that the revised charter must include the organizational and governance structure of the NRO; the provision for NRO participation in the development and generation of requirements and acquisition; a delineation of the capabilities of the NRO, its roles and responsibilities, and the relationship of the NRO to other organizations. The provision requires the revised NRO charter be submitted no later than 90 days after the date of the enactment of the Act. The Senate bill included no similar provision.

**DoD Position/Impact:** The Department recognizes the necessity for a foundational document for the NRO and a high priority revision effort is currently underway. Once completed, the results will be provided to Congress.

However, the Department opposes section 1024 as written from an implementation perspective (i.e., timeframe, scope and nature of deliverables). The necessity of coordinating with other intelligence agencies and the Office of the Director of National Intelligence will require more than the mandated 90 days to ensure the final document is cogent, comprehensive, and accurately captures the mission, organization and management, responsibilities and functions, relationships, authorities, and administration of the NRO.

The Department urges exclusion of the House provision (section 1024).

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Authority for the Employment of Individuals Who Have Successfully Completed the Department of Defense Information Assurance Scholarship Program

**Appeal Citation:** H.R. 2647, sec. 1103

**Language/Provision:** House section 1103 would modify the governing authority for the Information Assurance Scholarship Program (IASP), section 2200 of title 10, United States Code, to include a program-specific excepted service appointment for IASP to facilitate hiring of program graduates as DoD employees. The Senate included no similar provision.

**DoD Position/Impact:** The Department supports the House provision which would increase the candidate pool of exceptional students in critical IT/IA career fields who may apply for the IASP and streamline their ultimate hiring as DoD employees.

The IASP is a competitive scholarship program whereby select students (rising college juniors and above) at Centers of Academic Excellence in Information Assurance Education are provided funding for tuition, fees, books and a stipend in exchange for a service commitment with DoD. As part of the competitive process, students are vetted by their college or university, pre-screened by the IASP Program Office, and then, based on their specific academic program and skill qualifications, they are individually selected to receive a scholarship by a DoD Component who guarantees assignment within their organization upon graduation.

The original IASP legislation did not provide an appointing authority for program graduates. As a result, they must either 1) compete for a position after graduation or 2) be hired using appointment authority under Section 213.3102(r) of title 5, Code of Federal Regulations, which requires completion of a 640 hour internship and limits the appointment to 4 years. The first option is undesirable as it is not productive to have competitively selected scholarship recipients re-compete for job placement in order to fulfill their employment commitment to DoD. The second option, while more viable, typically limits the applicant pool to rising juniors and first year master's degree students who are able to complete the required internship period prior to graduation. Cumbersome federal hiring practices, and limited appointment authorities such as these, limit DoD's capability to attract and retain new talent to fill critical positions within the Department.

This provision will enhance the IASP's capacity to meet the growing demand for cyber security/IA and IT skills within DoD by improving hiring flexibility for the program and increasing the student applicant pool. Further, it will allow DoD to convert incumbents who have fulfilled two years of service commitment to a career or career conditional appointment, aiding in their retention in mission critical occupations in the Department.

The Department urges support of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Joint Program Office for Cyber Operations Capabilities

**Appeal Citation:** H. R. 2647, sec. 931

**Language/Provision:** The House provision would require the establishment of a “Joint Program Office for Cyber Operations Capabilities (JPO-COC) to assist the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) in improving the development of specific leap-ahead capabilities, including manpower development, tactics, and technologies, for the military departments, the Defense Agencies, and the combatant commands.”

**DoD Position/Impact:** The Department opposes the House provision to establish a Joint Program Office for Cyber Operations Capabilities (JPO-COC). The proposed functions of the JPO-COC would be duplicative of functions currently performed by existing offices within the Department of Defense (DoD) that span the Office of the Secretary of Defense (OSD), the Joint Chiefs of Staff, and the Combatant Commands. The Department of Defense already has a tool to assess capabilities against requirements, the Quadrennial Defense Review (QDR). Cybersecurity is now a central focus of the QDR. In addition, the Secretary of Defense has directed the establishment of a subordinate unified command under the Commander, U.S. Strategic Command (CDRSTRATCOM), and the Under Secretary of Defense for Policy (USD(P)) to develop a comprehensive approach to cyberspace operations.

The JPO-COC would compete for funding and resources with existing cyber organizations, and would hinder the important work currently being performed jointly by USD (AT&L), USD(P), Under Secretary of Defense for Intelligence, and Assistant Secretary of Defense for Networks and Information / DoD Chief Information Officer in the area of cybersecurity. The objectives identified in the proposed legislation would be best supported by the standup of the newly identified U.S. Cyber Command, follow-through on requirements and priorities established through the QDR, and directed reinforcement of ongoing cybersecurity initiatives for acquisition cybersecurity, and cyber research and development that reinforce capability needs.

The Department opposes the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Warfighter Information Network – Tactical (WIN-T)

**Appeal Citation:** H.R. 2647, sec. 215; H.Rpt. 111-166, p. 240

**Language/Provision:** The House provision would require that not more than 50 percent of the fiscal year (FY) 2010 appropriation be authorized until the Secretary of Defense submits to the Congressional Defense Committees the comprehensive annual Selected Acquisition Report (SAR) for Fiscal Year 2009. The list of applicable programs for this provision includes WIN-T.

**DoD Position/Impact:** The Department opposes the House provision because it puts considerable risk in the ability to execute the required Increment 3 development. The WIN-T Increment 3 effort supports the radio and antenna technology needed to support the network's air tier networking capability. This air tier component reduces reliance on costly and limited Satellite resources while effectively increasing throughput and speed and significantly reducing network vulnerabilities. This decrement further would cause risk to Increment 2 meeting its test dates in fiscal year 2011 based on the development efforts within the scope of the Increment 3 effort that support WIN-T Increment 2.

Furthermore, the Office of the Secretary of Defense has recently verified that there would be no SAR submissions in fiscal year 2009. Based on the Increment 3 Acquisition Decision Memorandum of May 18, 2009, and the schedule for annual SARs, the first submission of an Increment 3 SAR would occur in March 2010. A delay of 50 percent of funds until March 2010 would significantly impact the ability to maintain development efforts in support of both Increment 2 and 3, as described above.

The Department opposes the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Requested Increase in Army National Guard Non-Dual Status Technician Authorization

**Appeal Citation:** S.1390, sec. 414; H.R. 2647, sec. 414

**Language/Provision:** Senate section 414 of S. 1390 would authorize only 1,600 Non-dual Status Technicians for the Army National Guard, while House section 414 of H.R. 2647 would authorize the requested 2,191 non-dual status technicians.

**DoD Position/Impact:** The Department opposes the Senate provision because the increase in Army National Guard Non-Dual-Status technicians is an important enhancement to full-time staffing necessary to support the frequent mobilization of units of the Army National Guard as an operational force. The Department requested an increase from current authorization of 1,600 to 2,191 non-dual status technicians. Sec. 414 of the Senate bill only authorizes 1,600 non-dual status technicians for the Army National Guard. The Department opposes the Senate provision because it would undercut the need to rebalance full-time staffing in the Army National Guard.

Dual-status technicians are full-time personnel who perform training, administration and maintenance functions for the Army National Guard and are also deployable, uniformed members of the National Guard. In contrast, Non-dual status technicians are civilian full-time personnel who perform the same duties, except as civilians and not members of the National Guard they are not subject to deployment orders.

For FY 2010, the Department sought an increase in non-dual status technicians in order to strengthen the number of Army National Guard full-time personnel who do not deploy but remain at home station and perform those ongoing training, maintenance, administration tasks necessary to support of forces preparing for mobilization, returning from mobilization, or conducting training at other phases of the ARFORGEN cycle. The request for an increase in NDS technicians is a direct result of two things: OPTEMPO which results in an ever increasing number of dual-status technicians being mobilized, and at the same time a reduced applicant pool for those positions. Second, the move to an Operational Reserve from a Strategic Reserve has increased the distinction between mobilization positions which must be dual-status and mobilized with their units, and positions that are not mobilization positions but governmental in nature and must be accomplished regardless of mobilizations (such as military pay positions).

Failure to provide the requested increase in Non-dual Status Technicians will result in continued cases in which duties necessary to support deploying and returning forces are shortchanged because it was being performed by a Dual Status Technician who has deployed overseas with his/her unit of assignment.

The House fully supported the Department's requested increase in Non-dual Status Technicians for the Army National Guard.

The Department urges support of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Disposal of Excess Property of Armed Forces Retirement Home (AFRH)

**Appeal Citation:** H.R. 2647, sec. 2816

**Language/Provision:** House section 2816 states: “If the Secretary of Defense determines that any property of the Retirement Home is excess to the needs of the Retirement Home, the Secretary shall dispose of the property in accordance with subchapter III of chapter 5 of title 40, United States code (40 U.S.C. 541 et seq.)”. H.R. 2647 section 2816 would effectively eliminate Department’s ability to generate revenue for the AFRH Trust Fund through the disposal of excess AFRH property. The Senate bill included no similar provision.

**DoD Position/Impact:** The Department opposes this House provision because, if passed, it will make it extremely difficult, if not impossible for the Department to generate an independent revenue stream through the disposal of AFRH excess property and implementation of its Master Plan. AFRH’s Master Plan strategy is based on the ability to lease excess property and use the resulting revenue stream to augment the AFRH Trust Fund and allow AFRH to construct new and renovate existing facilities to meet future needs. Proposed legislation will threaten solvency of the AFRH Trust Fund and potentially require the Department to make offsetting revenue increases via withholding payroll deductions of our Service members (e.g. potential increase from 50 cents to one dollar); adjustments to resident fees, and/or request supplemental funding through an appropriation. The FY 2002 NDAA recognized the requirement for an additional revenue stream to enhance and maintain AFRH Trust Fund solvency. The proposed section would reverse eight years of progress through the AFRH Master Plan development working with GSA and the District of Columbia.

The Department urges exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Provisions Relating to the National Security Personnel System (NSPS)

**Appeal Citation:** H.R. 2647, sec. 1112; S. 1390, sec. 1101

**Language/Provision:** House section 1112 proposes modifications to NSPS, including restoring the full nationwide January pay adjustment to NSPS employees; prohibiting coverage of NSPS to any individual and to any position not subject to NSPS (but in NSPS organizations) as of June 16, 2009; and mandates that within 12 months after enactment the Secretary of Defense convert all NSPS employees and positions back to the pay system that would apply had NSPS not been established. If the Secretary wants to retain NSPS, he must submit a report to the President and both Houses of Congress within six months after enactment stating so, with rationale and a description of proposed changes to NSPS. Congress would then have to act to preserve NSPS in statute.

Senate section 1101 also includes provisions to repeal NSPS; however, it gives the Secretary the discretion to submit a report to Congress within 60 days after enactment certifying that termination of NSPS is not in the best interest of DoD and that he intends to implement changes during FY2010 to improve NSPS fairness, credibility, and transparency, and employee acceptance; and a description of changes and schedule for implementation. If the Secretary retains NSPS, it cannot be expanded beyond the organizational and functional units that were covered as of June 1, 2009, unless Congress so authorizes by statute enacted after enactment of the FY2010 NDAA. Absent the foregoing report, NSPS would remain in force and effect for one year after the date of enactment of the FY2010 NDAA for organizational and functional units covered by NSPS on January 20, 2009; the full nationwide January pay adjustment would be restored to NSPS employees pending repeal of NSPS; and the Secretary would have authority to establish new staffing/hiring flexibilities and/or establish and implement new regulations providing for a "fair, credible, and transparent" performance appraisal system that could link employee bonuses and other performance-based actions to performance appraisal of employees, and establish the "DoD Civilian Workforce Incentive Fund" to be used for incentive payments based on employee or team performance or for recruitment and retention of qualified individuals with particular competencies or qualifications. If the Secretary uses these staffing/hiring flexibilities and/or performance management/workforce incentive authorities, design and implementation would be subject to government-wide collective bargaining obligations and other design, implementation, and oversight requirements; and the GAO would conduct annual reviews of these new personnel authorities in 2010, 2011, and 2012, covering employee satisfaction with any processes established pursuant to the new authorities and the extent to which such processes are fair, credible, and transparent.

**DoD Position/Impact:** The Department opposes the House and Senate provisions because legislative action on NSPS is premature given the ongoing independent comprehensive review by a special task group under the Defense Business Board, a federal advisory committee. The Board should be allowed to complete its review, submit its final report to the Secretary and Director of the Office of Personnel Management, allowing the Administration to make informed decisions, together with the Congress, about the future of NSPS.

The Department suspended new conversions to NSPS in March 2009, pending the outcome of the comprehensive review. The House provision (section 1112), that would require new positions and new hires in organizations already under NSPS as of June 16, 2009 be placed in the General Schedule system, would be extremely disruptive to those organizations. Even if the Secretary exercised his discretion to submit a report within six months of enactment of the FY2010 NDAA stating his desire to retain NSPS, further congressional action would be required; however, in the interim, the Secretary would have to prepare for and complete all necessary actions to sunset NSPS and move more than 200,000 employees from coverage not later than 12 months after enactment of the FY2010 NDAA. The termination of NSPS would be disruptive and potentially have a negative impact on the Department's mission and its in-sourcing efforts, which require streamlined and timely hiring flexibilities as provided by NSPS.

The Department strongly urges exclusion of the House provision.

The Senate version is preferable to the House version. It recognizes the ongoing independent review of NSPS and gives the Secretary the opportunity to be informed in making decisions on the future of the program by findings and recommendations from the Defense Business Board, as well as results of internal program evaluation, workforce surveys, and external reviews. It also provides the Secretary the option of terminating NSPS in a more deliberate, reasonable manner and exploring other new personnel authorities.

While the Department is opposed to any legislation on NSPS, it prefers the Senate provisions for the reasons stated above.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Department of Defense Civilian Leadership Program

**Appeal Citation:** S. 1390, sec. 1105

**Language/Provision:** Senate section 1105 would require the Department to implement within 180 days of enactment, a civilian leader recruitment and development program for up to 5,000 civilian employees on a fiscal year basis, largely to promote rapid advancement and priority consideration of program participants for executive-level positions.

The House does not include a similar provision.

**DoD Position/Impact:** The Department opposes the Senate provision because active engagement in civilian leader development is already well underway within DoD and substantive concerns exist with the foundational principles espoused in the legislation.

**Active Engagement**

- DoD manages two Departmental civilian leader development programs: (1) Defense Senior Leader Development Program, targeted at the Lead Organizations & Programs leadership tier; and (2) Executive Leader Development Program, targeted at the Lead People leadership tier. These programs mirror the program criteria required by the proposed legislation, including: deliberate development of high potential civilians (along a continuum of progressive leadership); a competitive selection process (appropriately conducted on an annual basis); merit based; and which affords greater opportunities for advancement by virtue of successful completion.
- Creating a new leadership development program under the demonstration project authority is unnecessary. DoD currently has sufficient flexibilities needed to administer a credible leader development program. Due to the prestige of its existing programs and the widespread recognition in completing them, program graduates have a distinct edge in competing for more responsible positions, without sacrificing Merit System Principles.
- DoD is actively integrating civilian leader development in its overall talent and succession management framework.

**Concerns with Foundational Principles**

- Rapid Advancement: Lessons learned from DoD's 12 years with the Defense Leadership and Management Program (DLAMP) underscore that expectations of rapid advancement following a development program for entry level and mid-career level employees can be problematic.
  - Rapid advancement depends on multiple factors, such as:
    - A credible, rigorous preparatory developmental program aligned with the organization's needs for now and the future that expose individuals to the relevant environments and challenges and which develops their competencies for these environments and challenges
    - Proficient level demonstration of critical competencies
    - Successful experience demonstrating increasing responsibility, broad program responsibilities, and accountability for outcomes and results
  - The legislation proposal for rapid advancement, which relies on the strength of a single input (i.e., a development program) creates an expectation that simply cannot be met given the other critical variables in selection. A developmental program aimed at entry level and mid-career should be a critical preparatory prerequisite for intermediate and senior level leadership positions as appropriate. It should not be a non-competitive and priority "ticket" for selection into leadership positions, particularly at the executive level. The combination of sound developmental programs, the right experiences and education, and proficiency on critical competencies is what DoD believes makes one truly competitive for leadership positions, particularly at the senior level.

- Priority Consideration for SES/SL and ST positions: The legislative proposal assumes that entry level and mid-career DoD employees and private citizen individuals, after engaging in a training and development program, are ready for non-competitive leadership appointments, including for SES and SL and ST positions. DoD strongly disagrees. It is only through such preparation, when combined with the right experience and education, that one can truly be competitive for senior level positions. It is unreasonable to expect an entry level employee can become competitive for an SES position after a short term development program, and that an employee is so competitive as to bump all others who have chosen an alternate route of preparation for SES/SL/ST positions. The Federal Candidate Development Program (CDP) is already in place, and there are a number of successful CDPs in executive branch agencies.
- Administrative burdens of operating a demonstration project: DoD would need funds for managing the development of numerous participants per year as well as an SES allocation and other resources for managing and evaluating this program. Notionally, resources required for up to 5,000 participants approximate \$100 million annually. Moreover, 5 USC 4703 would not permit implementation of this program within 180 days of enactment, due to statutory notification requirements.

The Department urges exclusion of the Senate provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Pilot Program to Establish and Evaluate Language Training Centers

**Appeal Citation:** H.R. 2647, sec. 534

**Language/Provision:** House section 534 would require DoD to carry out a pilot program to establish and evaluate language training centers for members of the Armed Forces, including members of the Reserve Component and Reserve Officers' Training Corps and Civilian Employees. The legislation would require the establishment of at least three Language Training Centers at accredited universities, senior military colleges, or other similar institutions of higher education, not later than October 1, 2010. The Secretary of Defense would be required to submit a report to the congressional defense committees no later than December 31, 2015, evaluating the pilot program.

The Senate has no corresponding provision.

**DoD Position/Impact:** The Department opposes the House provision, because it would require the expenditure of already limited resources, i.e., funding and personnel for oversight and management, to the detriment of higher priority defense language programs.

The provision does not allocate funding to establish the pilot program and language training centers. This lack of additional resourcing would negatively impact existing defense language program resources, similar to the pilot program for foreign language proficiency training for Reserve members, mandated by NDAA 2009 (section 619(c)) which the Department had to fund from other programs. Additionally, program management and oversight are also major considerations, because experiences in our Language Flagship and Grant programs demonstrate that the Department would have to outsource and/or create new positions to provide the required management and oversight of this new pilot program.

The Department urges exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Travel and Transportation Allowances for Members of the Reserve Component of the Armed Forces on Leave for Suspension of Training

**Appeal Citation:** S. 1390, sec. 633

**Language/Provision:** Senate section 633 intends to allow for reimbursement of travel expenses or provide transportation to members of the Reserve Component on active duty for a period of more than 30 days who are performing duty at a temporary duty station, for travel between the temporary duty station and permanent duty station in connection with authorized leave pursuant to a suspension of training. The House included no similar provision.

**DoD Position/Impact:** The Department of Defense opposes the Senate provision because it would provide a travel/transportation allowance benefit for reserve component members while on leave status, setting a precedent that is not available to members of the regular component.

The Senate provision would establish a precedent whereby the Department would pay travel and transportation for members in a leave status – a leave status a member enters into voluntarily and for personal reasons. The Department believes it would be unwise and fiscally irresponsible to establish such a precedent. It also would provide a benefit for Reserve Component members that is not available to members of the Active Component and one for which the Department has not identified a need. This inequity between the Reserve and Active Components is likely to lead to an expansion of benefits, and possibly a move towards a mandatory benefit versus one at the discretion of the Secretary concerned. Creating an inequity in benefits among members of the Armed Forces is inconsistent with the basic principles of a Total Force, and this language would create an unbudgeted and un-programmed cost to the Department.

The Department urges exclusion of the Senate provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Increase the Maximum Supplemental Subsistence Allowance from \$500 to \$1,100

**Appeal Citation:** S. 1390, sec. 603

**Language/Provision:** Senate section 603(a)(1) directs the Secretary of Defense to increase the Supplemental Subsistence Allowance (SSA) from \$500 to \$1,100 per month beginning 1 October 2009. The House included no similar provision.

**DoD Position/Impact:** The Department opposes this provision. Increasing the Supplemental Subsistence Allowance cap, in itself, will not eliminate Supplemental Nutrition Assistance Program (SNAP) usage among Service members.

We believe that SNAP usage will continue as long as stark differences exist between the two programs. We also believe the existing inequities in calculating income between the two programs must be resolved to eliminate the need for low-income Service members and their dependents to rely on SNAP for additional subsistence. The government housing benefit must be included in the eligibility calculations of both programs to attain parity.

An increase to the current SSA cap from \$500 to \$1,100 will result in unwanted, adverse consequences. Such a substantial increase will, in some cases, cause an unintended “inversion” to the pay scale in which a Service member of a lower grade could earn more income than a member in a higher grade. Such occurrences would create an inequity to the pay system and adversely impact morale.

The eligibility calculations need to be the same for both programs if we are to attain the goal of eliminating the need for members of the Armed Forces and their dependents to rely on SNAP to meet their monthly nutritional needs.

The Department urges exclusion of the Senate provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Role of the Commander, Special Operations Command Regarding Personnel Management Policy and Plans Affecting Special Operations Forces

**Appeal Citation:** H.R. 2647, sec 901

**Language/Provision:** House section 901 would require the Secretaries of the military departments to coordinate with the Commander, Special Operations Command (USSOCOM), regarding personnel management policy and plans for special operations forces. There is no corresponding Senate provision.

**DoD Position/Impact:** The Department opposes the House provision. The Department does not recognize a lack of an established mechanism for consultation, as implied within the proposed legislation, between the Military Services and the Special Operations Command regarding management and mitigation of concerns across the entire special operations community.

As directed by the FY 2009 National Defense Authorization Act, the Commander, Special Operations Command, prepared and submitted its plan for the management of special operations forces. This plan has been coordinated with the Military Services and clearly demonstrates significant consultation between the services and USSOCOM. Additionally, the Department is finalizing guidance that directs the coordination of special operations forces personnel management concerns similar to what is being proposed in section 901.

Section 901 states the coordination required shall not interfere with the authorities of the Service Secretary regarding personnel management plans. However, due to the probability of future misunderstanding and/or misinterpretation of the rationale behind the statute, the legislation proposed has the potential of creating the interference it states should be avoided. Current legislation and the successful implementation of existing Department policies and guidance obviate the need for the proposed changes in section 901.

The Department urges exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Civilian Personnel Overstatement

**Appeal Citation:** H.Rpt. 111-166, p. 282; S.Rpt. 111-35, p.110

**Appropriation:** Operation and Maintenance, Air Force

**Summary:** The House reduced the President's Budget request by \$400.0 million based on Government Accountability Office (GAO) analysis that the Air Force (AF) is overstating civilian end strength requirements. The Senate proposes a \$538.1 million reduction.

<u>Item</u>	<u>Budget Authority</u> (Dollars in Millions)			
	<u>Budget</u>	<u>House</u>	<u>Senate</u>	<u>Appeal</u>
Civilian Personnel	7,410.9	7,010.9	6,872.8	7,410.9

**DoD Position/Impact:** The Department opposes the reductions. They are based on GAO projections which inaccurately conclude the AF cannot execute its budgeted civilian strength. The GAO model uses only historical data to predict future execution and does not account for programmatic increases in support of the Department's new/emerging manning requirements.

Using this historical data, the GAO report is projecting FY 2010 AF civilian on-board strength at 164,187. However, the AF's May 2009 on-board strength of 164,852 already exceeds GAO's FY 2010 projection. The AF is on track for an on-board strength of 166,500 by FY 2009's close. In addition, GAO's projected FY 2009 AF on-board strength of 161,703, which is 3,000 civilians below current levels, highlights the unreliability of their model to predict future end strength.

The AF has an aggressive hiring plan in place to increase on-board strength by another 6,000+ hires in support of new programmatic requirements such as contract in-sourcing, reforming the acquisition workforce, ensuring nuclear security, and joint basing. This alone accounts for approximately \$530.0 million in the civilian personnel budget. To this end, AF is actively engaging with Office of Personnel Management (OPM) to fully implement all hiring authorities available. Given new mission requirements and AF strength levels exceeding GAO projections, congressional reductions would force AF to remain at current FY 2009 strength levels and prohibit us from meeting the SECDEF's goals of contract in-sourcing and acquisition workforce reform. With in-sourcing targets increasing in FY 2011, the reduction in FY 2010 end strength will create a bow-wave jeopardizing the five year plan.

The Department urges support of the President's Budget.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Prohibition on Conversion of Military Medical and Dental Positions to Civilian Medical and Dental Positions

**Appeal Citation:** H.R. 2647, sec. 701

**Language/Provision:** House section 701 would indefinitely extend the prohibition on conversions of military medical and dental positions to civilian medical and dental positions by a secretary of a Military Department by removing the end date of section 721 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181). The Senate included no such provision.

**DoD Position/Impact:** The Department opposes section 701 since it prohibits conversions even when they meet Congressional certification requirements and are shown to either assist the Army with increasing operational/medical capability while reducing stress on the force, or provide the Navy or Air Force with cost savings that can be applied to high priority programs. Prohibiting conversions is a major impediment for the Department in achieving the additional goals supported by the House of reducing costs, increasing access to health care, and improving readiness.

Military health care is fully protected. Under prior law, medical and dental conversions had to be certified as not adversely affecting cost (to include costs of overtime), quality, or access to health care for the conversions to take place. Also, only billets in excess of readiness requirements had been designated for conversion. If a billet could not be certified, it was re-designated for military performance, and it was NOT converted.

The House provision would have multiple negative impacts. The Department would be restricted during war from moving military members out of billets that are not military essential when less expensive, fully qualified civilians are available to perform the work. Prohibiting conversions would preclude the Army from increasing operational requirements in response to increasing demands, while retaining medical capability at medical treatment facilities through civilian backfills. This would adversely affect Army transformation and stop planned improvements to dwell times and stress on the force. Also, if the conversion of billets in shortage medical specialties is prohibited, the Army will not be able to hire civilians quickly and at less cost so care in these areas can be increased. This could eventually lead to shortfalls in medical capacity, since requirements for these specialties are increasing.

The Department urges exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Requirements for Standard Ground Combat Uniform

**Appeal Citation:** H.R. 2647, sec. 352

**Language/Provision:** Section 352 of H.R. 2674 would require the Secretary of Defense, in consultation with the Defense Logistics Agency (DLA), to require that future ground combat uniforms be standardized in order to ensure increased interoperability of ground combat forces and reduce tactical risks encountered when military personnel wear a different uniform from their counterparts in the other military services in a combat area. The House Armed Services Committee notes that previously all the military services used the same desert camouflage uniform or the standard battle dress uniform, both in the temperate and enhanced weather versions.

The House Armed Services Committee is concerned that the recent move toward unique service camouflage uniforms has resulted in increased costs and production inefficiencies. For example, problems with consistency in fabric shading have required remanufacture of some uniforms. In addition, the costs for the unique uniforms are substantially more than for the standard battle dress uniform because of the differences in design, camouflage pattern, and type of fabric. Most importantly, the House Armed Services Committee is concerned that this uniqueness poses a tactical risk in theater, especially for those assigned to combatant commands or as individual augmentees who may be wearing a different uniform from those they are serving with in combat. The House Armed Services Committee also notes that service-specific battle dress uniforms magnify the challenges and costs associated with procuring personal protective gear and body armor that conform to the design and coloration of the basic uniform.

**DoD Position/Impact:** The Department opposes the House language because the Department of Defense (DoD) is already addressing Ground Combat Uniform related issues by carrying out Department of Defense Instruction (DoDI) 4140.63, "Management of Clothing and Textiles (Class II)."

In May 2009, DoDI 4140.63 created a joint clothing and textile governance board, which is intended to coordinate Service clothing and textile acquisition activity. This board is governed by the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics and facilitates the standardization of Service clothing and textiles, as appropriate. The Under Secretary of Defense for Acquisition, Technology and Logistics oversees the clothing and textiles support activities of the Director, DLA, and ensures the development of logistics plans to support clothing and textiles operations in all environments. All Services agreed to this governance board on 18 June 2009. This board can and will address the concerns expressed in this proposed language.

In addition, the U.S. Army, Air Force, and Marine Corps are not aware of evidence showing that Individual Augmentees are at higher tactical risk when wearing different uniforms/camouflage patterns, and even if there were, it would be a simple matter for the uniform of one Service to be issued to a member of a sister Service in a given operating environment.

The Department urges exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Conversion of Civilian Personnel of Certain Defense Laboratories from their Current Personnel System to a Personnel System under an Appropriate Demonstration Project

**Appeal Citation:** H.R. 2647, sections 1110, 1112; S. 1390, section 1106

**Language/Provision:** The House bill, section 1110 designates six Department of Defense laboratories as Science and Technology Reinvention Laboratories under section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995 (Public Law 103-337: 108 Stat. 2721). It further mandates the conversion of the civilian personnel of each of these facilities from their current personnel system to a personnel management demonstration project as referred to in section 342(b) within 18 months, and the conversion shall not adversely affect any employee with respect to pay or any other term or condition of employment. The six named laboratories have employees that were converted to the National Security Personnel System (NSPS) and these employees are also impacted by section 1112 language. The section 1112 language terminates the NSPS, and requires conversion of employees subject to NSPS back to their former personnel system or one which would have applied if NSPS had not been established within 12 months.

Senate section 1106 requires a review of certain identified, non-personnel demonstration project defense laboratories to determine whether these laboratories would benefit from inclusion under the Department's personnel management demonstration project authority. It further requires a report not later than 90 days after enactment of the National Defense Authorization Act for Fiscal Year 2010 setting forth the results of the review.

**DoD Position/Impact:** The Department opposes sections 1110 and 1112 of the House bill. Section 1110 would designate certain DoD organizations as "Reinvention Laboratories" and mandate conversion of their civilian workforce to a laboratory demonstration project, effectively removing approximately 16,000 employees from the National Security Personnel System (NSPS). The legislation is premature in light of the ongoing independent review of NSPS, which will result in findings and recommendations aimed at assisting the Department and the Office of Personnel Management, working together with Congress, to make informed decisions about the future of the program. Section 1110 would short-circuit that process, and conflicts with provisions under Section 1112 regarding NSPS termination, potentially causing significant disruption to these organizations. The 18-month timeline for conversion is impracticable in that each of these laboratories have bargaining units for which title 5, United States Code, sections 4703(f) and (g) have specific guidance for consultation and collective bargaining. The language—"convert the civilian personnel of each facility"—appears to encompass all employees in the Federal Wage System, Senior Executive Service, and Senior Scientific and Professional Positions for which new demonstration project systems would be needed. In addition, the guarantee that the conversion shall not adversely affect any employee with respect to pay, or any other term or condition of employment, should be revised to clarify that it applies only at the point of conversion. While there may be merit to designating these organizations Reinvention Laboratories, the Secretary has the authority to do so under current law, and would prefer to consider such a determination in the context of the Department's overall human capital strategy.

The Department prefers section 1106 of the Senate bill. The review proposed in the Senate provision would require at least a six to twelve-month effort to design the evaluation criteria, conduct the research, analyze the results, and prepare the report.

The Department urges the adoption of the Senate provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Award of Vietnam Service Medal to Veterans Who Participated in Mayaguez Rescue Operation

**Appeal Citation:** H.R. 2647, sec. 571

**Language/Provision:** House section 571 would require the Military Departments to award the Vietnam Service Medal to members and former members of the U.S. Armed Forces who participated in the Mayaguez rescue operation of May 12 to May 15, 1975. The Senate included no similar provision.

**DoD Position/Impact:** The Department opposes awarding the Vietnam Service Medal to members and former members of the U.S. Armed Forces who participated in the Mayaguez rescue operation of May 12-15, 1975. The Mayaguez rescue operation occurred over two years past the termination date for the Vietnam Service Medal. The Vietnam Service Medal termination date, March 28, 1973, corresponds with the signing of the Paris Peace Accords which led to the cessation of military combat operations in Vietnam and ended direct U.S. military involvement in the Vietnam conflict. No combat operations or combat casualties occurred in Vietnam during the period of March 29, 1973 to May 15, 1975.

In addition, the Mayaguez rescue operation did not meet the eligibility requirement that awardees serve in direct support of operations in Vietnam. The SS Mayaguez, a U.S. merchant ship, and its crew were captured by Cambodian Khmer Rouge forces, not Vietnamese forces. The Mayaguez rescue operation was directed against the Khmer Rouge and did not support operations in Vietnam in any way.

The Department's position is that Congress should not disregard the Vietnam Service Medal's long-standing eligibility dates and criteria to allow award of this prestigious medal to Service members whose actions, although noteworthy, clearly do not qualify for the award. The Service members who participated in the Mayaguez rescue operation were appropriately recognized through award of the Armed Forces Expeditionary Medal.

The Department urges the exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Transportation of Additional Motor Vehicle of Members on Change of Permanent Station to or from Non-foreign Areas Outside the Continental United States

**Appeal Citation:** H.R 2647, sec. 631

**Language/Provision:** House section 631 would authorize Service members with at least one family member (besides the member) eligible to drive to ship two privately owned vehicles (POVs) during permanent change-of-station moves to or from non-foreign duty locations located outside the continental United States. Non-foreign duty locations outside the continental United States include Alaska, Hawaii, Puerto Rico, Guam, and other territories and possessions.

**DoD Position/Impact:** The Department opposes the House provision not only because it treats military members serving overseas inequitably, but also authorizing shipment of a second POV is cost prohibitive. The Department's cost estimate for shipment of a second POV for military members stationed overseas in non-foreign OCONUS locations is \$26 million, while shipment of a second POV for military members stationed overseas in foreign locations is \$72 million.

In addition to the inequity for members assigned to foreign OCONUS locations, this provision would also create a hardship for members who may be reassigned from a non-foreign OCONUS to a foreign duty location. Since these members are only authorized to ship one POV to the foreign location, the military member may have to pay out-of-pocket to transport the second POV, store the POV, or sell the vehicle outright, which could result in out-of-pocket loss. There is no authority in law that would allow transportation of the second POV back to CONUS or provide for storage of the second vehicle while the member is at the foreign duty location.

This provision also only includes Armed Forces members, but does not recognize the other Uniformed Services members (Public Health Service and National Oceanic and Atmospheric Administration members who are otherwise included in statutes authorizing POV transportation) who also ship POVs to locations overseas when reassigned to these locations.

The Department urges exclusion of the House provision, or any amended provision including shipment of a second POV.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Limitations on Collections of Overpayments

**Appeal Citation:** H.R. 2647, sec. 661

**Language/Provision:** The House provision would reduce the rate of allowable collections from 20 to 10 percent, mandate consultations regarding deductions and rates, delay beginning collections for wounded and injured, set a five-year deadline on initiating collection actions, and specify Secretarial discretion regarding remission or cancellation of indebtedness. The Senate included no similar provision.

**DoD Position/Impact:** The Department opposes this provision. The proposal to reduce the monthly maximum collection rate from 20 percent to 10 percent is unnecessary and diminishes existing flexibility. The current ceiling of 20 percent gives the Department discretion in determining the appropriate rate of collection of a particular debt. There are already numerous instances in which a lower collection rate is used, based upon a member's financial situation and other considerations. The law should not restrict the current flexibility.

There is a legal requirement to collect debts in a timely manner under the Federal Claims Collections Standards. Retaining the 20-percent rate as the maximum collection rate from the monthly pay of members, where the overpayment arises through no fault of the member, gives the Department flexibility in determining the appropriate amount to recoup each month.

Additionally, the establishment of a statutory requirement to formally consult with every member prior to establishing the monthly collection amount would impose an onerous procedural requirement. Under current general practices, members are informed about collection of a debt prior to the date the collection action will begin, and are provided the opportunity to request an installment agreement, if desired. A member's financial situation is already taken into consideration in many cases where the member works with their Service or DFAS in establishing a reasonable collection amount for each month.

Finally, under current authority, the Service Secretaries have full discretion to remit any debt for any reason if the debt is incurred on active duty. The law should not be amended to reduce the current discretion that is authorized. This provision would restrict remission to situations in which the member is receiving social security benefits or disability compensation from the VA or would suffer "undue hardship." Generally, social security and VA benefits are not payable to members who are serving on active duty so the amendment would not be effective other than to eliminate the broad discretion that currently exists. As proposed, this provision would also narrow, rather than broaden, the Department's ability to deal with wounded warrior matters. The net impact of this provision is to unduly restrict the authority to remit a debt.

The Department urges the exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Suicide Among Members of the Individual Ready Reserve (IRR)

**Appeal Citation:** H.R. 2647, sec. 710A

**Language/Provision:** House section 710A would require a “counseling call” to all IRR members by appropriately trained personnel not less than once every 90 days, as long as they are in the IRR, to determine the “emotional, psychological, medical, and career needs and concerns of the covered member.” The Senate included no similar provision.

**DoD Position/Impact:** The Department opposes the House provision because it is unclear what value this counseling call would have for the prevention of suicide. In addition, quarterly calls to determine the risk of self harm could be seen as excessively intrusive or even harassing by some IRR members. They may feel stigmatized by any Military Service or DoD program that targets them for permanent suicide prevention efforts simply by virtue of deployment.

Counseling calls can only determine the risk of self harm at a point in time, the value that this counseling call would have for prevention of suicide is open to interpretation. DoD has several programs open to IRR members, as to any Service member. DoD participates with the Substance Abuse and Mental Health Administration and the National Suicide Prevention Lifeline for individuals who require assistance in suicide prevention.

The Department urges exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Notification of Members of the Armed Forces of Exposure to Potentially Harmful Materials and Contaminants

**Appeal Citation:** H.R. 2647, sec. 708

**Language/Provision:** House section 708 would require notification of members of the Armed Forces for all exposures to potentially harmful materials and contaminants, as determined by the Secretary of Defense, along with any health risks. For reservists, it also requires notification of the State military department. The Senate included no similar provision.

**DoD Position/Impact:** The Department of Defense opposes the House provision because only those exposures to harmful materials and contaminants that result in an increased risk of an adverse health effect, as determined by the Secretary of Defense, should require notification in the deployed setting. There are low levels of hazardous materials and contaminants that do not present a health risk which are present in many deployed settings. Individual notifications of all occupational hazards are required by regulation as part of the DoD Hazard Communication program, but it is not feasible to implement these notifications for every environmental hazard during deployments, particularly during contingency operations. Under a separate initiative, the Department is pursuing the development of an individual longitudinal exposure record that will be facilitated by the full implementation of the electronic health record and by matching electronically archived site-specific environmental monitoring summaries with daily deployment location documentation. These records will be available to Department of Defense and Department of Veterans Affairs (VA) health care providers, to VA claims adjudicators, and others.

The position of the Department of Defense is that exposure notifications in deployed settings be limited only to exposures to potentially harmful materials and contaminants that result in elevated health risks, as determined by the Secretary of Defense. Section 708 should be omitted from the final legislation or amended to define “potentially harmful material or contaminant” as one that the Secretary of Defense determines presents an elevated health risk.

The Department of Defense urges exclusion the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Inclusion of Email Address on Certificate of Release or Discharge from Active Duty (DD Form 214)

**Appeal Citation:** H.R. 2647, sec. 523

**Language/Provision:** House section 523 would modify the form DD 214 to permit inclusion of an email address on the form. The Senate included no similar provision.

**DoD Position/Impact:** The Department opposes unnecessary legislation that would generally restrict the discretionary authority of the Secretary of Defense. The statute is unnecessary as the Department will publish revised DD214 policy in the summer of 2009 that will allow a member to elect to include an email address on the DD214.

The Department urges the exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Establishment of DoD School of Nursing

**Appeal Citation:** H.R. 2647, sec. 933

**Language/Provision:** House section 933 would require the establishment of a Defense School of Nursing not later than July 1, 2011.

**DoD Position/Impact:** The Department opposes the House provision because more effective, less resource-intensive courses of action are available. Department resources could be better spent funding and maximizing academic partnership programs. The purpose of the Tri-Service Nursing Academic Partnership Program (TSNAP) is to build capacity for educating individuals as registered nurses at the baccalaureate level within multiple state schools of nursing for service in the Army, Navy, and Air Force. The program offers minimal start-up time with graduates produced within 2 years of initiation. This is a dynamic program that can be expanded or contracted depending on force strength and structure, and will build capacity within existing schools of nursing. Proposed budgets are far less than the proposed budget for the Defense School of Nursing (cost per graduate is approximately \$126K, while the estimated cost per graduate of a Defense School of Nursing is approximately \$378K).

Output of qualified graduates from a DoD School of Nursing will not be realized for 5 years, and initially would have little impact on the Department's accession mission (as the Services would share 25 students each year for the first two years). Current DoD accession programs are attracting nurses to enter the services at various professional development levels. The Reserve Officer's Training Corps (ROTC) continues to produce approximately 60% of our new graduates. Studies on the impact to ROTC programs should be performed to ensure we continue to use ROTC as a viable resource.

The establishment of a Defense School of Nursing would negatively impact the Department's ability to perform its current nursing mission. This provision would require the use of active-duty Masters-prepared nursing officers as faculty when this short-handed specialty can be better used elsewhere. National standards require faculty to have at minimum a Masters Degree in nursing to teach at the Baccalaureate level. We use our Doctoral and Masters-Prepared Nurses to teach and mentor our new nurses in critical nursing skills to function in austere environments under adverse conditions. Pulling these resources would negatively impact our current missions.

The Department urges exclusion of the House provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Clarification of Performance Policies for Military Musical Units and Musicians

**Appeal Citation:** S. 1390, sec. 572

**Language/Provision:** Senate section 572 adopts the Administration's request to amend 10 U.S.C. 974 regarding military musical units and musicians performance policies and restrictions on performances in competition with local civilian musicians. The House included no similar provision.

**DoD Position/Impact:** The Department supports the Senate provision because it adopts the Administration's proposal to amend the performance policies regarding military musical units and musicians and restrictions on performances in competition with local authorities under 10 U.S.C. 974.

Recent changes to the current law virtually eliminate the commander's ability to authorize the use of military bands for events that are not appropriated fund/official events. As a result, the Services cannot use military bands to support a number of functions deemed necessary for the benefit of their personnel. The subject proposal makes available a modest range of options to the Services to employ military bands in circumstances that have long been recognized as being in the interest of the military.

Neither the current statute nor the legislative proposal creates a right for the use of military bands. The legislative proposal merely authorizes commanders to employ bands under specific conditions and as resources permit.

The Department urges support of the Senate provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Repeal of requirement of reduction of Survivor Benefit Program (SBP) survivor annuities by dependency and indemnity compensation

**Appeal Citation:** S. 1390, sec. 652

**Language/Provision:** Section 652 eliminates the existing offset between Survivor Benefit Program annuities provided by the DoD and dependency and indemnity compensation provided by the VA.

**DoD Position/Impact:** The Department opposes any action to eliminate the offset between the Survivor Benefit Plan (SBP) and Dependency Indemnity Compensation (DIC).

The Department has consistently been supportive of retaining the offset between these two programs. Both were established to provide a lifetime annuity for two generally separate groups of survivors of military or former military members. The VA's DIC program was designed to cover survivors of members who died while serving on active duty and members formerly separated whose death was deemed service connected. The SBP program was designed to provide a lifetime annuity for survivors of members who retired from the military.

When the SBP program began in 1972, it was recognized that there could be some overlap between these groups and the offset was made an integral part of the design. The rule allows such a dual eligible survivor to receive an annuity equal to the higher payment. The existence of the offset was instrumental to expansion of the SBP program, just a few years ago, to cover members who die on active duty. This group has the added benefit of being able to assign the SBP benefit to a child or children in the household resulting in the surviving spouse being eligible for the DIC without offset. Thus, during the child rearing years the household can receive both the SBP and the DIC. This can result in monthly payments during the child rearing years approaching \$100,000 per year.

There are over 330,000 DIC recipients and over 280,000 SBP eligible survivors of retirees. The overlap between these two programs is about 55,000 with about 7,500 of these eligible for both because of a death on active duty. Elimination of the offset would provide this dual eligible group an enhanced lifetime annuity that would be unfair and inequitable in relation to those survivors entitled to only DIC or SBP, not both.

DoD opposes eliminating the SBP/DIC offset for the following reasons:

- **Duplication of benefits:** Both entitlements are paid by separate departments for the purpose of providing a continuing annuity to the survivors of military members or former members. Both benefits are subsidized by the federal government.
- **Active duty election:** The program has already been enhanced so that the SBP annuity of a surviving spouse whose sponsor dies on active duty may be assigned to a child or children permitting the spouse to receive DIC without offset during a child's dependent schooling years (expires at age 18 to 22).
- **Complementary programs:** DIC is a flat rate of \$1154 per month plus \$286 for each dependent child (2009). SBP is 55% of the maximum disability retired pay for death of an active pay member or, for retired members, 55% of an elected amount not to exceed earned retired pay. The present dual entitlement with offset that joins the two programs, ensures junior members and those with lesser years of service have a floor of the DIC amount while senior members and those with greater years of service have the potential of a larger SBP amount.
- **Equity:** Allowing concurrent receipt of SBP and DIC without offset would create a group of survivors receiving two survivor annuities, while survivors of most military retirees and survivors of veterans who died of service connected cause, but who did not serve to retirement would receive only one or the other.
- **High cost:** Eliminating the SBP offset for all survivors entitled to DIC would cost the Military Retirement Fund more than \$8.5 billion over 10 years.

The Department urges exclusion of the Senate provision (sec. 652).

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Incremental Funding of FY 2010 Military Construction Projects

**Appeal Citation:** H.Rpt. 111-166, pp. 513, 516, 520-21; S.Rpt. 111-35, pp. 217, 227

**Appropriations:** Military Construction, Army, Navy and Defense-Wide

**Summary:** The House and Senate reduced the amount authorized for appropriation by \$530.0 million and \$383.5 million, respectively, for several construction projects, citing that they supported authorizing for appropriation an amount equivalent to the ability of a Military Department to execute in the year of authorization for appropriations vice fully funding the project.

<u>Item</u>	<u>Budget Authority</u>			
	<u>(Dollars in Millions)</u>			
	<u>Budget</u>	<u>House</u>	<u>Senate</u>	<u>Appeal</u>
Army-Aviation Task Force Complex, Ft. Wainwright	125.0	95.0	125.0	125.0
Navy-North Region Tertiary Treatment, Camp Pend	142.3	112.3	142.3	142.3
Navy-Ship Repair Pier Replacement, Portsmouth, VA	227.0	177.0	127.0	227.0
Navy-Apra Harbor Wharf Improvements, Guam	167.0	127.0	83.5	167.0
Defense-Wide-Data Center, Camp Williams	800.0	500.0	600.0	800.0
Defense-Wide-USAMRIID, Ft. Detrick	108.0	28.0	108.0	108.0

**DoD Position/Impact:** The Department opposes these reductions because they are contrary to the Administration's position to fully fund Military Construction projects. Although some exceptions to the fully funding policy have been made, based primarily on prior congressional action, reductions of this magnitude will result in delaying or eliminating critical FY 2011 projects since financing will again be required in FY 2011. Given the fiscal challenges already facing the Department to adequately fund critical efforts and other infrastructure requirements, such reductions will not only severely restrict the Department, but would also restrict Congress in the future because it would have to appropriate funds to finish funding these projects in future years.

The Department urges the conferees to fully fund these projects.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Military Personnel – Unobligated Balances

**Appeal Citation:** H.Rpt. 111-166, p. 312; S.Rpt. 111-35, p.122

**Appropriations:** Military Personnel

**Summary:** The House proposes reductions of \$799.0 million and the Senate proposes reductions of \$818.5 million for projected FY 2010 unexpended balances based on an annual Government Accountability Office (GAO) review of prior year balances.

<u>Item</u>	<u>Budget Authority</u> (Dollars in Millions)			
	<u>Budget</u>	<u>House</u>	<u>Senate</u>	<u>Appeal</u>
Military Personnel	-	-799.0	-818.5	0.0

**DoD Position/Impact:** The Department of Defense (DoD) opposes these reductions and urges support of the President’s budget request. The DoD fully considered prior year execution in developing the FY 2010 military personnel budget request. The proposed reductions are excessive and will lead to shortfalls within the military personnel appropriations. The resulting shortfalls will require the Department to either reprogram funds from other critical defense programs or request baseline funding requirements in future supplemental requests.

The GAO data, upon which the House and Senate reductions are based, is strictly a macro-level historical (FY 2004 - FY 2007) snap-shot of each year’s performance. This data should not be used for projecting future unexpended balances without accounting for various execution anomalies (e.g., unexpended hurricane supplemental) and operational turbulence occurring during this period, as well as subsequent budget and management actions taken to improve unexpended balances.

The proposed reductions also fail to recognize that each year the military personnel budgets are carefully reviewed and repriced based on detailed requirements (e.g., workyears, longevity by pay grade, and operational requirements), as well as prior year execution and congressional actions. While historical execution data is used in developing budget estimates, the most recent execution trends are generally more representative of current budget estimates. The additional unexpended balance reductions proposed by the House and Senate undermine good budgeting practices and unnecessarily consume the Department’s limited General Transfer Authority.

The Department opposes these reductions and urges support of the President’s budget request.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Temporary Authority for Monthly Special Pay for Members of the Armed Forces Subject to Continuing Active Duty or Service under Stop-Loss Authorities

**Appeal Citation:** S. 1390, sec. 618

**Language/Provision:** The Senate provision is intended to extend the stop-loss payment of up to \$500 per month set to expire 30 September 2009. It also expands the eligible service under stop-loss authorities to include time on active status, not just active duty as in previous legislation. The House included no similar provision.

**DoD Position/Impact:** The Department opposes expansion of stop-loss special pay to include “active status in a reserve component of the Armed Forces...” as it could extend eligibility for payment to far more members than just those mobilized for deployment.

While the Department supports continuing the current stop-loss special pay authority through FY 2010, sec. 8103 of the House passed FY 2010 DoD Appropriations Bill (H.R. 3326) would provide the necessary extension and funding. The Army is moving to eliminate the use of stop-loss and plans to deploy units without stop-loss starting August 2009 for Army Reserve, September 2009 for Army Guard, and January 2010 for Active Army.

As defined by 10 U.S.C 101(d) “active status” means the status of a member of a reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve. By changing the reserve component eligibility to “active status” rather than “active duty”, the proposed language expands the potential entitlement to include all Selected Reservists who were held under stop-loss, regardless if they were mobilized or not. This is more far-reaching than the provision’s intent of capturing the pre-mobilization and re-integration duty while on “active status”.

The proposed Senate provision results in higher costs to the Department since current stop-loss special pay programs are not funded for this eligibility expansion. Additionally, this provision could result in future retroactive payments of stop loss special pay to this expanded population under the stop-loss authority of sec. 310 of the FY 2009 Supplemental Appropriations Act (P.L. 111-32). This authority currently defines eligible service for reserve component members as “active duty”, not “active status”.

The Department urges exclusion of the Senate provision.

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Compliance with Naval Aviation Safety Requirements Futenma Replacement Facility

**Appeal Citation:** H.R. 2647, sec. 2836

**Language/Provision:** Section 2836 of the House version of the bill requires the Secretary of the Defense to certify that the Futenma Replacement Facility (FRF) satisfies at least minimum Naval Aviation Safety requirements. The Secretary may not waive any of these requirements.

The Senate bill did not contain a similar provision.

**DoD Position/Impact:** The Department opposes Section 2836, which would limit the Secretary of Defense's authority to exercise reasonable judgment regarding airfield operations at the Futenma Replacement Facility (FRF) that is planned for construction on Okinawa. The current FRF configuration was agreed to during bilateral negotiations with the Government of Japan, and this provision, therefore, could place at risk the resulting 2008 U.S.-Japan Agreement Concerning the Implementation of the Relocation of III Marine Expeditionary Force Personnel and their Dependents from Okinawa to Guam. Further, this provision would raise questions regarding possible impermissible infringement on executive branch authority. It is important to note that there are safety waivers at nearly every Navy and Marine Corps airfield. The use of waivers serves as a means to control activities and enhance airfield safety at air stations when base development or operations necessitate operating outside of established aviation safety criteria.

The Department urges exclusion of the House provision (Section 2836).

**Priority Department of Defense Appeal  
FY 2010 Defense Authorization Bill**

**Subject:** Global Hawk Aircraft Maintenance and Ops Complex, Sigonella, Italy

**Appeal Citation:** S. 1390, sec. 4501; S.Rpt. 111-35, p. 765; H.R. 2647, sec. 2301(b)

**Appropriation:** Military Construction, Air Force

**Summary:** The Senate is deferring an authorization of appropriation for a new hangar to support the Global Hawk unmanned aerial vehicle at Naval Air Station (NAS) Sigonella, Italy, stating that the US Air Force can use underutilized US Navy facilities in the short-term until the Quadrennial Defense Review results inform future basing decisions for these programs at NAS Sigonella. The House supports the President's budget request.

<u>Item</u>	<u>Budget Authority</u>			
	<u>(Dollars in Millions)</u>			
	<u>Budget</u>	<u>House</u>	<u>Senate</u>	<u>Appeal</u>
Global Hawk Aircraft Maint and Ops Complex	31.3	31.3	0.0	31.3

**DoD Position/Impact:** The Department opposes the Senate deferral of this effort. While the Navy flight-line facilities at Sigonella can accommodate the Global Hawk, those facilities can house only two Global Hawk aircraft while the requirement is for 3 aircraft (1 system):

- o Sigonella facilities cannot accommodate the High Altitude Transition (HAT) from the U-2 to the three Global Hawk aircraft in the US EUCOM area of operations.
- o Global Hawk's sensitive electronics must be housed inside a climate controlled hanger and the current US Navy facilities at Sigonella are not climate controlled.
- o Sigonella facilities are under a "shared-use" agreement which could restrict availability for Global Hawk maintenance and pre-mission operations.
- o These facilities (hangar 630 & 633) were also requested by the NATO team for initial beddown of the NATO Global Hawk (AGS).

At a minimum, the Navy facilities at NAS Sigonella are inadequate for a complete Combat Air Patrol (CAP) with RQ-4 Global Hawks and the elimination of this project will complicate the Combatant Command's High Altitude Transition. Deferral of these hangar facilities will also negatively impact the operational tempo of the Global Hawk and will reduce the number of sorties available to meet Combatant Commander requirements.

The Department urges support for the House position.