

DCMA Administrative Record for FY 2013 Furlough Appeals

TABLE OF CONTENTS

Part 3

Location (tab)	Agency File Part	Date	Document	Source
24	Part 3 of 5	2/27/2013	EO President, Agency Responsibilities For Implementation of Potential Joint Committee Sequestration	Agency
25		2/21/2013	OASD, "Total Force Management and Budgetary Uncertainty"	Agency
26		2/20/2013	SDEF Preparation for Potential Sequestration Agency On March 1 and Furlough Notifications	Agency
27		1/14/2013	OMB Memo, "Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources"	Agency
28		1/10/2013	DSD, "Handling Budgetary Uncertainty in FY 2013"	Agency
29		1/2/2013	"American Taxpayer Relief Act of 2012"	Agency
30		12/20/2012	SECDEF "Implications of Ongoing Fiscal Cliff Negotiations"	Agency
31		9/25/2012	Guidance on FY 2013 Joint Committee Sequestration	Agency
32		7/31/2012	Issues Raised by Potential Sequestration Pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985	Agency
33		6/3/2012	DSD "Guidance for Limitations on Aggregate Amount Available for Contracted Services"	Agency
34		3/2/2012	USD "Guidance Related to the Utilization of Agency Military Manpower to Perform Certain Functions"	Agency
35		3/1/2012	Organization Chart of the DOD SECDEF	Agency
36		12/1/2011	USD, "Prohibition on converting Certain Functions to Contract Performance"	Agency
37		8/2/2011	"Budget Control Act of 2011"	Agency
38		4/12/2010	DODI "Policy and Procedures for Determining <i>Workforce Mix</i> "	Agency



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

February 27, 2013

M-13-05

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Danny Werfel
Controller

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

SUBJECT: Agency Responsibilities for Implementation of Potential Joint Committee
Sequestration

Unless Congress acts to amend current law, the President is required to issue a sequestration order on March 1, 2013, canceling \$85 billion in budgetary resources across the Federal Government. Because these cuts must be achieved over the remaining seven months of the fiscal year, the Office of Management and Budget (OMB) estimates that the effective percentage reductions are approximately 9 percent for nondefense programs and 13 percent for defense programs. These reductions will result in significant and harmful impacts to national security and domestic priorities.

The President has been clear that sequestration is bad policy that was never intended to be implemented, and the Administration remains hopeful that Congress will act to avoid it through an agreement on balanced deficit reduction. However, because legislation may not be enacted to avoid sequestration before the current deadline of March 1, 2013, executive departments and agencies (agencies) with sequestrable accounts have been engaged in planning activities to operate at the lower, post-sequestration funding levels should it be necessary.

This guidance builds on prior communications with agencies about the implementation of sequestration, and addresses questions that have been raised as to certain categories of planning activities.

Agency Planning Activities

OMB Memorandum 13-03, *Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources*, directed agencies to begin planning activities to operate with reduced budgetary resources in the event that sequestration occurs. Agencies' planning efforts must be guided by the principle of protecting the agency's mission to serve the public to the greatest extent practicable. Planning efforts should be done with sufficient detail and clarity to determine the specific actions that will be taken to operate under the lower level of budgetary resources

required by sequestration. For example, agencies should identify any major contracts that they plan to cancel, re-scope or delay as well as any grants that they plan to cancel, delay, or for which they plan to change the payment amount. Similarly, agencies should identify the number of employees who will be furloughed, the length of expected furloughs, the timing of when furlough notices will be issued, and the manner in which furloughs will be administered. In some cases, agencies may not be able to ascertain all of this information prior to March 1. However, agencies should continue to engage in intense and thorough planning activities to determine all specific actions that will be taken as soon as practicable.

Communications

To the extent permitted by law, agencies should inform their various partners and stakeholders in a timely and complete manner of the impact of sequestration so that third parties are able to adjust their operations and plans as appropriate. Accordingly, at this time, agencies should be actively and continuously communicating with affected stakeholders—including States, localities, tribal governments, Federal contractors, Federal grant recipients, and Federal employees—regarding elements of the agency's planning that have a direct impact on these groups. These communications will vary greatly by agency and by stakeholder, but agencies should be as specific as possible in order to provide sufficient detail to be helpful to these stakeholders in understanding the implications of the reduced budget authority resulting from sequestration.

With regard to any planned personnel actions to reduce Federal civilian workforce costs, consistent with Section 3(a)(ii) of Executive Order 13522, agencies must allow employees' exclusive representatives to have pre-decisional involvement in these matters to the fullest extent practicable and permitted under the law. In particular, in instances where agencies are considering potential furloughs, agencies have a duty to notify their exclusive representatives and, upon request, bargain over any negotiable impact and implementation proposals the union may submit, unless the matter of furloughs is already covered by a collective bargaining agreement. Agencies should ensure that they are fully aware of and in compliance with any and all collective bargaining requirements, and should consult with their General Counsel or appropriate labor relations office for questions regarding these requirements and appropriate interaction with employees and unions on these matters.

Acquisition

Due to the Government's large acquisition footprint, sequestration will inevitably affect agency contracting activities and require agencies to reduce contracting costs where appropriate. As with all actions taken as a result of sequestration, agencies should ensure that any contract actions are both cost-effective and minimize negative impact on the agency's mission to the extent practicable.

Program, acquisition, financial/budget management, information technology, and legal personnel should work together to make determinations regarding contracts in light of sequestration. As a general matter, agencies should only enter into new contracts or exercise options when they support high-priority initiatives or where failure to do so would expose the

government to significantly greater costs in the future. Agencies may also consider de-scoping or terminating for convenience contracts that are no longer affordable within the funds available for Fiscal Year 2013, should no other options exist to reduce contracting costs in these instances. Should such steps be necessary, agencies must evaluate the associated costs and benefits of such actions, and appropriately inform and negotiate with contractors. Finally, agencies should take all appropriate steps to minimize to the extent practicable the impact on small businesses of reduced contracting activities.

Financial Assistance

Given the widespread use of grants, loans and other Federal financial assistance to non-federal entities (e.g., State, local and tribal governments, non-profit organizations, and companies), sequestration will impact the funding of these activities.

As a general matter, agencies should ensure that any new financial assistance obligations or funding increases under existing agreements are consistent with the need to protect the agency's mission at the post-sequestration level. In light of sequestration, agencies may also consider delaying awarding of new financial assistance obligations, reducing levels of continued funding, and renegotiating or reducing the current scope of assistance. Agencies may be forced to reduce the level of assistance provided through formula funds or block grants. Should any such steps be necessary, agencies should evaluate the associated costs and benefits of such actions and appropriately engage and inform recipient(s) as early as possible.

Increased Scrutiny of Certain Activities

In determining the appropriate manner to achieve funding reductions, agency heads must also ensure that their agencies have risk management strategies and internal controls in place that provide heightened scrutiny of certain types of activities funded from sequestered accounts. To the extent these accounts remain at the post-sequestration funding level, increased scrutiny should apply to:

- hiring new personnel;¹
- issuing discretionary monetary awards to employees, which should occur only if legally required until further notice; and
- incurring obligations for new training, conferences, and travel (including agency-paid travel for non-agency personnel).

In light of the reduced budgetary resources available due to sequestration, expending funds on these activities at this time would in many circumstances not be the most effective way to protect agency mission to the extent practicable. Therefore, agency leadership should review processes and controls around these activities, and ensure that these activities are conducted only

¹ Agencies must also ensure that appropriate controls are in place to prevent the increased use of contractors to perform work due to any restrictions on hiring. Agencies should bear in mind the statutory restrictions contained in 10 U.S.C. 2461 and 41 U.S.C. 1710 on the conversion of functions from performance by Federal employees to performance by contractors.

to the extent they are the most cost-effective way to maintain critical agency mission operations under sequestration.

Please contact your OMB Resource Management Office (RMO) if you have any questions about or need assistance with this guidance.

DCMA Administrative Record for FY 2013 Furlough Appeals
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WASHINGTON, D.C. 20301-4000



READINESS AND
FORCE MANAGEMENT

MEMORANDUM FOR: SEE DISTRIBUTION

FEB 21 2013

SUBJECT: Total Force Management and Budgetary Uncertainty

- Reference:
- (a) Deputy Secretary of Defense Memorandum, "Handling Budget Uncertainty in Fiscal Year 2013", dated 10 January 2013
 - (b) Under Secretary of Defense of Personnel & Readiness Memorandum, "Prohibition on Converting Certain Functions to Contract Performance", dated 1 December 2011
 - (c) Deputy Secretary of Defense Memorandum, "Guidance for Limitation on Aggregate Annual Amount Available for Contracted Services", dated 3 June 2012
 - (d) Under Secretary of Defense of Personnel & Readiness Memorandum, "Guidance Related to the Utilization of Military Manpower to Perform Certain Functions", dated 2 March 2012
 - (e) DoD Instruction 1100.22, "Guidance for Determining Workforce Mix", dated 12 April 2010

This memorandum provides guidance for the management of the Total Force (active and reserve military, government civilians, and contracted support) during this time of continued budget uncertainty. The Department must maintain the viability of the All-Volunteer Force and sustain its operational readiness in the most cost-conscious manner. To do so, the Department must also maintain a properly sized, highly capable civilian workforce that is aligned to mission and workload; complements and delivers support to the military; supports the well-being of the warfighters and their families; and recognizes evolving critical demands while guarding against an erosion of organic skills and an overreliance on contracted services. Finally, the use of contracted services must continue to be reviewed to ensure the most appropriate, cost effective, and efficient support aligned to mission.

As DoD Components begin to take actions consistent with reference (a) – including the implementation of civilian hiring freezes, the release of term or temporary civilian employees, and other personnel related actions – they must be mindful of the Department's obligations to manage the Total Force consistent with Title 10 statutory requirements and references (b) through (e). These considerations are required in planning for the potential reduction or unavailability of fiscal year 2013 funds (with the exception of funds for military personnel) associated with sequester or the continuing resolution.

Consistent with section 2461 of title 10, United States Code, and reference (b), the conversion of functions or work performed by, or designated for performance by, civilian employees to contract performance without a public-private competition is expressly prohibited. Currently such competitions are prohibited under section 325 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84). Workload currently performed by, or designated for performance by, civilian employees may not be transferred or assumed by contractors performing against prior year obligations. Most importantly, contractors may not perform inherently governmental work, and section 2464 of title 10, United States Code expressly prohibits contracting of certain functions (enclosure 1). DoD

Component heads, as well as field commanders and line managers, are urged to be particularly vigilant to prevent the inappropriate conversion of work to contract performance.

Additionally, limits on contracted support spending enacted in section 808 of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112-81, and implemented via reference (c) still apply. The statutory obligations in section 2330a of title 10, United States Code, to minimize reliance on contract performance of work closely associated with inherently governmental functions (see illustrative examples at enclosure 2) remain in force. Moreover, the guidance in reference (c) to achieve reductions of such reliance, as well as in staff augmentation contract support, remains in effect. Planning for budgetary uncertainty does not relieve DoD Components from compliance with these mandates.

As we continue planning during this period of budgetary uncertainty, the Department must also ensure military personnel are not inappropriately utilized, particularly in a manner that may degrade readiness or result in unnecessary costs to the Department. Consistent with references (d) and (e), except in extraordinary, and typically temporary, circumstances, individual military personnel or units should not perform functions or work that is not military essential (see illustrative examples in enclosure 3). The use of "borrowed" or "repurposed" military can harm readiness and operational capabilities by diverting service members from training or performance of military essential functions, particularly when military members are required to work outside of their occupational specialties. In addition to the risk of hollowing the force, this practice could adversely impact the All-Volunteer Force and have negative effects on the recruitment, retention, and career progression of individual members. During this period of budgetary uncertainty, military units may perform work previously performed by civilian employees or contracted support as part of a rotation base for an operational capability (if this has been reflected in Operational Orders), provided this is done on a limited and temporary basis. In the event of sequestration, where military personnel accounts are exempted, there may be instances where military personnel can be used on a short-term, emergency basis to satisfy a demand that is of mission critical importance.

Please ensure maximum distribution of this memorandum throughout your organization, particularly to your manpower, personnel, and resourcing communities. Questions regarding application and implementation of this memorandum should be addressed to the following points of contact within the Office of Total Force Planning & Requirements: Mr. Thomas Hessel (thomas.hessel@osd.mil or 703-697-3402), and Ms. Amy Parker (amy.parker@osd.mil or 703-697-1735). Thank you for your support in the mitigating risks from budgetary uncertainty that could adversely affect the sustainability and readiness of the All Volunteer Force.



Frederick Vollrath
Principal Deputy Assistant Secretary of Defense for
Readiness and Force Management
Performing the Duties of the Assistant Secretary of
Defense for Readiness and Force Management

Enclosures: As stated

DISTRIBUTION:

**SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
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Non-Exhaustive Examples of Inherently Governmental Functions
(Extract from Office of Federal Procurement Policy Letter 11-1 (September 12, 2011))

1. The direct conduct of criminal investigation.
2. The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).
3. The command of military forces.
4. Combat.
5. Security provided under any of the circumstances set out below. This provision should not be interpreted to preclude contractors taking action in self-defense or defense of others against the imminent threat of death or serious injury. (a) Security operations performed in direct support of combat as part of a larger integrated armed force. (b) Security operations performed in environments where, in the judgment of the responsible Federal official, there is significant potential for the security operations to evolve into combat. (c) Security that entails augmenting or reinforcing others (whether private security contractors, civilians, or military units) that have become engaged in combat.
6. The conduct of foreign relations and the determination of foreign policy.
7. The determination of agency policy, such as determining the content and application of regulations.
8. The determination of budget policy, guidance, and strategy.
9. The determination of Federal program priorities or budget requests.
10. The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.
11. The direction and control of Federal employees.
12. The direction and control of intelligence and counter-intelligence operations.
13. The approval of position descriptions and performance standards for Federal employees.
14. The determination of what government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices with specified ranges and subject to other reasonable conditions deemed appropriate by the agency).
15. In Federal procurement activities with respect to prime contracts:
 - (a) determining what supplies or services are to be acquired by the government
 - (b) participating as a voting member on any source selection boards;
 - (c) approving of any contractual documents, including documents defining requirements, incentive plans and evaluation criteria;
 - (d) determining that prices are fair and reasonable;
 - (e) awarding contracts;
 - (f) administering contracts (including ordering changes in contract performance or contract quantities, making final determinations about a contractor's performance, including approving award fee determinations or past performance evaluations and taking action based on those evaluations, and accepting or rejecting contractor products or services);
 - (g) terminating contracts
 - (h) determining whether contract costs are reasonable, allocable, and allowable;
 - (i) And participating as a voting member on performance evaluation boards.

16. The selection of grant and cooperative agreement recipients including: (a) approval of agreement activities; (b) negotiating the scope of work to be conducted under grants/cooperative agreements; (c) approval of modifications to grant/cooperative agreement budgets and activities; and (d) performance monitoring.
17. The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency response to the administrative appeals of denials of Freedom of Information Act requests.
18. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in government programs.
19. The approval of Federal licensing actions and inspections.
20. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as title 31 United States Code section 952 (relating to private collection contractors) and title 31 United States Code section 3718 (Relating to private attorney collection services), but not including (a) collection of fees, fines, penalties, costs or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is predetermined or can be readily calculated and the funds collected can be readily controlled using standard cash management techniques; and (b) routine voucher and invoice examination.
21. The control of the Treasury accounts.
22. The administration of public trusts.
23. The drafting of official agency proposals for legislation, Congressional testimony responses to Congressional correspondence, or responses to audit reports from an inspector general, the Government Accountability Office, or other Federal audit entity.
24. Representation of the government before administrative and judicial tribunals, unless statute expressly authorizes the use of attorney whose services are procured through contract.

Statutory Restrictions on Contracting
(Title 10 United States Code Section 2465)

- (a) Except as provided in subsection (b), funds appropriated to Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of fire-fighting or security-guard functions at any military installation or facility.
- (b) The prohibition in subsection (a) does not apply to the following contracts:
 - (1) A contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which members of the armed forces would have to be used for the performance of a function described in subsection (a) at the expense of unit readiness.
 - (2) A contract to be carried out on a Government-owned but privately operated installation.

- (3) A contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983.
- (4) A contract for the performance of firefighting functions if the contract is-
 - (A) for a period of one year or less; and
 - (B) covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

**Non-Exhaustive Examples of Closely Associated With Inherently Governmental Functions
(Extract from Office of Federal Procurement Policy Letter 11-1 (September 12, 2011))**

1. Services in support of inherently governmental functions, including, but not limited to the following:
 - a. Performing budget preparation activities, such as workload modeling, fact finding, efficiency studies, and should-cost analysis.
 - b. Undertaking activities to support agency planning and reorganization.
 - c. Providing support for developing policies, including drafting documents, and conducting analyses, feasibility studies, and strategy options.
 - d. Providing services to support the development of regulations and legislative proposals pursuant to specific policy direction.
 - e. Supporting acquisition, including in the areas of:
 - i. Acquisition planning, such as by conducting market research; developing inputs for government cost estimates, and drafting statements of work and other pre-award documents.
 - ii. Source selection, such as by preparing a technical evaluation and associated documentation; participating as a technical advisor to a source selection board or as a nonvoting member of a source selection evaluation board; and drafting the price negotiations memorandum.
 - iii. Contract management, such as by assisting in the evaluation of a contractor's performance (e.g. by collecting information performing an analysis, or making a recommendation for a proposed performance rating), and providing support for assessing contract claims and preparing termination settlement documents.
 - f. Preparation of responses to Freedom of Information Act requests.
2. Work in a situation that permits or might permit access to confidential business information or other sensitive information (other than situations covered by the National Industrial Security Program described in Federal Acquisition Regulation 4.402(b)).
3. Dissemination of information regarding agency policies or regulations, such as conducting community relations campaigns, or conducting agency training courses.
4. Participation in a situation where it might be assumed that participants are agency employees or representatives, such as attending conferences on behalf of an agency.
5. Services as arbitrators or provision of alternative dispute resolution (ADR) services.
6. Construction of buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.
7. Provision of inspection services.
8. Provision of legal advice and interpretations of regulations and statutes to government officials.
9. Provision of non-law enforcement security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

**Examples of Military Essential Functions
(summarized from DoD Instruction 1100.22)**

1. Missions involving operational risks and combatant status under the Law of War.
2. Specialized collective and individual training requiring military unique knowledge and skills based on recent operational experience
3. Independent advice to senior civilian leadership in Department requiring military unique knowledge and skills based on recent operational experience
4. Command and control arrangements best performed within the Uniform Code of Military Justice.
5. Rotation base for an operational capability.
6. Career progression.
7. Esprit de corps (such as military recruiters, military bands)



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

FEB 20 2013

MEMORANDUM FOR DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES

SUBJECT: Preparations for Potential Sequestration on March 1 and Furlough Notifications

For more than a year and a half, the President, the Joint Chiefs of Staff, and I have repeatedly voiced our deep concerns over the half a trillion dollars in automatic across-the-board cuts that would be imposed under sequestration and the severe damage that it would do to both this Department and our national defense.

The Administration continues to work with Congress to reach agreement on a balanced deficit reduction plan to avoid these cuts. Meanwhile, because another trigger for sequestration is approaching on March 1st, the Department's leadership has begun extensive planning on how to implement the required spending reductions. These cuts will be magnified because the Department has been forced to operate under a six-month continuing resolution that has already compelled us to take steps to reduce spending.

In the event of sequestration, we will do everything we can to continue to perform our core mission of providing for the security of the United States, but there is no mistaking that the rigid nature and scale of the cuts forced upon this Department will result in a serious erosion of readiness across the force.

I have also been deeply concerned about the potential direct impact of sequestration on you and your families. We are doing everything possible to limit the worst effects on DoD personnel – but I regret that our flexibility within the law is extremely limited. The President has used his legal authority to exempt military personnel funding from sequestration, but we have no legal authority to exempt civilian personnel funding from reductions. As a result, should sequestration occur and continue for a substantial period, DoD will be forced to place the vast majority of its civilian workforce on administrative furlough.

Today, I notified Congress that furloughs could occur under sequestration. I can assure you that, if we have to implement furloughs, all affected employees will be provided at least 30 days' notice prior to executing a furlough and your benefits will be protected to the maximum extent possible. We will work to ensure that furloughs are executed in a consistent and appropriate manner, and we will also continue to engage in discussions with employee unions as appropriate. More information and answers to frequently asked questions regarding furloughs can be found at www.opm.gov/furlough, under the "administrative furlough" section.



OSD001644-13

Working with your component heads and supervisors, the Department's leaders will continue to keep you informed. As we deal with these difficult issues, I want to thank you for your patience, hard work, and continued dedication to our mission of protecting the country.

Our most important asset in the Department is our world-class personnel. You are fighting every day to keep our country strong and secure, and rest assured that the leaders of this Department will continue to fight with you and for you.

A handwritten signature in black ink, appearing to be "Johnston", with a long horizontal flourish extending to the right.




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

January 14, 2013

M-13-03

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Jeffrey D. Zients 
Deputy Director for Management

SUBJECT: Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources

In the coming months, executive departments and agencies (agencies) will confront significant uncertainty regarding the amount of budgetary resources available for the remainder of the fiscal year. In particular, unless Congress acts to amend current law, the President is required to issue a sequestration order on March 1, 2013, canceling approximately \$85 billion in budgetary resources across the Federal Government. Further uncertainty is created by the expiration of the Continuing Appropriations Resolution, 2013 (CR) on March 27, 2013. This memorandum directs agencies to take certain steps to plan for and manage this budgetary uncertainty.

The Administration continues to urge Congress to take prompt action to address the current budgetary uncertainty, including through the enactment of balanced deficit reduction to avoid sequestration. Should Congress fail to act to avoid sequestration, there will be significant and harmful impacts on a wide variety of Government services and operations. For example, should sequestration remain in place for an extended period of time, hundreds of thousands of families will lose critical education and wellness services through Head Start and nutrition assistance programs. The Department of Defense will face deep cuts that will reduce readiness of non-deployed units, delay needed investments in equipment and facilities, and cut services for military families. And Federal agencies will likely need to furlough hundreds of thousands of employees and reduce essential services such as food inspections, air travel safety, prison security, border patrols, and other mission-critical activities.

At this time, agencies do not have clarity regarding the manner in which Congress will address these issues or the amount of budgetary resources that will be available through the remainder of the fiscal year. Until Congress acts, agencies must continue to prepare for the possibility that they will need to operate with reduced budgetary resources.

Prior to passage of the American Taxpayer Relief Act of 2012 (ATRA), the President was required to issue a sequestration order on January 2, 2013. Although the ATRA postponed this date by two months, agencies had already engaged in extensive planning for operations under post-sequestration funding levels before this postponement was effected. In light of persistent budgetary uncertainty, all agencies should continue these planning activities, in coordination with the Office of Management and Budget (OMB), and should intensify efforts to identify actions that may be required should sequestration occur.

Agencies should generally adhere to the following guiding principles, to the extent practicable and appropriate, in preparing plans to operate with reduced budgetary resources in the event that sequestration occurs:

- use any available flexibility to reduce operational risks and minimize impacts on the agency's core mission in service of the American people;
- identify and address operational challenges that could potentially have a significant deleterious effect on the agency's mission or otherwise raise life, safety, or health concerns;
- identify the most appropriate means to reduce civilian workforce costs where necessary – this may include imposing hiring freezes, releasing temporary employees or not renewing term or contract hires, authorizing voluntary separation incentives and voluntary early retirements, or implementing administrative furloughs (appropriate guidance for administrative furloughs can be found on the OPM website [\[here\]](#)); consistent with Section 3(a)(ii) of Executive Order 13522, allow employees' exclusive representatives to have pre-decisional involvement in these matters to the fullest extent practicable;
- review grants and contracts to determine where cost savings may be achieved in a manner that is consistent with the applicable terms and conditions, remaining mindful of the manner in which individual contracts or grants advance the core mission of the agency;
- take into account funding flexibilities, including the availability of reprogramming and transfer authority; and,
- be cognizant of the requirements of the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. §§ 2101-2109.

While agency plans should reflect intensified efforts to prepare for operations under a potential sequestration, actions that would implement reductions specifically designed as a response to sequestration should generally not be taken at this time. In some cases, however, the overall budgetary uncertainty and operational constraints may require that certain actions be taken in the immediate- or near-term. Agencies presented with these circumstances should continue to act in a prudent manner to ensure that operational risks are avoided and adequate funding is available for the remainder of the fiscal year to meet the agency's core requirements and mission. Should circumstances require an agency to take actions that would constitute a change from normal practice and result in a reduction of normal spending and operations in the

immediate- or near-term, the agency must coordinate closely with its OMB Resource Management Office (RMO) before taking any such actions.

All agencies should work with their OMB RMO on the appropriate timing to submit draft contingency plans for operating under sequestration for review. Furthermore, should Congress take action that affects the current budgetary uncertainty, OMB will provide agencies with additional guidance as appropriate.



DEPUTY SECRETARY OF DEFENSE
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JAN 10 2013

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
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DIRECTOR, ADMINISTRATION AND MANAGEMENT
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DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Handling Budgetary Uncertainty in Fiscal Year 2013

Two sources of uncertainty are creating budgetary challenges for the Department of Defense (DoD) in 2013. The first is the fact that the Department is operating under a Continuing Resolution (CR) through at least March 27, 2013. Because most operating funding was planned to increase from Fiscal Year (FY) 2012 to FY 2013, but is instead being held at FY 2012 levels under the CR, funds will run short at current rates of expenditure if the CR continues through the end of the fiscal year in its current form. The Secretary will continue to urge the Congress to enact appropriations bills for FY 2013. But if the CR were to be extended through the end of the fiscal year, it would hinder our ability to maintain a ready force.

The second source of uncertainty is the potential sequestration recently deferred from January 2, 2013 to March 1, 2013 by the American Taxpayer Relief Act of 2012. The possibility of sequestration occurring as late as the beginning of the sixth month of the fiscal year creates significant additional uncertainty for the management of the Department.

Either of these problems, in isolation, would present serious budget execution challenges to the Department, negatively impacting readiness and resulting in other undesirable outcomes. This situation would be made even more challenging by the need to protect funds for wartime operations.

Near-Term Actions

Given the overall budgetary uncertainty faced by the Department, and in particular the immediate operational issues presented by the CR, it is prudent to take certain steps now in order to help avoid serious future problems. I therefore authorize all Defense Components to begin implementing measures that will help mitigate our budget execution risks. For now, and to the extent possible, any actions taken must be reversible at a later date in the event that Congress acts to remove the risks I have described. The actions should be structured to minimize harmful effects on our people and on operations and unit readiness.

Categories of approved actions are identified in Table 1. The authority to implement these actions shall remain in effect until they are revoked in a subsequent memorandum from my office. If Components believe they must take actions that go beyond the categories listed in Table 1, they should present the options for my review and approval prior to their implementation.

Intensified Planning for Longer-Term Budgetary Uncertainty

Given the added challenge of a potential sequestration in March, we must also intensify efforts to plan future actions that might be required should that happen. This planning does not assume these unfortunate events will occur, only that we must be ready.

As they formulate draft plans, Components should follow the guidance that directs the Department to take all possible steps to mitigate harmful effects associated with this budgetary uncertainty and to maintain a strong defense. The details of the guidance are summarized below:

- For the operating portions of the DoD budget:
 - Exempt all military personnel funding from sequestration reductions, in accordance with the decision made by the President in July 2012.
 - Fully protect funding for wartime operations.
 - Fully protect Wounded Warrior programs.
 - To the extent feasible, protect programs most closely associated with the new defense strategy.
 - Reduce civilian workforce costs using the following actions (all subject to mission-critical exemptions, and appropriate consultation with union representatives consistent with Executive Order 13522):
 - Release temporary employees and do not renew term hires.
 - Impose hiring freezes.
 - Authorize voluntary separation incentives and voluntary early retirements to the extent feasible.
 - Consider the possibility of furloughs of up to 30 calendar days or 22 discontinuous workdays.
 - To the extent feasible, protect family programs.

- To the extent feasible, protect funding most directly associated with readiness; focus the necessary cuts on later deploying units.
- For the investment portions of the DoD budget (procurement, RDT&E, construction):
 - Protect investments funded in Overseas Contingency Operations if associated with urgent operational needs.
 - To the extent feasible, protect programs mostly closely associated with the new defense strategy.
 - Take prudent steps to minimize disruption and added costs (e.g., avoid penalties associated with potential contract cancellations where feasible; prudently manage construction projects funded with prior-year monies).

While we are hopeful of avoiding budgetary problems, draft Component plans should reflect the possibility that we may have to operate under a year-long CR and that sequestration takes place. Table 2 shows the types of information that should be included in the plans. Components should submit these draft plans to the Under Secretary of Defense (Comptroller) by February 1, 2013. The Under Secretary of Defense (Comptroller) will work with the Components to adjust this schedule if changes are required due to the deadlines for the preparation of the FY 2014 President's Budget submission.

I appreciate your patience as we work through these difficult budgetary times. The Department will continue to do its best to resolve these budgetary uncertainties in a manner that permits us to support our current defense strategy and maintain a strong defense.

If addressees have questions about this memorandum, they should direct them to the Under Secretary of Defense (Comptroller).

A handwritten signature in black ink that reads "Ashton Carter". The signature is written in a cursive, flowing style.

Attachments:
As stated

Table 1. Categories of Approved Near-Term Actions

- Freeze civilian hiring (with exceptions for mission-critical activities*).
- Provide authority to terminate employment of temporary hires and to notify term employees that their contracts will not be renewed (with exceptions for mission-critical activities and when appropriate in terms of personnel timing*).
- Reduce base operating funding.
- Curtail travel, training, and conferences (all with exceptions for mission-critical activities* including those required to maintain professional licensure or equivalent certifications).
- Curtail facilities maintenance or Facilities Sustainment, Restoration, and Modernization (FSRM) (with exceptions for mission-critical activities*).
 - If necessary, services/agencies are authorized to fund FSRM at levels below current guidance.
- Curtail administrative expenses such as supply purchases, business IT, ceremonies, etc. (with exceptions for mission-critical activities*).
- Review contracts and studies for possible cost-savings.
- Cancel 3rd and 4th quarter ship maintenance availabilities and aviation and ground depot-level maintenance activities. Take this action no earlier than February 15, 2013.
- Clear all R&D and production contracts and contract modifications that obligate more than \$500 million with the USD(AT&L) prior to award.
- For Science and Technology accounts, provide the USD(AT&L) and the Assistant Secretary of Defense (Research & Engineering) with an assessment of the impact that budgetary uncertainty may have on meeting Departmental research priorities.

*Approvals will be granted by Component heads or by senior officials designated by the Component head.

Components with personnel serving Combatant Commanders (COCOMs) must consult with the COCOMs before implementing actions that affect them. Disputes will be brought to the attention of the Chairman of the Joint Chiefs of Staff for further resolution.

Components receiving reimbursements should coordinate with customer before taking actions that would affect the customer's mission.

Table 2. Information to Be Included in Draft Implementation Plans

The following information should be provided at the Component level. Information by commands and bases/installations is not required.

- For operating accounts, identify major actions to include, at a minimum:
 - Extent of civilian hiring freezes; expected number of temps/terms released; expected number, duration, and nature of furloughs.
 - Reductions in flying hours, steaming days, vehicle miles, and other operations/training/support activities that affect force readiness.
 - Areas of budgets experiencing disproportionate cuts.
- For investment accounts:
 - Plans for large programs (ACAT 1D and 1C, and MAIS programs).
 - Include major changes in unit buys, delays, etc.
 - Significant changes in all joint programs.
- Identify and prioritize any essential reprogramming actions with offsets.



UNITED STATES PUBLIC LAWS

112th Congress 2nd Session

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PUBLIC LAW 112-240 [H.R. 8]

JAN. 02, 2013

AMERICAN TAXPAYER RELIEF ACT OF 2012

112 P.L. 240; 126 Stat. 2313; 2013 Enacted H.R. 8; 112 Enacted H.R. 8

BILL TRACKING REPORT: 112 Bill Tracking H.R. 8
FULL TEXT VERSION(S) OF BILL: 112 H.R. 8
CIS LEGIS. HISTORY DOCUMENT: 112 CIS Legis. Hist. P.L. 240

An Act

Entitled the "American Taxpayer Relief Act of 2012".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[*1] SECTION 1. <26 USC 1 note> SHORT TITLE, ETC.

(a) Short Title.--This Act may be cited as the "American Taxpayer Relief Act of 2012".

(b) Amendment of 1986 Code.--Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) Table of Contents.--The table of contents for this Act is as follows:

Sec. 1. Short title, etc.

TITLE I--GENERAL EXTENSIONS

- Sec. 101. Permanent extension and modification of 2001 tax relief.
- Sec. 102. Permanent extension and modification of 2003 tax relief.
- Sec. 103. Extension of 2009 tax relief.
- Sec. 104. Permanent alternative minimum tax relief.

TITLE II--INDIVIDUAL TAX EXTENDERS

- Sec. 201. Extension of deduction for certain expenses of elementary and secondary school teachers.
- Sec. 202. Extension of exclusion from gross income of discharge of qualified principal residence indebtedness.
- Sec. 203. Extension of parity for exclusion from income for employer-provided mass transit and parking benefits.
- Sec. 204. Extension of mortgage insurance premiums treated as qualified residence interest.
- Sec. 205. Extension of deduction of State and local general sales taxes.
- Sec. 206. Extension of special rule for contributions of capital gain real property made for conservation purposes.
- Sec. 207. Extension of above-the-line deduction for qualified tuition and related expenses.
- Sec. 208. Extension of tax-free distributions from individual retirement plans for charitable purposes.
- Sec. 209. Improve and make permanent the provision authorizing the Internal Revenue Service to disclose certain return and return information to certain prison officials.

TITLE III--BUSINESS TAX EXTENDERS

- Sec. 301. Extension and modification of research credit.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

- Sec. 302. Extension of temporary minimum low-income tax credit rate for non-federally subsidized new buildings.
 Sec. 303. Extension of housing allowance exclusion for determining area median gross income for qualified residential rental project exempt facility bonds.
 Sec. 304. Extension of Indian employment tax credit.
 [**2314] Sec. 305. Extension of new markets tax credit.
 Sec. 306. Extension of railroad track maintenance credit.
 Sec. 307. Extension of mine rescue team training credit.
 Sec. 308. Extension of employer wage credit for employees who are active duty members of the uniformed services.
 Sec. 309. Extension of work opportunity tax credit.
 Sec. 310. Extension of qualified zone academy bonds.
 Sec. 311. Extension of 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements.
 Sec. 312. Extension of 7-year recovery period for motorsports entertainment complexes.
 Sec. 313. Extension of accelerated depreciation for business property on an Indian reservation.
 Sec. 314. Extension of enhanced charitable deduction for contributions of food inventory.
 Sec. 315. Extension of increased expensing limitations and treatment of certain real property as section 179 property.
 Sec. 316. Extension of election to expense mine safety equipment.
 Sec. 317. Extension of special expensing rules for certain film and television productions.
 Sec. 318. Extension of deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.
 Sec. 319. Extension of modification of tax treatment of certain payments to controlling exempt organizations.
 Sec. 320. Extension of treatment of certain dividends of regulated investment companies.
 Sec. 321. Extension of RIC qualified investment entity treatment under FIRPTA.
 Sec. 322. Extension of subpart F exception for active financing income.
 Sec. 323. Extension of look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules.
 Sec. 324. Extension of temporary exclusion of 100 percent of gain on certain small business stock.
 Sec. 325. Extension of basis adjustment to stock of S corporations making charitable contributions of property.
 Sec. 326. Extension of reduction in S-corporation recognition period for built-in gains tax.
 Sec. 327. Extension of empowerment zone tax incentives.
 Sec. 328. Extension of tax-exempt financing for New York Liberty Zone.
 Sec. 329. Extension of temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands.
 Sec. 330. Modification and extension of American Samoa economic development credit.
 Sec. 331. Extension and modification of bonus depreciation.

TITLE IV--ENERGY TAX EXTENDERS

- Sec. 401. Extension of credit for energy-efficient existing homes.
 Sec. 402. Extension of credit for alternative fuel vehicle refueling property.
 Sec. 403. Extension of credit for 2- or 3-wheeled plug-in electric vehicles.
 Sec. 404. Extension and modification of cellulosic biofuel producer credit.
 Sec. 405. Extension of incentives for biodiesel and renewable diesel.
 Sec. 406. Extension of production credit for Indian coal facilities placed in service before 2009.
 Sec. 407. Extension and modification of credits with respect to facilities producing energy from certain renewable resources.
 Sec. 408. Extension of credit for energy-efficient new homes.
 Sec. 409. Extension of credit for energy-efficient appliances.
 Sec. 410. Extension and modification of special allowance for cellulosic biofuel plant property.
 Sec. 411. Extension of special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities.
 Sec. 412. Extension of alternative fuels excise tax credits.

TITLE V--UNEMPLOYMENT

- Sec. 501. Extension of emergency unemployment compensation program.
 Sec. 502. Temporary extension of extended benefit provisions.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

- Sec. 503. Extension of funding for reemployment services and reemployment and eligibility assessment activities.
- Sec. 504. Additional extended unemployment benefits under the Railroad Unemployment Insurance Act.

TITLE VI--MEDICARE AND OTHER HEALTH EXTENSIONS

Subtitle A--Medicare Extensions

- Sec. 601. Medicare physician payment update.
- [**2315] Sec. 602. Work geographic adjustment.
- Sec. 603. Payment for outpatient therapy services.
- Sec. 604. Ambulance add-on payments.
- Sec. 605. Extension of Medicare inpatient hospital payment adjustment for low-volume hospitals.
- Sec. 606. Extension of the Medicare-dependent hospital (MDH) program.
- Sec. 607. Extension for specialized Medicare Advantage plans for special needs individuals.
- Sec. 608. Extension of Medicare reasonable cost contracts.
- Sec. 609. Performance improvement.
- Sec. 610. Extension of funding outreach and assistance for low-income programs.

Subtitle B--Other Health Extensions

- Sec. 621. Extension of the qualifying individual (QI) program.
- Sec. 622. Extension of Transitional Medical Assistance (TMA).
- Sec. 623. Extension of Medicaid and CHIP Express Lane option.
- Sec. 624. Extension of family-to-family health information centers.
- Sec. 625. Extension of Special Diabetes Program for Type I diabetes and for Indians.

Subtitle C--Other Health Provisions

- Sec. 631. IPPS documentation and coding adjustment for implementation of MS-DRGs.
- Sec. 632. Revisions to the Medicare ESRD bundled payment system to reflect findings in the GAO report.
- Sec. 633. Treatment of multiple service payment policies for therapy services.
- Sec. 634. Payment for certain radiology services furnished under the Medicare hospital outpatient department prospective payment system.
- Sec. 635. Adjustment of equipment utilization rate for advanced imaging services.
- Sec. 636. Medicare payment of competitive prices for diabetic supplies and elimination of overpayment for diabetic supplies.
- Sec. 637. Medicare payment adjustment for non-emergency ambulance transports for ESRD beneficiaries.
- Sec. 638. Removing obstacles to collection of overpayments.
- Sec. 639. Medicare advantage coding intensity adjustment.
- Sec. 640. Elimination of all funding for the Medicare Improvement Fund.
- Sec. 641. Rebasement of State DSH allotments.
- Sec. 642. Repeal of CLASS program.
- Sec. 643. Commission on Long-Term Care.
- Sec. 644. Consumer Operated and Oriented Plan program contingency fund.

TITLE VII--EXTENSION OF AGRICULTURAL PROGRAMS

- Sec. 701. 1-year extension of agricultural programs.
- Sec. 702. Supplemental agricultural disaster assistance.

TITLE VIII--MISCELLANEOUS PROVISIONS

- Sec. 801. Strategic delivery systems.
- Sec. 802. No cost of living adjustment in pay of members of congress.

TITLE IX--BUDGET PROVISIONS

Subtitle A--Modifications of Sequestration

- Sec. 901. Treatment of sequester.
- Sec. 902. Amounts in applicable retirement plans may be transferred to designated Roth accounts without distribution.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

Subtitle B--Budgetary Effects
Sec. 911. Budgetary effects.

TITLE I--GENERAL EXTENSIONS

[*101] Sec. 101. PERMANENT EXTENSION AND MODIFICATION OF 2001 TAX RELIEF.

(a) Permanent Extension.--

(1) <26 USC 1 note> In general.-- The Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking title IX.

(2) <26 USC 121 note> Conforming amendment.-- The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 is amended by striking section 304.

[**2316] (3) <26 USC 1 note> Effective date.-- The amendments made by this subsection shall apply to taxable, plan, or limitation years beginning after December 31, 2012, and estates of decedents dying, gifts made, or generation skipping transfers after December 31, 2012.

(b) Application of Income Tax to Certain High-Income Taxpayers.--

(1) Income tax rates.----

(A) <26 USC 1> Treatment of 25-, 28-, and 33-percent rate brackets.--Paragraph (2) of section 1(i) is amended to read as follows:

"(2) 25-, 28-, and 33-percent rate brackets.--The tables under subsections (a), (b), (c), (d), and (e) shall be applied--

"(A) by substituting '25%' for '28%' each place it appears (before the application of subparagraph (B)),

"(B) by substituting '28%' for '31%' each place it appears, and

"(C) by substituting '33%' for '36%' each place it appears.".

(B) 35-percent rate bracket.--Subsection (i) of section 1 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) Modifications to income tax brackets for high-income taxpayers.----

"(A) 35-percent rate bracket.--In the case of taxable years beginning after December 31, 2012--

"(i) the rate of tax under subsections (a), (b), (c), and (d) on a taxpayer's taxable income in the highest rate bracket shall be 35 percent to the extent such income does not exceed an amount equal to the excess of--

"(I) the applicable threshold, over

"(II) the dollar amount at which such bracket begins, and

"(ii) the 39.6 percent rate of tax under such subsections shall apply only to the taxpayer's taxable income in such bracket in excess of the amount to which clause (i) applies.

"(B) Applicable threshold.--For purposes of this paragraph, the term 'applicable threshold' means--

"(i) \$ 450,000 in the case of subsection (a),

"(ii) \$ 425,000 in the case of subsection (b),

"(iii) \$ 400,000 in the case of subsection (c), and

"(iv) 1/2 the amount applicable under clause (i) (after adjustment, if any, under subparagraph (C)) in the case of subsection (d).

"(C) Inflation adjustment.--For purposes of this paragraph, with respect to taxable years beginning in calendar years after 2013, each of the dollar amounts under clauses (i), (ii), and (iii) of subparagraph (B) shall be adjusted in the same manner as under paragraph (1)(C)(i), except that subsection (f)(3)(B) shall be applied by substituting '2012' for '1992'.".

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(2) Phaseout of personal exemptions and itemized deductions.----

[**2317] <26 USC 68> (A) Overall limitation on itemized deductions.--Section 68 is amended--

(i) by striking subsection (b) and inserting the following:

"(b) Applicable Amount.--

"(1) In general.-- For purposes of this section, the term 'applicable amount' means--

"(A) \$ 300,000 in the case of a joint return or a surviving spouse (as defined in section 2(a)),

"(B) \$ 275,000 in the case of a head of household (as defined in section 2(b)),

"(C) \$ 250,000 in the case of an individual who is not married and who is not a surviving spouse or head of household, and

"(D) 1/2 the amount applicable under subparagraph (A) (after adjustment, if any, under paragraph (2)) in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

"(2) Inflation adjustment.-- In the case of any taxable year beginning in calendar years after 2013, each of the dollar amounts under subparagraphs (A), (B), and (C) of paragraph (1) shall be shall be increased by an amount equal to--

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that section 1(f)(3)(B) shall be applied by substituting '2012' for '1992'.

If any amount after adjustment under the preceding sentence is not a multiple of \$ 50, such amount shall be rounded to the next lowest multiple of \$ 50.", and

(ii) by striking subsections (f) and (g).

(B) Phaseout of deductions for personal exemptions.--

(i) In general.--Paragraph (3) of section 151(d) is amended--

(I) by striking "the threshold amount" in subparagraphs (A) and (B) and inserting "the applicable amount in effect under section 68(b)",

(II) by striking subparagraph (C) and redesignating subparagraph (D) as subparagraph (C), and

(III) by striking subparagraphs (E) and (F).

(ii) Conforming amendments.--Paragraph (4) of section 151(d) is amended--

(I) by striking subparagraph (B),

(II) by redesignating clauses (i) and (ii) of subparagraph (A) as subparagraphs (A) and (B), respectively, and by indenting such subparagraphs (as so redesignated) accordingly, and

(III) by striking all that precedes "in a calendar year after 1989," and inserting the following:

"(4) Inflation adjustment.-- In the case of any taxable year beginning".

(3) <26 USC 1 note> Effective date.-- The amendments made by this subsection shall apply to taxable years beginning after December 31, 2012.

(c) Modifications of Estate Tax.--

[**2318] (1) Maximum estate tax rate equal to 40 percent.-- The table contained in subsection (c) of section 2001, as amended by section 302(a)(2) of the Tax Relief, Unemployment <26 USC 2001> Insurance Reauthorization, and Job Creation Act of 2010, is amended by striking "Over \$ 500,000" and all that follows and inserting the following:

"Over [dollar]500,000 but	\$ 155,800, plus 37 percent of the
not over [dollar]750,000.	excess of such amount over

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

	\$ 500,000.
Over \$ 750,000 but not over \$ 1,000,000.	\$ 248,300, plus 39 percent of the excess of such amount over \$ 750,000.
Over [dollar]1,000,000	\$ 345,800, plus 40 percent of the excess of such amount over \$ 1,000,000."

(2) Technical correction.-- Clause (i) of section 2010(c)(4)(B) is amended by striking "basic exclusion amount" and inserting "applicable exclusion amount".

(3) <26 USC 2001 note> Effective dates.----

(A) In general.--Except as otherwise provided by in this paragraph, the amendments made by this subsection shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2012.

(B) Technical correction.--The amendment made by paragraph (2) shall take effect as if included in the amendments made by section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.

[*102] Sec. 102. PERMANENT EXTENSION AND MODIFICATION OF 2003 TAX RELIEF.

(a) <26 USC 1 note> Permanent Extension.--The Jobs and Growth Tax Relief Reconciliation Act of 2003 is amended by striking section 303.

(b) 20-Percent Capital Gains Rate for Certain High Income Individuals.--

(1) In general.-- Paragraph (1) of section 1(h) is amended by striking subparagraph (C), by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F) and by inserting after subparagraph (B) the following new subparagraphs:

"(C) 15 percent of the lesser of--

"(i) so much of the adjusted net capital gain (or, if less, taxable income) as exceeds the amount on which a tax is determined under subparagraph (B), or

"(ii) the excess of--

"(I) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 39.6 percent, over

"(II) the sum of the amounts on which a tax is determined under subparagraphs (A) and (B),

"(D) 20 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the sum of the amounts on which tax is determined under subparagraphs (B) and (C),".

[**2319] (2) <26 USC 55> Minimum tax.-- Paragraph (3) of section 55(b) is amended by striking subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (B) the following new subparagraphs:

"(C) 15 percent of the lesser of--

"(i) so much of the adjusted net capital gain (or, if less, taxable excess) as exceeds the amount on which tax is determined under subparagraph (B), or

"(ii) the excess described in section 1(h)(1)(C)(ii), plus

"(D) 20 percent of the adjusted net capital gain (or, if less, taxable excess) in excess of the sum of the amounts on which tax is determined under subparagraphs (B) and (C), plus".

(c) Conforming Amendments.--

(1) The following provisions are each amended by striking "15 percent" and inserting "20 percent":

(A) Section 531.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(B) Section 541.

(C) Section 1445(e)(1).

(D) The second sentence of section 7518(g)(6)(A).

(E) Section 53511(f)(2) of title 46, United States Code.

(2) Sections 1(h)(1)(B) and 55(b)(3)(B) are each amended by striking "5 percent (0 percent in the case of taxable years beginning after 2007)" and inserting "0 percent".

(3) Section 1445(e)(6) is amended by striking "15 percent (20 percent in the case of taxable years beginning after December 31, 2010)" and inserting "20 percent".

(d) Effective Dates.--

(1) <26 USC 1 note> In general.-- Except as otherwise provided, the amendments made by subsections (b) and (c) shall apply to taxable years beginning after December 31, 2012.

(2) Withholding.-- The amendments made by paragraphs (1)(C) and (3) of subsection (c) shall apply to amounts paid on or after January 1, 2013.

[*103] Sec. 103. EXTENSION OF 2009 TAX RELIEF.

(a) 5-year Extension of American Opportunity Tax Credit.--

(1) In general.-- Section 25A(i) is amended by striking "in 2009, 2010, 2011, or 2012" and inserting "after 2008 and before 2018".

(2) Treatment of possessions.-- Section 1004(c)(1) of division B of the American Recovery and Reinvestment Tax Act of 2009 is amended by striking "in 2009, 2010, 2011, and 2012" <26 USC 25A note> each place it appears and inserting "after 2008 and before 2018".

(b) 5-year Extension of Child Tax Credit.--Section 24(d)(4) is amended--

(1) by striking "2009, 2010, 2011, and 2012" in the heading and inserting "for certain years", and

(2) by striking "in 2009, 2010, 2011, or 2012" and inserting "after 2008 and before 2018".

(c) 5-year Extension of Earned Income Tax Credit.--Section 32(b)(3) is amended--

(1) by striking "2009, 2010, 2011, and 2012" in the heading and inserting "for certain years", and

[**2320] (2) by striking "in 2009, 2010, 2011, or 2012" and inserting "after 2008 and before 2018".

(d) <26 USC 6409> Permanent Extension of Rule Disregarding Refunds in the Administration of Federal Programs and Federally Assisted Programs.--Section 6409 is amended to read as follows:

"Sec. 6409. REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.

"Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds."

(e) Effective Dates.--

(1) <26 USC 24 note> In general.-- Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2012.

(2) Rule regarding disregard of refunds.-- The amendment made by subsection (d) shall apply to amounts received after December 31, 2012.

[*104] Sec. 104. PERMANENT ALTERNATIVE MINIMUM TAX RELIEF.

(a) 2012 Exemption Amounts Made Permanent.--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(1) In general.-- Paragraph (1) of section 55(d) is amended--

(A) by striking "\$ 45,000" and all that follows through "2011)" in subparagraph (A) and inserting "\$ 78,750",

and
(B) by striking "\$ 33,750" and all that follows through "2011)" in subparagraph (B) and inserting "\$ 50,600",

(C) by striking "paragraph (1)(A)" in subparagraph (C) and inserting "subparagraph (A)".

(b) Exemption Amounts Indexed for Inflation.--

(1) In general.-- Subsection (d) of section 55 is amended by adding at the end the following new paragraph:

"(4) Inflation adjustment.----

"(A) In general.--In the case of any taxable year beginning in a calendar year after 2012, the amounts described in subparagraph (B) shall each be increased by an amount equal to--

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2011' for 'calendar year 1992' in subparagraph (B) thereof.

"(B) Amounts described.--The amounts described in this subparagraph are--

"(i) each of the dollar amounts contained in subsection (b)(1)(A)(i),

"(ii) each of the dollar amounts contained in paragraph (1), and

"(iii) each of the dollar amounts in subparagraphs (A) and (B) of paragraph (3).

[**2321] "(C) Rounding.--Any increase determined under subparagraph (A) shall be rounded to the nearest multiple of \$ 100."

(2) Conforming amendments.----

(A) <26 USC 55> Clause (iii) of section 55(b)(1)(A) is amended by striking "by substituting" and all that follows through "appears." and inserting "by substituting 50 percent of the dollar amount otherwise applicable under subclause (I) and subclause (II) thereof."

(B) Paragraph (3) of section 55(d) is amended--

(i) by striking "or (2)" in subparagraph (A),

(ii) by striking "and" at the end of subparagraph (B), and

(iii) by striking subparagraph (C) and inserting the following new subparagraphs:

"(C) 50 percent of the dollar amount applicable under subparagraph (A) in the case of a taxpayer described in subparagraph (C) or (D) of paragraph (1), and

"(D) \$ 150,000 in the case of a taxpayer described in paragraph (2)."

(c) Alternative Minimum Tax Relief for Nonrefundable Credits.--

(1) In general.-- Subsection (a) of section 26 is amended to read as follows:

"(a) Limitation Based on Amount of Tax.--The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the sum of--

"(1) the taxpayer's regular tax liability for the taxable year reduced by the foreign tax credit allowable under section 27(a), and

"(2) the tax imposed by section 55(a) for the taxable year."

(2) Conforming amendments.----

(A) Adoption credit.--

(i) Section 23(b) is amended by striking paragraph (4).

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(ii) Section 23(c) is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) In general.-- If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 25D and 1400C), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year."

(iii) Section 23(c) is amended by redesignating paragraph (3) as paragraph (2).

(B) Child tax credit.--

(i) Section 24(b) is amended by striking paragraph (3).

(ii) Section 24(d)(1) is amended--

(I) by striking "section 26(a)(2) or subsection (b)(3), as the case may be," each place it appears in subparagraphs (A) and (B) and inserting "section 26(a)", and

(II) by striking "section 26(a)(2) or subsection (b)(3), as the case may be" in the second last sentence and inserting "section 26(a)".

[**2322] (C) Credit for interest on certain home mortgages.--Section 25(e)(1)(C) is amended to read as follows:

"(C) <26 USC 25> Applicable tax limit.--For purposes of this paragraph, the term 'applicable tax limit' means the limitation imposed by section 26(a) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 25D, and 1400C)."

(D) Hope and lifetime learning credits.--Section 25A(i) is amended--

(i) by striking paragraph (5) and by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively, and

(ii) by striking "section 26(a)(2) or paragraph (5), as the case may be" in paragraph (5), as redesignated by clause (i), and inserting "section 26(a)".

(E) Savers' credit.--Section 25B is amended by striking subsection (g).

(F) Residential energy efficient property.--Section 25D(c) is amended to read as follows:

"(c) Carryforward of Unused Credit.--If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year."

(G) Certain plug-in electric vehicles.--Section 30(c)(2) is amended to read as follows:

"(2) Personal credit.-- For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year."

(H) Alternative motor vehicle credit.--Section 30B(g)(2) is amended to read as follows:

"(2) Personal credit.-- For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year."

(I) New qualified plug-in electric vehicle credit.--Section 30D(c)(2) is amended to read as follows:

"(2) Personal credit.-- For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year."

(J) Cross references.--Section 55(c)(3) is amended by striking "26(a), 30C(d)(2)," and inserting "30C(d)(2)".

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(K) Foreign tax credit.--Section 904 is amended by striking subsection (i) and by redesignating subsections (j), (k), and (l) as subsections (i), (j), and (k), respectively.

(L) First-time home buyer credit for the District of Columbia.--Section 1400C(d) is amended to read as follows:

"(d) Carryforward of Unused Credit.--If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and section 25D), such excess shall be carried to the [**2323] succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year."

(d) <26 USC 23 note> Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

TITLE II--INDIVIDUAL TAX EXTENDERS

[*201] Sec. 201. EXTENSION OF DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

(a) <26 USC 62> In General.--Subparagraph (D) of section 62(a)(2) is amended by striking "or 2011" and inserting "2011, 2012, or 2013".

(b) <26 USC 62 note> Effective Date.--The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

[*202] Sec. 202. EXTENSION OF EXCLUSION FROM GROSS INCOME OF DISCHARGE OF QUALIFIED PRINCIPAL RESIDENCE INDEBTEDNESS.

(a) In General.--Subparagraph (E) of section 108(a)(1) is amended by striking "January 1, 2013" and inserting "January 1, 2014".

(b) <26 USC 108 note> Effective Date.--The amendment made by this section shall apply to indebtedness discharged after December 31, 2012.

[*203] Sec. 203. EXTENSION OF PARITY FOR EXCLUSION FROM INCOME FOR EMPLOYER-PROVIDED MASS TRANSIT AND PARKING BENEFITS.

(a) In General.--Paragraph (2) of section 132(f) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 132 note> Effective Date.--The amendment made by this section shall apply to months after December 31, 2011.

[*204] Sec. 204. EXTENSION OF MORTGAGE INSURANCE PREMIUMS TREATED AS QUALIFIED RESIDENCE INTEREST.

(a) In General.--Subclause (I) of section 163(h)(3)(E)(iv) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Technical Amendments.--Clause (i) of section 163(h)(4)(E) is amended--

(1) by striking "Veterans Administration" and inserting "Department of Veterans Affairs", and

(2) by striking "Rural Housing Administration" and inserting "Rural Housing Service".

(c) <26 USC 163 note> Effective Date.--The amendments made by this section shall apply to amounts paid or accrued after December 31, 2011.

[*205] Sec. 205. EXTENSION OF DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES.

(a) In General.--Subparagraph (I) of section 164(b)(5) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 164 note> Effective Date.--The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

[*206] [**2324] Sec. 206. EXTENSION OF SPECIAL RULE FOR CONTRIBUTIONS OF CAPITAL GAIN REAL PROPERTY MADE FOR CONSERVATION PURPOSES.

(a) <26 USC 170> In General.--Clause (vi) of section 170(b)(1)(E) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Contributions by Certain Corporate Farmers and Ranchers.--Clause (iii) of section 170(b)(2)(B) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(c) <26 USC 170 note> Effective Date.--The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2011.

[*207] Sec. 207. EXTENSION OF ABOVE-THE-LINE DEDUCTION FOR QUALIFIED TUITION AND RELATED EXPENSES.

(a) In General.--Subsection (e) of section 222 is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 222 note> Effective Date.--The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

[*208] Sec. 208. EXTENSION OF TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR CHARITABLE PURPOSES.

(a) In General.--Subparagraph (F) of section 408(d)(8) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 408 note> Effective Date; Special Rule.--

(1) Effective date.-- The amendment made by this section shall apply to distributions made in taxable years beginning after December 31, 2011.

(2) Special rules.-- For purposes of subsections (a)(6), (b)(3), and (d)(8) of section 408 of the Internal Revenue Code of 1986, at the election of the taxpayer (at such time and in such manner as prescribed by the Secretary of the Treasury)--

(A) any qualified charitable distribution made after December 31, 2012, and before February 1, 2013, shall be deemed to have been made on December 31, 2012, and

(B) any portion of a distribution from an individual retirement account to the taxpayer after November 30, 2012, and before January 1, 2013, may be treated as a qualified charitable distribution to the extent that--

(i) such portion is transferred in cash after the distribution to an organization described in section 408(d)(8)(B)(i) before February 1, 2013, and

(ii) such portion is part of a distribution that would meet the requirements of section 408(d)(8) but for the fact that the distribution was not transferred directly to an organization described in section 408(d)(8)(B)(i).

[*209] Sec. 209. IMPROVE AND MAKE PERMANENT THE PROVISION AUTHORIZING THE INTERNAL REVENUE SERVICE TO DISCLOSE CERTAIN RETURN AND RETURN INFORMATION TO CERTAIN PRISON OFFICIALS.

(a) In General.--Paragraph (10) of section 6103(k) is amended to read as follows:

"(10) Disclosure of certain returns and return information to certain prison officials.----

[**2325] "(A) In general.--Under such procedures as the Secretary may prescribe, the Secretary may disclose to officers and employees of the Federal Bureau of Prisons and of any State agency charged with the responsibility for administration of prisons any returns or return information with respect to individuals incarcerated in Federal or State prison systems whom the Secretary has determined may have filed or facilitated the filing of a false or fraudulent return to the extent that the Secretary determines that such disclosure is necessary to permit effective Federal tax administration.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

"(B) Disclosure to contractor-run prisons.--Under such procedures as the Secretary may prescribe, the disclosures authorized by subparagraph (A) may be made to contractors responsible for the operation of a Federal or State prison on behalf of such Bureau or agency.

"(C) Restrictions on use of disclosed information.--Any return or return information received under this paragraph shall be used only for the purposes of and to the extent necessary in taking administrative action to prevent the filing of false and fraudulent returns, including administrative actions to address possible violations of administrative rules and regulations of the prison facility and in administrative and judicial proceedings arising from such administrative actions.

"(D) Restrictions on redisclosure and disclosure to legal representatives.--Notwithstanding subsection (h)--

"(i) Restrictions on redisclosure.--Except as provided in clause (ii), any officer, employee, or contractor of the Federal Bureau of Prisons or of any State agency charged with the responsibility for administration of prisons shall not disclose any information obtained under this paragraph to any person other than an officer or employee or contractor of such Bureau or agency personally and directly engaged in the administration of prison facilities on behalf of such Bureau or agency.

"(ii) Disclosure to legal representatives.--The returns and return information disclosed under this paragraph may be disclosed to the duly authorized legal representative of the Federal Bureau of Prisons, State agency, or contractor charged with the responsibility for administration of prisons, or of the incarcerated individual accused of filing the false or fraudulent return who is a party to an action or proceeding described in subparagraph (C), solely in preparation for, or for use in, such action or proceeding."

(b) Conforming Amendments.--

(1) Paragraph (3) of section 6103(a) is amended by inserting "subsection (k)(10)," after "subsection (e)(1)(D)(iii),".

(2) Paragraph (4) of section 6103(p) is amended--

(A) by inserting "subsection (k)(10)," before "subsection (l)(10)," in the matter preceding subparagraph (A),

(B) in subparagraph (F)(i)--

(i) by inserting "(k)(10)," before "or (l)(6),", and

[[*2326] (ii) by inserting "subsection (k)(10) or" before "subsection (l)(10),", and

(C) by inserting "subsection (k)(10) or" before "subsection (l)(10)," both places it appears in the matter following subparagraph (F)(iii).

(3) <26 USC 7213> Paragraph (2) of section 7213(a) is amended by inserting "(k)(10)," before "(l)(6),".

(c) <26 USC 6103 note> Effective Date.--The amendments made by this section shall take effect on the date of the enactment of this Act.

TITLE III--BUSINESS TAX EXTENDERS

[*301] Sec. 301. EXTENSION AND MODIFICATION OF RESEARCH CREDIT.

(a) Extension.--

(1) In general.-- Subparagraph (B) of section 41(h)(1) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(2) Conforming amendment.-- Subparagraph (D) of section 45C(b)(1) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Inclusion of Qualified Research Expenses and Gross Receipts of an Acquired Person.--

(1) Partial inclusion of pre-acquisition qualified research expenses and gross receipts.-- Subparagraph (A) of section 41(f)(3) is amended to read as follows:

"(A) Acquisitions.--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

"(i) In general.--If a person acquires the major portion of either a trade or business or a separate unit of a trade or business (hereinafter in this paragraph referred to as the 'acquired business') of another person (hereinafter in this paragraph referred to as the 'predecessor'), then the amount of qualified research expenses paid or incurred by the acquiring person during the measurement period shall be increased by the amount determined under clause (ii), and the gross receipts of the acquiring person for such period shall be increased by the amount determined under clause (iii).

"(ii) Amount determined with respect to qualified research expenses.--The amount determined under this clause is--

"(I) for purposes of applying this section for the taxable year in which such acquisition is made, the acquisition year amount, and

"(II) for purposes of applying this section for any taxable year after the taxable year in which such acquisition is made, the qualified research expenses paid or incurred by the predecessor with respect to the acquired business during the measurement period.

"(iii) Amount determined with respect to gross receipts.--The amount determined under this clause is the amount which would be determined under clause (ii) if 'the gross receipts of' were substituted for 'the qualified research expenses paid or incurred by' each place it appears in clauses (ii) and (iv).

[**2327] "(iv) Acquisition year amount.--For purposes of clause (ii), the acquisition year amount is the amount equal to the product of--

"(I) the qualified research expenses paid or incurred by the predecessor with respect to the acquired business during the measurement period, and

"(II) the number of days in the period beginning on the date of the acquisition and ending on the last day of the taxable year in which the acquisition is made, divided by the number of days in the acquiring person's taxable year.

"(v) Special rules for coordinating taxable years.--In the case of an acquiring person and a predecessor whose taxable years do not begin on the same date--

"(I) each reference to a taxable year in clauses (ii) and (iv) shall refer to the appropriate taxable year of the acquiring person,

"(II) the qualified research expenses paid or incurred by the predecessor, and the gross receipts of the predecessor, during each taxable year of the predecessor any portion of which is part of the measurement period shall be allocated equally among the days of such taxable year,

"(III) the amount of such qualified research expenses taken into account under clauses (ii) and (iv) with respect to a taxable year of the acquiring person shall be equal to the total of the expenses attributable under subclause (II) to the days occurring during such taxable year, and

"(IV) the amount of such gross receipts taken into account under clause (iii) with respect to a taxable year of the acquiring person shall be equal to the total of the gross receipts attributable under subclause (II) to the days occurring during such taxable year.

"(vi) Measurement period.--For purposes of this subparagraph, the term 'measurement period' means, with respect to the taxable year of the acquiring person for which the credit is determined, any period of the acquiring person preceding such taxable year which is taken into account for purposes of determining the credit for such year."

(2) <26 USC 41> Expenses and gross receipts of a predecessor.-- Subparagraph (B) of section 41(f)(3) is amended to read as follows:

"(B) Dispositions.--If the predecessor furnished to the acquiring person such information as is necessary for the application of subparagraph (A), then, for purposes of applying this section for any taxable year ending after such disposition, the amount of qualified research expenses paid or incurred by, and the gross receipts of, the predecessor during the measurement period (as defined in [**2328] subparagraph (A)(vi), determined by substituting 'predecessor' for 'acquiring person' each place it appears) shall be reduced by--

"(i) in the case of the taxable year in which such disposition is made, an amount equal to the product of--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

"(I) the qualified research expenses paid or incurred by, or gross receipts of, the predecessor with respect to the acquired business during the measurement period (as so defined and so determined), and

"(II) the number of days in the period beginning on the date of acquisition (as determined for purposes of subparagraph (A)(iv)(II)) and ending on the last day of the taxable year of the predecessor in which the disposition is made, divided by the number of days in the taxable year of the predecessor, and

"(ii) in the case of any taxable year ending after the taxable year in which such disposition is made, the amount described in clause (i)(I)."

(c) <26 USC 41> Aggregation of Expenditures.--Paragraph (1) of section 41(f) is amended--

(1) by striking "shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit" in subparagraph (A)(ii) and inserting "shall be determined on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, taken into account by such controlled group for purposes of this section", and

(2) by striking "shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit" in subparagraph (B)(ii) and inserting "shall be determined on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, taken into account by all such persons under common control for purposes of this section".

(d) <26 USC 41 note> Effective Date.--

(1) Extension.-- The amendments made by subsection (a) shall apply to amounts paid or incurred after December 31, 2011.

(2) Modifications.-- The amendments made by subsections (b) and (c) shall apply to taxable years beginning after December 31, 2011.

[*302] Sec. 302. EXTENSION OF TEMPORARY MINIMUM LOW-INCOME TAX CREDIT RATE FOR NON-FEDERALLY SUBSIDIZED NEW BUILDINGS.

(a) In General.--Subparagraph (A) of section 42(b)(2) is amended by striking "and before December 31, 2013" and inserting "with respect to housing credit dollar amount allocations made before January 1, 2014".

[**2329] (b) <26 USC 42 note> Effective Date.--The amendment made by this section shall take effect on the date of the enactment of this Act.

[*303] Sec. 303. EXTENSION OF HOUSING ALLOWANCE EXCLUSION FOR DETERMINING AREA MEDIAN GROSS INCOME FOR QUALIFIED RESIDENTIAL RENTAL PROJECT EXEMPT FACILITY BONDS.

(a) In General.--Subsection (b) of section 3005 of the Housing Assistance Tax Act of 2008 is amended by striking "January 1, 2012" <26 USC 142 note> each place it appears and inserting "January 1, 2014".

(b) <26 USC 142 note> Effective Date.--The amendment made by this section shall take effect as if included in the enactment of section 3005 of the Housing Assistance Tax Act of 2008.

[*304] Sec. 304. EXTENSION OF INDIAN EMPLOYMENT TAX CREDIT.

(a) <26 USC 45A> In General.--Subsection (f) of section 45A is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 45A note> Effective Date.--The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

[*305] Sec. 305. EXTENSION OF NEW MARKETS TAX CREDIT.

(a) In General.--Subparagraph (G) of section 45D(f)(1) is amended by striking "2010 and 2011" and inserting "2010, 2011, 2012, and 2013".

(b) Carryover of Unused Limitation.--Paragraph (3) of section 45D(f) is amended by striking "2016" and inserting "2018".

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(c) <26 USC 45D note> Effective Date.--The amendments made by this section shall apply to calendar years beginning after December 31, 2011.

[*306] Sec. 306. EXTENSION OF RAILROAD TRACK MAINTENANCE CREDIT.

(a) In General.--Subsection (f) of section 45G is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 45G note> Effective Date.--The amendment made by this section shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2011.

[*307] Sec. 307. EXTENSION OF MINE RESCUE TEAM TRAINING CREDIT.

(a) In General.--Subsection (e) of section 45N is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 45N note> Effective Date.--The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

[*308] Sec. 308. EXTENSION OF EMPLOYER WAGE CREDIT FOR EMPLOYEES WHO ARE ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.

(a) In General.--Subsection (f) of section 45P is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 45P note> Effective Date.--The amendment made by this section shall apply to payments made after December 31, 2011.

[*309] Sec. 309. EXTENSION OF WORK OPPORTUNITY TAX CREDIT.

(a) In General.--Subparagraph (B) of section 51(c)(4) is amended by striking "after" and all that follows and inserting "after December 31, 2013".

(b) <26 USC 51 note> Effective Date.--The amendment made by this section shall apply to individuals who begin work for the employer after December 31, 2011.

[*310] [**2330] Sec. 310. EXTENSION OF QUALIFIED ZONE ACADEMY BONDS.

(a) <26 USC 54E> In General.--Paragraph (1) of section 54E(c) is amended by inserting ", 2012, and 2013" after "for 2011".

(b) <26 USC 54E note> Effective Date.--The amendments made by this section shall apply to obligations issued after December 31, 2011.

[*311] Sec. 311. EXTENSION OF 15-YEAR STRAIGHT-LINE COST RECOVERY FOR QUALIFIED LEASEHOLD IMPROVEMENTS, QUALIFIED RESTAURANT BUILDINGS AND IMPROVEMENTS, AND QUALIFIED RETAIL IMPROVEMENTS.

(a) In General.--Clauses (iv), (v), and (ix) of section 168(e)(3)(E) are each amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 168 note> Effective Date.--The amendments made by this section shall apply to property placed in service after December 31, 2011.

[*312] Sec. 312. EXTENSION OF 7-YEAR RECOVERY PERIOD FOR MOTORSPORTS ENTERTAINMENT COMPLEXES.

(a) In General.--Subparagraph (D) of section 168(i)(15) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 168 note> Effective Date.--The amendment made by this section shall apply to property placed in service after December 31, 2011.

[*313] Sec. 313. EXTENSION OF ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON AN INDIAN RESERVATION.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(a) In General.--Paragraph (8) of section 168(j) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 168 note> Effective Date.--The amendment made by this section shall apply to property placed in service after December 31, 2011.

[*314] Sec. 314. EXTENSION OF ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) In General.--Clause (iv) of section 170(e)(3)(C) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 170 note> Effective Date.--The amendment made by this section shall apply to contributions made after December 31, 2011.

[*315] Sec. 315. EXTENSION OF INCREASED EXPENSING LIMITATIONS AND TREATMENT OF CERTAIN REAL PROPERTY AS SECTION 179 PROPERTY.

(a) In General.--

(1) Dollar limitation.-- Section 179(b)(1) is amended--

(A) by striking "2010 or 2011," in subparagraph (B) and inserting "2010, 2011, 2012, or 2013, and",

(B) by striking subparagraph (C),

(C) by redesignating subparagraph (D) as subparagraph (C), and

(D) in subparagraph (C), as so redesignated, by striking "2012" and inserting "2013".

(2) Reduction in limitation.-- Section 179(b)(2) is amended--

(A) by striking "2010 or 2011," in subparagraph (B) and inserting "2010, 2011, 2012, or 2013, and",

(B) by striking subparagraph (C),

(C) by redesignating subparagraph (D) as subparagraph (C), and

[**2331] (D) in subparagraph (C), as so redesignated, by striking "2012" and inserting "2013".

(3) Conforming amendment.-- Subsection (b) of section 179 is amended by striking paragraph (6).

(b) <26 USC 179> Computer Software.--Section 179(d)(1)(A)(ii) is amended by striking "2013" and inserting "2014".

(c) Election.--Section 179(c)(2) is amended by striking "2013" and inserting "2014".

(d) Special Rules for Treatment of Qualified Real Property.--

(1) In general.-- Section 179(f)(1) is amended by striking "2010 or 2011" and inserting "2010, 2011, 2012, or 2013".

(2) Carryover limitation.----

(A) In general.--Section 179(f)(4) is amended by striking "2011" each place it appears and inserting "2013".

(B) Conforming amendment.--Subparagraph (C) of section 179(f)(4) is amended--

(i) in the heading, by striking "2010" and inserting "2010, 2011 and 2012", and

(ii) by adding at the end the following: "For the last taxable year beginning in 2013, the amount determined under subsection (b)(3)(A) for such taxable year shall be determined without regard to this paragraph."

(e) <26 USC 179 note> Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

[*316] Sec. 316. EXTENSION OF ELECTION TO EXPENSE MINE SAFETY EQUIPMENT.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(a) In General.--Subsection (g) of section 179E is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 179E note> Effective Date.--The amendment made by this section shall apply to property placed in service after December 31, 2011.

[*317] Sec. 317. EXTENSION OF SPECIAL EXPENSING RULES FOR CERTAIN FILM AND TELEVISION PRODUCTIONS.

(a) In General.--Subsection (f) of section 181 is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 181 note> Effective Date.--The amendment made by this section shall apply to productions commencing after December 31, 2011.

[*318] Sec. 318. EXTENSION OF DEDUCTION ALLOWABLE WITH RESPECT TO INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES IN PUERTO RICO.

(a) In General.--Subparagraph (C) of section 199(d)(8) is amended--

(1) by striking "first 6 taxable years" and inserting "first 8 taxable years", and

(2) by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 199 note> Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

[*319] Sec. 319. EXTENSION OF MODIFICATION OF TAX TREATMENT OF CERTAIN PAYMENTS TO CONTROLLING EXEMPT ORGANIZATIONS.

(a) In General.--Clause (iv) of section 512(b)(13)(E) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

[**2332] (b) <26 USC 512 note> Effective Date.--The amendment made by this section shall apply to payments received or accrued after December 31, 2011.

[*320] Sec. 320. EXTENSION OF TREATMENT OF CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.

(a) <26 USC 871> In General.--Paragraphs (1)(C)(v) and (2)(C)(v) of section 871(k) are each amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 871 note> Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

[*321] Sec. 321. EXTENSION OF RIC QUALIFIED INVESTMENT ENTITY TREATMENT UNDER FIRPTA.

(a) In General.--Clause (ii) of section 897(h)(4)(A) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 897 note> Effective Date.--

(1) In general.-- The amendment made by subsection (a) shall take effect on January 1, 2012. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act.

(2) Amounts withheld on or before date of enactment.-- In the case of a regulated investment company--

(A) which makes a distribution after December 31, 2011, and before the date of the enactment of this Act; and

(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

[*322] Sec. 322. EXTENSION OF SUBPART F EXCEPTION FOR ACTIVE FINANCING INCOME.

(a) Exempt Insurance Income.--Paragraph (10) of section 953(e) is amended--

- (1) by striking "January 1, 2012" and inserting "January 1, 2014", and
- (2) by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Special Rule for Income Derived in the Active Conduct of Banking, Financing, or Similar Businesses.--Paragraph (9) of section 954(h) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(c) <26 USC 953 note> Effective Date.--The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

[*323] [**2333] Sec. 323. EXTENSION OF LOOK-THRU TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER FOREIGN PERSONAL HOLDING COMPANY RULES.

(a) <26 USC 954> In General.--Subparagraph (C) of section 954(c)(6) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 954 note> Effective Date.--The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

[*324] Sec. 324. EXTENSION OF TEMPORARY EXCLUSION OF 100 PERCENT OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

(a) In General.--Paragraph (4) of section 1202(a) is amended--

- (1) by striking "January 1, 2012" and inserting "January 1, 2014", and
- (2) by striking "and 2011" and inserting ", 2011, 2012, and 2013" in the heading thereof.

(b) Technical Amendments.--

(1) Special rule for 2009 and certain period in 2010.-- Paragraph (3) of section 1202(a) is amended by adding at the end the following new flush sentence:

"In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223."

(2) 100 percent exclusion.-- Paragraph (4) of section 1202(a) is amended by adding at the end the following new flush sentence:

"In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223."

(c) <26 USC 1202 note> Effective Dates.--

- (1) In general.-- The amendments made by subsection (a) shall apply to stock acquired after December 31, 2011.
- (2) Subsection (b)(1).-- The amendment made by subsection (b)(1) shall take effect as if included in section 1241(a) of division B of the American Recovery and Reinvestment Act of 2009.
- (3) Subsection (b)(2).-- The amendment made by subsection (b)(2) shall take effect as if included in section 2011(a) of the Creating Small Business Jobs Act of 2010.

[*325] Sec. 325. EXTENSION OF BASIS ADJUSTMENT TO STOCK OF S CORPORATIONS MAKING CHARITABLE CONTRIBUTIONS OF PROPERTY.

(a) In General.--Paragraph (2) of section 1367(a) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(b) <26 USC 1367 note> Effective Date.--The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2011.

[*326] [**2334] Sec. 326. EXTENSION OF REDUCTION IN S-CORPORATION RECOGNITION PERIOD FOR BUILT-IN GAINS TAX.

(a) <26 USC 1374> In General.--Paragraph (7) of section 1374(d) is amended--

(1) by redesignating subparagraph (C) as subparagraph (D), and

(2) by inserting after subparagraph (B) the following new subparagraph:

"(C) Special rule for 2012 and 2013.--For purposes of determining the net recognized built-in gain for taxable years beginning in 2012 or 2013, subparagraphs (A) and (D) shall be applied by substituting '5-year' for '10-year'.", and

(3) by adding at the end the following new subparagraph:

"(E) Installment sales.--If an S corporation sells an asset and reports the income from the sale using the installment method under section 453, the treatment of all payments received shall be governed by the provisions of this paragraph applicable to the taxable year in which such sale was made."

(b) Technical Amendment.--Subparagraph (B) of section 1374(d)(2) is amended by inserting "described in subparagraph (A)" after ", for any taxable year".

(c) <26 USC 1374 note> Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

[*327] Sec. 327. EXTENSION OF EMPOWERMENT ZONE TAX INCENTIVES.

(a) In General.--Clause (i) of section 1391(d)(1)(A) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Increased Exclusion of Gain on Stock of Empowerment Zone Businesses.--Subparagraph (C) of section 1202(a)(2) is amended--

(1) by striking "December 31, 2016" and inserting "December 31, 2018"; and

(2) by striking "2016" in the heading and inserting "2018".

(c) <26 USC 1391 note> Treatment of Certain Termination Dates Specified in Nominations.--In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary's designee) may provide.

(d) <26 USC 1202 note> Effective Date.--The amendments made by this section shall apply to periods after December 31, 2011.

[*328] Sec. 328. EXTENSION OF TAX-EXEMPT FINANCING FOR NEW YORK LIBERTY ZONE.

(a) In General.--Subparagraph (D) of section 1400L(d)(2) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 1400L note> Effective Date.--The amendment made by this section shall apply to bonds issued after December 31, 2011.

[*329] [**2335] Sec. 329. EXTENSION OF TEMPORARY INCREASE IN LIMIT ON COVER OVER OF RUM EXCISE TAXES TO PUERTO RICO AND THE VIRGIN ISLANDS.

(a) <26 USC 7652> In General.--Paragraph (1) of section 7652(f) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 7652 note> Effective Date.--The amendment made by this section shall apply to distilled spirits brought into the United States after December 31, 2011.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

[*330] Sec. 330. MODIFICATION AND EXTENSION OF AMERICAN SAMOA ECONOMIC DEVELOPMENT CREDIT.

(a) Modification.--

(1) In general.-- Subsection (a) of section 119 of division A of the Tax Relief and Health Care Act of 2006 is amended <26 USC 30A note> by striking "if such corporation" and all that follows and inserting "if--

"(1) in the case of a taxable year beginning before January 1, 2012, such corporation--

"(A) is an existing credit claimant with respect to American Samoa, and

"(B) elected the application of section 936 of the Internal Revenue Code of 1986 for its last taxable year beginning before January 1, 2006, and

"(2) in the case of a taxable year beginning after December 31, 2011, such corporation meets the requirements of subsection (e).".

(2) Requirements.-- Section 119 of division A of such Act is amended by adding at the end the following new subsection:

"(e) Qualified Production Activities Income Requirement.--A corporation meets the requirement of this subsection if such corporation has qualified production activities income, as defined in subsection (c) of section 199 of the Internal Revenue Code of 1986, determined by substituting 'American Samoa' for 'the United States' each place it appears in paragraphs (3), (4), and (6) of such subsection (c), for the taxable year."

(b) Extension.--Subsection (d) of section 119 of division A of the Tax Relief and Health Care Act of 2006 is amended by striking "shall apply" and all that follows and inserting "shall apply--

"(1) in the case of a corporation that meets the requirements of subparagraphs (A) and (B) of subsection (a)(1), to the first 8 taxable years of such corporation which begin after December 31, 2006, and before January 1, 2014, and

"(2) in the case of a corporation that does not meet the requirements of subparagraphs (A) and (B) of subsection (a)(1), to the first 2 taxable years of such corporation which begin after December 31, 2011, and before January 1, 2014."

(c) <26 USC 30A note> Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

[*331] Sec. 331. EXTENSION AND MODIFICATION OF BONUS DEPRECIATION.

(a) In General.--Paragraph (2) of section 168(k) is amended--

(1) by striking "January 1, 2014" in subparagraph (A)(iv) and inserting "January 1, 2015", and

(2) by striking "January 1, 2013" each place it appears and inserting "January 1, 2014".

[**2336] (b) <26 USC 460> Special Rule for Federal Long-Term Contracts.--Clause (ii) of section 460(c)(6)(B) is amended by inserting ", or after December 31, 2012, and before January 1, 2014 (January 1, 2015, in the case of property described in section 168(k)(2)(B))" before the period.

(c) Extension of Election To Accelerate the AMT Credit in Lieu of Bonus Depreciation.--

(1) In general.-- Subclause (II) of section 168(k)(4)(D)(iii) is amended by striking "2013" and inserting "2014".

(2) Round 3 extension property.-- Paragraph (4) of section 168(k) is amended by adding at the end the following new subparagraph:

"(J) Special rules for round 3 extension property.--

"(i) In general.--In the case of round 3 extension property, this paragraph shall be applied without regard to--

"(I) the limitation described in subparagraph (B)(i) thereof, and

"(II) the business credit increase amount under subparagraph (E)(iii) thereof.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

"(ii) Taxpayers previously electing acceleration.--In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, a taxpayer who made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008, or a taxpayer who made the election under subparagraph (I)(iii) for its first taxable year ending after December 31, 2010--

"(I) the taxpayer may elect not to have this paragraph apply to round 3 extension property, but

"(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer the bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is round 3 extension property. The amounts described in subclause (II) shall be computed separately from any amounts computed with respect to eligible qualified property which is not round 3 extension property.

"(iii) Taxpayers not previously electing acceleration.--In the case of a taxpayer who neither made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, nor made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008, nor made the election under subparagraph (I)(iii) for any taxable year ending after December 31, 2010--

"(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2012, and each subsequent taxable year, and

"(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to [**2337] eligible qualified property which is round 3 extension property.

"(iv) Round 3 extension property.--For purposes of this subparagraph, the term 'round 3 extension property' means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 331(a) of the American Taxpayer Relief Act of 2012 (and the application of such extension to this paragraph pursuant to the amendment made by section 331(c)(1) of such Act)."

(d) Normalization Rules Amendment.--Clause (ii) of section 168(i)(9)(A) is amended by inserting "(respecting all elections made <26 USC 168> by the taxpayer under this section)" after "such property".

(e) Conforming Amendments.--

(1) The heading for subsection (k) of section 168 is amended by striking "January 1, 2013" and inserting "January 1, 2014".

(2) The heading for clause (ii) of section 168(k)(2)(B) is amended by striking "pre-January 1, 2013" and inserting "pre-January 1, 2014".

(3) Subparagraph (C) of section 168(n)(2) is amended by striking "January 1, 2013" and inserting "January 1, 2014".

(4) Subparagraph (D) of section 1400L(b)(2) is amended by striking "January 1, 2013" and inserting "January 1, 2014".

(5) Subparagraph (B) of section 1400N(d)(3) is amended by striking "January 1, 2013" and inserting "January 1, 2014".

(f) <26 USC 168 note> Effective Date.--The amendments made by this section shall apply to property placed in service after December 31, 2012, in taxable years ending after such date.

TITLE IV--ENERGY TAX EXTENDERS

[*401] Sec. 401. EXTENSION OF CREDIT FOR ENERGY-EFFICIENT EXISTING HOMES.

(a) In General.--Paragraph (2) of section 25C(g) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) <26 USC 25C note> Effective Date.--The amendment made by this section shall apply to property placed in service after December 31, 2011.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

[*402] Sec. 402. EXTENSION OF CREDIT FOR ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.

(a) In General.--Paragraph (2) of section 30C(g) is amended by striking "December 31, 2011." and inserting "December 31, 2013".

(b) <26 USC 30C note> Effective Date.--The amendment made by this section shall apply to property placed in service after December 31, 2011.

[*403] Sec. 403. EXTENSION OF CREDIT FOR 2- OR 3-WHEELED PLUG-IN ELECTRIC VEHICLES.

(a) In General.--Section 30D is amended by adding at the end the following new subsection:

"(g) Credit Allowed for 2- and 3-wheeled Plug-in Electric Vehicles.--

"(1) In general.-- In the case of a qualified 2- or 3-wheeled plug-in electric vehicle--

"(A) there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the applicable amount with respect [**2338] to each such qualified 2- or 3-wheeled plug-in electric vehicle placed in service by the taxpayer during the taxable year, and

"(B) the amount of the credit allowed under subparagraph (A) shall be treated as a credit allowed under subsection (a).

"(2) Applicable amount.-- For purposes of paragraph (1), the applicable amount is an amount equal to the lesser of--

"(A) 10 percent of the cost of the qualified 2- or 3-wheeled plug-in electric vehicle, or

"(B) \$ 2,500.

"(3) Qualified 2- or 3-wheeled plug-in electric vehicle.-- The term 'qualified 2- or 3-wheeled plug-in electric vehicle' means any vehicle which--

"(A) has 2 or 3 wheels,

"(B) meets the requirements of subparagraphs (A), (B), (C), (E), and (F) of subsection (d)(1) (determined by substituting '2.5 kilowatt hours' for '4 kilowatt hours' in subparagraph (F)(i)),

"(C) is manufactured primarily for use on public streets, roads, and highways,

"(D) is capable of achieving a speed of 45 miles per hour or greater, and

"(E) is acquired after December 31, 2011, and before January 1, 2014."

(b) Conforming Amendments.--

(1) No double benefit.-- Paragraph (2) of section 30D(f) is amended--

(A) by striking "new qualified plug-in electric drive motor vehicle" and inserting "vehicle for which a credit is allowable under subsection (a)", and

(B) by striking "allowed under subsection (a)" and inserting "allowed under such subsection".

(2) <26 USC 30D> Air quality and safety standards.-- Section 30D(f)(7) is amended by striking "motor vehicle" and inserting "vehicle".

(c) <26 USC 30D note> Effective Date.--The amendments made by this section shall apply to vehicles acquired after December 31, 2011.

[*404] Sec. 404. EXTENSION AND MODIFICATION OF CELLULOSIC BIOFUEL PRODUCER CREDIT.

(a) Extension.--

(1) In general.-- Subparagraph (H) of section 40(b)(6) is amended to read as follows:

"(H) Application of paragraph.--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

"(i) In general.--This paragraph shall apply with respect to qualified cellulosic biofuel production after December 31, 2008, and before January 1, 2014.

"(ii) No carryover to certain years after expiration.--If this paragraph ceases to apply for any period by reason of clause (i), rules similar to the rules of subsection (e)(2) shall apply."

(2) Conforming amendment.-- Paragraph (2) of section 40(e) is amended by striking "or subsection (b)(6)(H)".

(3) <26 USC 40 note> Effective date.-- The amendments made by this subsection shall take effect as if included in section 15321(b) of the Heartland, Habitat, and Horticulture Act of 2008.

(b) Algae Treated as a Qualified Feedstock.--

[**2339] (1) <26 USC 40> In general.-- Subclause (I) of section 40(b)(6)(E)(i) is amended to read as follows:

"(I) is derived by, or from, qualified feedstocks, and".

(2) Qualified feedstock; special rules for algae.-- Paragraph (6) of section 40(b) is amended by redesignating subparagraphs (F), (G), and (H), as amended by this Act, as subparagraphs (H), (I), and (J), respectively, and by inserting after subparagraph (E) the following new subparagraphs:

"(F) Qualified feedstock.--For purposes of this paragraph, the term 'qualified feedstock' means--

"(i) any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and

"(ii) any cultivated algae, cyanobacteria, or lemna.

"(G) Special rules for algae.--In the case of fuel which is derived by, or from, feedstock described in subparagraph (F)(ii) and which is sold by the taxpayer to another person for refining by such other person into a fuel which meets the requirements of subparagraph (E)(i)(II) and the refined fuel is not excluded under subparagraph (E)(iii)--

"(i) such sale shall be treated as described in subparagraph (C)(i),

"(ii) such fuel shall be treated as meeting the requirements of subparagraph (E)(i)(II) and as not being excluded under subparagraph (E)(iii) in the hands of such taxpayer, and

"(iii) except as provided in this subparagraph, such fuel (and any fuel derived from such fuel) shall not be taken into account under subparagraph (C) with respect to the taxpayer or any other person."

(3) Conforming amendments.----

(A) Section 40, as amended by paragraph (2), is amended--

(i) by striking "cellulosic biofuel" each place it appears in the text thereof and inserting "second generation biofuel",

(ii) by striking "Cellulosic" in the headings of subsections (b)(6), (b)(6)(E), and (d)(3)(D) and inserting "Second generation", and

(iii) by striking "cellulosic" in the headings of subsections (b)(6)(C), (b)(6)(D), (b)(6)(H), (d)(6), and (e)(3) and inserting "second generation".

(B) Clause (ii) of section 40(b)(6)(E) is amended by striking "Such term shall not" and inserting "The term 'second generation biofuel' shall not".

(C) Paragraph (1) of section 4101(a) is amended by striking "cellulosic biofuel" and inserting "second generation biofuel".

(4) <26 USC 40 note> Effective date.-- The amendments made by this subsection shall apply to fuels sold or used after the date of the enactment of this Act.

[*405] [**2340] Sec. 405. EXTENSION OF INCENTIVES FOR BIODIESEL AND RENEWABLE DIESEL.

(a) Credits for Biodiesel and Renewable Diesel Used as Fuel.--Subsection (g) of section 40A <26 USC 40A> is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Excise Tax Credits and Outlay Payments for Biodiesel and Renewable Diesel Fuel Mixtures.--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(1) Paragraph (6) of section 6426(c) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(2) Subparagraph (B) of section 6427(e)(6) is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(c) <26 USC 40A note> Effective Date.--The amendments made by this section shall apply to fuel sold or used after December 31, 2011.

[*406] Sec. 406. EXTENSION OF PRODUCTION CREDIT FOR INDIAN COAL FACILITIES PLACED IN SERVICE BEFORE 2009.

(a) In General.--Subparagraph (A) of section 45(e)(10) is amended by striking "7-year period" each place it appears and inserting "8-year period".

(b) <26 USC 45 note> Effective Date.--The amendment made by this section shall apply to coal produced after December 31, 2012.

[*407] Sec. 407. EXTENSION AND MODIFICATION OF CREDITS WITH RESPECT TO FACILITIES PRODUCING ENERGY FROM CERTAIN RENEWABLE RESOURCES.

(a) Production Tax Credit.--

(1) Extension for wind facilities.-- Paragraph (1) of section 45(d) is amended by striking "January 1, 2013" and inserting "January 1, 2014".

(2) Exclusion of paper which is commonly recycled from definition of municipal solid waste.-- Section 45(c)(6) is amended by inserting ", except that such term does not include paper which is commonly recycled and which has been segregated from other solid waste (as so defined)" after "(42 U.S.C. 6903)".

(3) Modification to definition of qualified facility.----

(A) In general.--The following provisions of section 45(d), as amended by paragraph (1), are each amended by striking "before January 1, 2014" and inserting "the construction of which begins before January 1, 2014":

- (i) Paragraph (1).
- (ii) Paragraph (2)(A)(i).
- (iii) Paragraph (3)(A)(i)(I).
- (iv) Paragraph (6).
- (v) Paragraph (7).
- (vi) Paragraph (9)(B).
- (vii) Paragraph (11)(B).

(B) Certain closed-loop biomass facilities.--Subparagraph (A) of section 45(d)(2) is amended by adding at the end the following new flush sentence:

"For purposes of clause (ii), a facility shall be treated as modified before January 1, 2014, if the construction of such modification begins before such date."

[**2341] (C) Certain open-loop biomass facilities.--Clause (ii) of section 45(d)(3)(A) <26 USC 45> is amended by striking "is originally placed in service" and inserting "the construction of which begins".

(D) Geothermal facilities.--

(i) In general.--Paragraph (4) of section 45(d) is amended by striking "and before January 1, 2014" and all that follows and inserting "and which--

"(A) in the case of a facility using solar energy, is placed in service before January 1, 2006, or

"(B) in the case of a facility using geothermal energy, the construction of which begins before January 1, 2014.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48."

(E) Incremental hydropower production.--Paragraph (9) of section 45(d) is amended--

(i) by redesignating subparagraphs (A) and (B), as amended by subparagraph (A), as clauses (i) and (ii), respectively, and by moving such clauses (as so redesignated) 2 ems to the right,

(ii) by striking "In the case of a facility" and inserting the following:

"(A) In general.--In the case of a facility",

(iii) by redesignating subparagraph (C) as subparagraph (B), and

(iv) by adding at the end the following new subparagraph:

"(C) Special rule.--For purposes of subparagraph (A)(i), an efficiency improvement or addition to capacity shall be treated as placed in service before January 1, 2014, if the construction of such improvement or addition begins before such date."

(b) Extension of Election to Treat Qualified Facilities as Energy Property.--Subparagraph (C) of section 48(a)(5) is amended to read as follows:

"(C) Qualified investment credit facility.--For purposes of this paragraph, the term 'qualified investment credit facility' means any facility--

"(i) which is a qualified facility (within the meaning of section 45) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d),

"(ii) which is placed in service after 2008 and the construction of which begins before January 1, 2014, and

"(iii) with respect to which--

"(I) no credit has been allowed under section 45, and

"(II) the taxpayer makes an irrevocable election to have this paragraph apply."

(c) Technical Corrections.--

(1) Subparagraph (D) of section 48(a)(5) is amended--

(A) by striking "and" at the end of clause (i)(II),

(B) by striking the period at the end of clause (ii) and inserting a comma, and

(C) by adding at the end the following new clauses:

["*2342] "(iii) which is constructed, reconstructed, erected, or acquired by the taxpayer, and

"(iv) the original use of which commences with the taxpayer."

(2) Paragraphs (1) and (2) of subsection (a) of section 1603 of division B of the American Recovery and Reinvestment Act of 2009 <26 USC 48 note> are each amended by striking "placed in service" and inserting "originally placed in service by such person".

(d) <26 USC 45 note> Effective Dates.--

(1) In general.-- Except as provided in paragraphs (2) and (3), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) Modification to definition of municipal solid waste.-- The amendments made by subsection (a)(2) shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

(3) Technical corrections.-- The amendments made by subsection (c) shall apply as if included in the enactment of the provisions of the American Recovery and Reinvestment Act of 2009 to which they relate.

["*408] Sec. 408. EXTENSION OF CREDIT FOR ENERGY-EFFICIENT NEW HOMES.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(a) <26 USC 45L> In General.--Subsection (g) of section 45L is amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Energy Savings Requirements.--Clause (i) of section 45L(c)(1)(A) is amended by striking "2003 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of this section" and inserting "2006 International Energy Conservation Code, as such Code (including supplements) is in effect on January 1, 2006".

(c) <26 USC 45L note> Effective Date.--The amendments made by this section shall apply to homes acquired after December 31, 2011.

[*409] Sec. 409. EXTENSION OF CREDIT FOR ENERGY-EFFICIENT APPLIANCES.

(a) In General.--Section 45M(b) is amended by striking "2011" each place it appears other than in the provisions specified in subsection (b) and inserting "2011, 2012, or 2013".

(b) Provisions Specified.--The provisions of section 45M(b) specified in this subsection are subparagraph (C) of paragraph (1) and subparagraph (E) of paragraph (2).

(c) <26 USC 45M note> Effective Date.--The amendments made by this section shall apply to appliances produced after December 31, 2011.

[*410] Sec. 410. EXTENSION AND MODIFICATION OF SPECIAL ALLOWANCE FOR CELLULOSIC BIOFUEL PLANT PROPERTY.

(a) Extension.--

(1) In general.-- Subparagraph (D) of section 168(l)(2) is amended by striking "January 1, 2013" and inserting "January 1, 2014".

(2) <26 USC 168 note> Effective date.-- The amendment made by this subsection shall apply to property placed in service after December 31, 2012.

(b) Algae Treated as a Qualified Feedstock for Purposes of Bonus Depreciation for Biofuel Plant Property.--

(1) In general.-- Subparagraph (A) of section 168(l)(2) is amended by striking "solely to produce cellulosic biofuel" and [**2343] inserting "solely to produce second generation biofuel (as defined in section 40(b)(6)(E))".

(2) <26 USC 168> Conforming amendments.-- Subsection (l) of section 168, as amended by subsection (a), is amended--

(A) by striking "cellulosic biofuel" each place it appears in the text thereof and inserting "second generation biofuel",

(B) by striking paragraph (3) and redesignating paragraphs (4) through (8) as paragraphs (3) through (7), respectively,

(C) by striking " Cellulosic" in the heading of such subsection and inserting " Second Generation", and

(D) by striking "cellulosic" in the heading of paragraph (2) and inserting "second generation".

(3) <26 USC 168 note> Effective date.-- The amendments made by this subsection shall apply to property placed in service after the date of the enactment of this Act.

[*411] Sec. 411. EXTENSION OF SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FERC OR STATE ELECTRIC RESTRUCTURING POLICY FOR QUALIFIED ELECTRIC UTILITIES.

(a) In General.--Paragraph (3) of section 451(i) is amended by striking "January 1, 2012" and inserting "January 1, 2014".

(b) <26 USC 451 note> Effective Date.--The amendment made by this section shall apply to dispositions after December 31, 2011.

[*412] Sec. 412. EXTENSION OF ALTERNATIVE FUELS EXCISE TAX CREDITS.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(a) In General.--Sections 6426(d)(5) and 6426(e)(3) are each amended by striking "December 31, 2011" and inserting "December 31, 2013".

(b) Outlay Payments for Alternative Fuels.--Paragraph (6) of section 6427(e) is amended--

(1) in subparagraph (C)--

(A) by striking "or alternative fuel mixture (as defined in subsection (d)(2) or (e)(3) of section 6426)" and inserting "(as defined in section 6426(d)(2))", and

(B) by striking "December 31, 2011, and" and inserting "December 31, 2013,"

(2) in subparagraph (D)--

(A) by striking "or alternative fuel mixture", and

(B) by striking the period at the end and inserting ", and", and

(3) by adding at the end the following new subparagraph:

"(E) any alternative fuel mixture (as defined in section 6426(e)(2)) sold or used after December 31, 2011."

(c) <26 USC 6426 note> Effective Date.--The amendments made by this section shall apply to fuel sold or used after December 31, 2011.

TITLE V--UNEMPLOYMENT

[*501] Sec. 501. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.

(a) Extension.--Section 4007(a)(2) of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note) is amended by striking "January 2, 2013" and inserting "January 1, 2014".

[**2344] (b) Funding.--Section 4004(e)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note) is amended--

(1) in subparagraph (H), by striking "and" at the end; and

(2) by inserting after subparagraph (I) the following:

"(J) the amendments made by section 501(a) of the American Taxpayer Relief Act of 2012;"

(c) <26 USC 3304 note> Effective Date.--The amendments made by this section shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 (Public Law 112-96)

[*502] Sec. 502. TEMPORARY EXTENSION OF EXTENDED BENEFIT PROVISIONS.

(a) In General.--Section 2005 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111-5 (26 U.S.C. 3304 note), is amended--

(1) by striking "December 31, 2012" each place it appears and inserting "December 31, 2013"; and

(2) in subsection (c), by striking "June 30, 2013" and inserting "June 30, 2014".

(b) Extension of Matching for States With No Waiting Week.--Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110-449; 26 U.S.C. 3304 note) is amended by striking "June 30, 2013" and inserting "June 30, 2014".

(c) Extension of Modification of Indicators Under the Extended Benefit Program.--Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) is amended--

(1) in subsection (d), by striking "December 31, 2012" and inserting "December 31, 2013"; and

(2) in subsection (f)(2), by striking "December 31, 2012" and inserting "December 31, 2013".

(d) <26 USC 3304 note> Effective Date.--The amendments made by this section shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 (Public Law 112-96).

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

[*503] Sec. 503. EXTENSION OF FUNDING FOR REEMPLOYMENT SERVICES AND REEMPLOYMENT AND ELIGIBILITY ASSESSMENT ACTIVITIES.

(a) In General.--Section 4004(c)(2)(A) of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note) is amended by striking "through fiscal year 2013" and inserting "through fiscal year 2014".

(b) <26 USC 3304 note> Effective Date.--The amendments made by this section shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 (Public Law 112-96).

[*504] Sec. 504. ADDITIONAL EXTENDED UNEMPLOYMENT BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT.

(a) Extension.--Section 2(c)(2)(D)(iii) of the Railroad Unemployment Insurance Act, as added by section 2006 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and as amended by section 9 of the Worker, Homeownership, and Business Assistance Act of 2009 (Public Law 111-92), section 505 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Public Law 111-312), section 202 of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112-78), and section 2124 of the Unemployment Benefits Extension Act of 2012 (Public Law 112-96), is amended-- <45 USC 352>

(1) by striking "June 30, 2012" and inserting "June 30, 2013"; and

(2) by striking "December 31, 2012" and inserting "December 31, 2013".

(b) <45 USC 352 note> Clarification on Authority to Use Funds.--Funds appropriated under either the first or second sentence of clause (iv) of section 2(c)(2)(D) of the Railroad Unemployment Insurance Act shall be available to cover the cost of additional extended unemployment benefits provided under such section 2(c)(2)(D) by reason of the amendments made by subsection (a) as well as to cover the cost of such benefits provided under such section 2(c)(2)(D), as in effect on the day before the date of enactment of this Act.

(c) Funding for Administration.--Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Railroad Retirement Board \$ 250,000 for administrative expenses associated with the payment of additional extended unemployment benefits provided under section 2(c)(2)(D) of the Railroad Unemployment Insurance Act by reason of the amendments made by subsection (a), to remain available until expended.

TITLE VI--MEDICARE AND OTHER HEALTH EXTENSIONS

Subtitle A--Medicare Extensions

[*601] Sec. 601. MEDICARE PHYSICIAN PAYMENT UPDATE.

(a) In General.--Section 1848(d) of the Social Security Act (42 U.S.C. 1395w-4(d)) is amended by adding at the end the following new paragraph:

"(14) Update for 2013.----

"(A) In general.--Subject to paragraphs (7)(B), (8)(B), (9)(B), (10)(B), (11)(B), (12)(B), and (13)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2013, the update to the single conversion factor for such year shall be zero percent.

"(B) No effect on computation of conversion factor for 2014 and subsequent years.--The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2014 and subsequent years as if subparagraph (A) had never applied."

(b) Advancement of Clinical Data Registries To Improve the Quality of Health Care.--

(1) In general.-- Section 1848(m)(3) of the Social Security Act (42 U.S.C. 1395w-4(m)(3)) is amended--

(A) by redesignating subparagraph (D) as subparagraph (F); and

(B) by inserting after subparagraph (C) the following new subparagraphs:

"(D) Satisfactory reporting measures through participation in a qualified clinical data registry.--For 2014 and subsequent years, the Secretary shall treat [**2346] an eligible professional as satisfactorily submitting data on quality measures under subparagraph (A) if, in lieu of reporting measures under subsection (k)(2)(C), the eligible professional

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

is satisfactorily participating, as determined by the Secretary, in a qualified clinical data registry (as described in subparagraph (E)) for the year.

"(E) Qualified clinical data registry.--

"(i) In general.--The Secretary shall establish requirements for an entity to be considered a qualified clinical data registry. Such requirements shall include a requirement that the entity provide the Secretary with such information, at such times, and in such manner, as the Secretary determines necessary to carry out this subsection.

"(ii) Considerations.--In establishing the requirements under clause (i), the Secretary shall consider whether an entity--

"(I) has in place mechanisms for the transparency of data elements and specifications, risk models, and measures;

"(II) requires the submission of data from participants with respect to multiple payers;

"(III) provides timely performance reports to participants at the individual participant level; and

"(IV) supports quality improvement initiatives for participants.

"(iii) Measures.--With respect to measures used by a qualified clinical data registry--

"(I) sections 1890(b)(7) and 1890A(a) shall not apply; and

"(II) measures endorsed by the entity with a contract with the Secretary under section 1890(a) may be used.

"(iv) Consultation.--In carrying out this subparagraph, the Secretary shall consult with interested parties.

"(v) Determination.--The Secretary shall establish a process to determine whether or not an entity meets the requirements established under clause (i). Such process may involve one or both of the following:

"(I) A determination by the Secretary.

"(II) A designation by the Secretary of one or more independent organizations to make such determination."

(2) GAO study and report on incorporating registry data into the Medicare program in order to improve quality and efficiency.----

(A) Study.--The Comptroller General of the United States shall conduct a study on the potential of clinical data registries to improve the quality and efficiency of care in the Medicare program, including through payment system incentives. Such study shall include an analysis of the role of health information technology in facilitating clinical data registries and the use of data from such registries among private health insurers as well as other entities the Comptroller General determines appropriate.

[**2347] (B) Report.--Not later than November 15, 2013, the Comptroller General of the United States shall submit to Congress a report on the study conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

[*602] Sec. 602. WORK GEOGRAPHIC ADJUSTMENT.

Section 1848(e)(1)(E) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)(E)) is amended by striking "before January 1, 2013" and inserting "before January 1, 2014".

[*603] Sec. 603. PAYMENT FOR OUTPATIENT THERAPY SERVICES.

(a) Extension.--Section 1833(g) of the Social Security Act (42 U.S.C. 1395l(g)) is amended--

(1) in paragraph (5)(A), in the first sentence, by striking "December 31, 2012" and inserting "December 31, 2013"; and

(2) in paragraph (6)--

(A) by striking "December 31, 2012" and inserting "December 31, 2013"; and

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(B) by inserting "or 2013" after "during 2012".

(b) Application of Therapy Cap to Therapy Furnished as Part of Outpatient Critical Access Hospital Services.--Section 1833(g)(6) of the Social Security Act (42 U.S.C. 1395l(g)(6)), as amended by subsection (a), is amended--

(1) by striking "In applying" and inserting " (A) In applying"; and

(2) by adding at the end the following new subparagraph:

"(B) (i) With respect to outpatient therapy services furnished beginning on or after January 1, 2013, and before January 1, 2014, for which payment is made under section 1834(g), the Secretary shall count toward the uniform dollar limitations described in paragraphs (1) and (3) and the threshold described in paragraph (5)(C) the amount that would be payable under this part if such services were paid under section 1834(k)(1)(B) instead of being paid under section 1834(g).

"(ii) Nothing in clause (i) shall be construed as changing the method of payment for outpatient therapy services under section 1834(g)."

(c) Beneficiary Protections.--Section 1833(g)(5) of the Social Security Act (42 U.S.C. 1395l(g)(5)) is amended by adding at the end the following new subparagraph:

"(D) With respect to services furnished on or after January 1, 2013, where payment may not be made as a result of application of paragraphs (1) and (3), section 1879 shall apply in the same manner as such section applies to a denial that is made by reason of section 1862(a)(1)."

(d) <42 USC 1395l note> Implementation.--Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the provisions of, and the amendments made by, this section by program instruction or otherwise.

[*604] Sec. 604. AMBULANCE ADD-ON PAYMENTS.

(a) Ground Ambulance.--Section 1834(l)(13)(A) of the Social Security Act (42 U.S.C. 1395m(l)(13)(A)) is amended--

(1) in the matter preceding clause (i), by striking "January 1, 2013" and inserting "January 1, 2014"; and

[**2348] (2) in each of clauses (i) and (ii), by striking "January 1, 2013" and inserting "January 1, 2014" each place it appears.

(b) Air Ambulance.--Section 146(b)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), as amended by sections 3105(b) and 10311(b) of the Patient Protection and Affordable Care Act (Public Law 111-148), section 106(b) of the Medicare and Medicaid Extenders Act of 2010 (Public Law 111-309), section 306(b) of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112-78), and section 3007(b) of the Middle Class Tax Relief and Job Creation Act of <42 USC 1395m note> 2012 (Public Law 112-96), is amended by striking "December 31, 2012" and inserting "June 30, 2013".

(c) Super Rural Ambulance.--Section 1834(l)(12)(A) of the Social Security Act (42 U.S.C. 1395m(l)(12)(A)) is amended in the first sentence by striking "January 1, 2013" and inserting "January 1, 2014".

(d) Studies of Ambulance Costs.--

(1) In general.-- The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall conduct a study of each of the following:

(A) A study that analyzes data on existing cost reports for ambulance services furnished by hospitals and critical access hospitals, including variation by characteristics of such providers of services.

(B) A study of the feasibility of obtaining cost data on a periodic basis from all ambulance providers of services and suppliers for potential use in examining the appropriateness of the Medicare add-on payments for ground ambulance services furnished under the fee schedule under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)) and in preparing for future reform of such payment system.

(2) Components of one of the studies.-- In conducting the study under paragraph (1)(B), the Secretary shall--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

- (A) consult with industry on the design of such cost collection efforts;
- (B) explore use of cost surveys and cost reports to collect appropriate cost data and the periodicity of such cost data collection;
- (C) examine the feasibility of development of a standard cost reporting tool for providers of services and suppliers of ground ambulance services; and
- (D) examine the ability to furnish such cost data by various types of ambulance providers of services and suppliers, especially by rural and super-rural providers of services and suppliers.

(3) Reports.----

(A) Existing cost reports.--Not later than October 1, 2013, the Secretary shall submit a report to Congress on the study conducted under paragraph (1)(A), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(B) Obtaining cost data.--Not later than July 1, 2014, the Secretary shall submit a report to Congress on the study conducted under paragraph (1)(B), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

[*605] [**2349] Sec. 605. EXTENSION OF MEDICARE INPATIENT HOSPITAL PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS.

Section 1886(d)(12) of the Social Security Act (42 U.S.C. 1395ww(d)(12)) is amended--

- (1) in subparagraph (B), in the matter preceding clause (i), by striking "2013" and inserting "2014";
- (2) in subparagraph (C)(i), by striking "and 2012" each place it appears and inserting ", 2012, and 2013"; and
- (3) in subparagraph (D), by striking "and 2012" and inserting ", 2012, and 2013".

[*606] Sec. 606. EXTENSION OF THE MEDICARE-DEPENDENT HOSPITAL (MDH) PROGRAM.

(a) Extension of Payment Methodology.--Section 1886(d)(5)(G) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(G)) is amended--

- (1) in clause (i), by striking "October 1, 2012" and inserting "October 1, 2013"; and
- (2) in clause (ii)(II), by striking "October 1, 2012" and inserting "October 1, 2013".

(b) Conforming Amendments.--

(1) Extension of target amount.-- Section 1886(b)(3)(D) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(D)) is amended--

- (A) in the matter preceding clause (i), by striking "October 1, 2012" and inserting "October 1, 2013"; and
- (B) in clause (iv), by striking "through fiscal year 2012" and inserting "through fiscal year 2013".

(2) Permitting hospitals to decline reclassification.-- Section 13501(e)(2) of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 1395ww note) is amended by striking "through fiscal year 2012" and inserting "through fiscal year 2013".

[*607] Sec. 607. EXTENSION FOR SPECIALIZED MEDICARE ADVANTAGE PLANS FOR SPECIAL NEEDS INDIVIDUALS.

Section 1859(f)(1) of the Social Security Act (42 U.S.C. 1395w-28(f)(1)) is amended by striking "2014" and inserting "2015".

[*608] Sec. 608. EXTENSION OF MEDICARE REASONABLE COST CONTRACTS.

Section 1876(h)(5)(C)(ii) of the Social Security Act (42 U.S.C. 1395mm(h)(5)(C)(ii)) is amended, in the matter preceding subclause (I), by striking "January 1, 2013" and inserting "January 1, 2014".

[*609] Sec. 609. PERFORMANCE IMPROVEMENT.

(a) Extension of Funding for Contract With Consensus-based Entity Regarding Performance Measurement.--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(1) In general.-- Section 1890(d) of the Social Security Act (42 U.S.C. 1395aaa(d)) is amended by striking "fiscal years 2009 through 2012" and inserting "fiscal years 2009 through 2013".

(2) Revision to duties.-- Section 1890(b) of the Social Security Act (42 U.S.C. 1395aaa(b)) is amended by striking paragraph (4).

(b) Providing Data for Performance Improvement in a Timely Manner.--

(1) In general.-- The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall [**2350] develop a strategy to provide data for performance improvement in a timely manner to applicable providers under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), including with respect to the provision of the following:

(A) Utilization data, including such data for items and services under parts A, B, and D of the Medicare program.

(B) Feedback on quality data submitted by the applicable provider under the Medicare program.

(2) Considerations.-- In developing the strategy under paragraph (1), the Secretary shall consider--

(A) the type of applicable provider receiving the data;

(B) the frequency of providing the data so that it can be the most relevant in improving provider performance;

(C) risk adjustment methods;

(D) presentation of the data in a meaningful manner and easily understandable format;

(E) with respect to utilization data, the provision of data that the Secretary determines would be useful to improve the performance of the type of applicable provider involved; and

(F) administrative costs involved with providing data.

(3) Submission and availability of initial strategy.-- Not later than 1 year after the date of the enactment of this Act, the Secretary shall--

(A) submit to the relevant committees of Congress the strategy described in paragraph (1); and

(B) post such strategy on the website of the Centers for Medicare & Medicaid Services.

(4) Strategy update.----

(A) Feedback from stakeholders.--The Secretary shall seek feedback from stakeholders on the initial strategy submitted under paragraph (3).

(B) Strategy update.--The Secretary shall--

(i) update the strategy described in paragraph (1) based on the feedback submitted under subparagraph (A); and

(ii) not later than 18 months after the date of the enactment of this Act--

(I) submit such updated strategy to the relevant committees of Congress; and

(II) post such updated strategy on the website of the Centers for Medicare & Medicaid Services.

(5) GAO study and report on private sector information sharing activities.----

(A) Study.--The Comptroller General of the United States (in this paragraph referred to as the "Comptroller General") shall conduct a study on information sharing activities. Such study shall include an analysis of--

(i) how private sector entities share timely data with hospitals, physicians, and other providers and what lessons can be learned from those activities;

(ii) how the Medicare program currently shares data with providers, including what data is provided and to which providers, and what divisions within the Centers for Medicare & Medicaid Services oversee those efforts;

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

[**2351] (iii) what, if any, differences there are between the private sector and the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) in terms of sharing data; and

(iv) what, if any, barriers there are for the Centers for Medicare & Medicaid Services to sharing timely data with applicable providers and recommendations to eliminate or reduce such barriers.

(B) Report.--Not later than 8 months after the date of the enactment of this Act, the Comptroller General shall submit to the relevant committees of Congress a report containing the results of the study conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(6) Definitions.-- In this subsection:

(A) Applicable provider.--The term "applicable provider" means the following:

(i) A critical access hospital (as defined in section 1861(mm)(1) of the Social Security Act (42 U.S.C. 1395xx(mm)(1))).

(ii) A hospital (as defined in section 1861(e) of such Act (42 U.S.C. 1395x(e))).

(iii) A physician (as defined in section 1861(r) of such Act (42 U.S.C. 1395x(r))).

(iv) Any other provider the Secretary determines should receive the information described in subsection (a).

(B) Performance improvement.--The term "performance improvement" means improvements in quality, reducing per capita costs, and other criteria the Secretary determines appropriate.

[*610] Sec. 610. EXTENSION OF FUNDING OUTREACH AND ASSISTANCE FOR LOW-INCOME PROGRAMS.

(a) Additional Funding for State Health Insurance Programs.--Subsection (a)(1)(B) of section 119 of the Medicare Improvements for Patients and Providers Act of 2008 (42 U.S.C. 1395b-3 note), as amended by section 3306 of the Patient Protection and Affordable Care Act Public Law 111-148), is amended--

(1) in clause (i), by striking "and" at the end;

(2) in clause (ii), by striking the period at the end and inserting "; and"; and

(3) by inserting after clause (ii) the following new clause:

"(iii) for fiscal year 2013, of \$ 7,500,000."

(b) Additional Funding for Area Agencies on Aging.--Subsection (b)(1)(B) of such section 119, as so amended, is amended--

(1) in clause (i), by striking "and" at the end;

(2) in clause (ii), by striking the period at the end and inserting "; and"; and

(3) by inserting after clause (ii) the following new clause:

"(iii) for fiscal year 2013, of \$ 7,500,000."

(c) Additional Funding for Aging and Disability Resource Centers.--Subsection (c)(1)(B) of such section 119, as so amended, is amended--

(1) in clause (i), by striking "and" at the end;

[**2352] (2) in clause (ii), by striking the period at the end and inserting "; and"; and

(3) by inserting after clause (ii) the following new clause:

"(iii) for fiscal year 2013, of \$ 5,000,000."

(d) Additional Funding for Contract With the National Center for Benefits and Outreach Enrollment.--Subsection (d)(2) of such section 119, as so amended, is amended--

(1) in clause (i), by striking "and" at the end;

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(2) in clause (ii), by striking the period at the end and inserting "; and"; and

(3) by inserting after clause (ii) the following new clause:

"(iii) for fiscal year 2013, of \$ 5,000,000."

Subtitle B--Other Health Extensions

[*621] Sec. 621. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI) PROGRAM.

(a) Extension.--Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended by striking "2012" and inserting "2013".

(b) Extending Total Amount Available for Allocation.--Section 1933(g) of such Act (42 U.S.C. 1396u-3(g)) is amended--

(1) in paragraph (2)--

(A) in subparagraph (Q), by striking "and" after the semicolon;

(B) in subparagraph (R), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

"(S) for the period that begins on January 1, 2013, and ends on September 30, 2013, the total allocation amount is \$ 485,000,000; and

"(T) for the period that begins on October 1, 2013, and ends on December 31, 2013, the total allocation amount is \$ 300,000,000."; and

(2) in paragraph (3), in the matter preceding subparagraph (A), by striking "or (R)" and inserting "(R), or (T)".

[*622] Sec. 622. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA).

Sections 1902(e)(1)(B) and 1925(f) of the Social Security Act (42 U.S.C. 1396a(e)(1)(B), 1396r-6(f)) are each amended by striking "2012" and inserting "2013".

[*623] Sec. 623. EXTENSION OF MEDICAID AND CHIP EXPRESS LANE OPTION.

Section 1902(e)(13)(I) of the Social Security Act (42 U.S.C. 1396a(e)(13)(I)) is amended by striking "2013" and inserting "2014".

[*624] Sec. 624. EXTENSION OF FAMILY-TO-FAMILY HEALTH INFORMATION CENTERS.

Section 501(c)(1)(A)(iii) of the Social Security Act (42 U.S.C. 701(c)(1)(A)(iii)) is amended by striking "2012" and inserting "2013".

[*625] Sec. 625. EXTENSION OF SPECIAL DIABETES PROGRAM FOR TYPE I DIABETES AND FOR INDIANS.

(a) Special Diabetes Programs for Type I Diabetes.--Section 330B(b)(2)(C) of the Public Health Service Act (42 U.S.C. 254c-2(b)(2)(C)) is amended by striking "2013" and inserting "2014".

[**2353] (b) Special Diabetes Programs for Indians.--Section 330C(c)(2)(C) of the Public Health Service Act (42 U.S.C. 254c-3(c)(2)(C)) is amended by striking "2013" and inserting "2014".

Subtitle C--Other Health Provisions

[*631] Sec. 631. IPPS DOCUMENTATION AND CODING ADJUSTMENT FOR IMPLEMENTATION OF MS-DRGS.

(a) Rule of Construction and Clarification.--

(1) Rule of construction.-- Nothing in the amendments made by subsection (b) shall be construed as changing the existing authority under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) to make prospective documentation and coding adjustments to the standardized amounts under such section 1886(d) to correct for changes in the coding or classification of discharges that do not reflect real changes in case mix.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(2) Clarification.-- Effective on the date of the enactment of this section, except as provided in section 7(b)(1)(B)(ii) of the TMA, Abstinence Education, and QI Programs Extension Act of 2007, as added by subsection (b)(2)(A)(ii)(IV) of this section, the Secretary of Health and Human Services shall not have authority to fully recoup past overpayments related to documentation and coding changes from fiscal years 2008 and 2009.

(b) Adjustment.--Section 7 of the TMA, Abstinence Education, and QI Programs Extension Act of 2007 (Public Law 110-90; 121 Stat. 986) is amended--

(1) in the heading, by striking "limitation" and all that follows through "adjustment" and inserting "documentation and coding adjustments"; and

(2) in subsection (b)--

(A) in paragraph (1)--

(i) in the matter before subparagraph (A)--

(I) by striking "or 2009" and inserting ", 2009, or 2010"; and

(II) by inserting "or otherwise applied for such year" after "applied under subsection (a)"; and

(ii) in subparagraph (B)--

(I) by inserting "(i)" after "(B)";

(II) by striking "or decrease";

(III) by striking the period at the end and inserting "; and"; and

(IV) by adding at the end the following:

"(ii) make an additional adjustment to the standardized amounts under such section 1886(d) based upon the Secretary's estimates for discharges occurring only during fiscal years 2014, 2015, 2016, and 2017 to fully offset \$ 11,000,000,000 (which represents the amount of the increase in aggregate payments from fiscal years 2008 through 2013 for which an adjustment was not previously applied)."; and

(B) in paragraph (3)--

(i) in subparagraph (A), by inserting before the semicolon the following: "or affecting the Secretary's authority under such paragraph to apply a prospective [**2354] adjustment to offset aggregate additional payments related to documentation and coding improvements made with respect to discharges during fiscal year 2010"; and

(ii) in subparagraph (B), by striking "and 2012" and inserting "2012, 2014, 2015, 2016, and 2017".

[*632] Sec. 632. REVISIONS TO THE MEDICARE ESRD BUNDLED PAYMENT SYSTEM TO REFLECT FINDINGS IN THE GAO REPORT.

(a) Adjustment to ESRD Bundled Payment Rate To Account for Changes in the Utilization of Certain Drugs and Biologicals.--Section 1881(b)(14) of the Social Security Act (42 U.S.C. 1395rr(b)(14)) is amended by adding at the end the following new subparagraph:

"(I) For services furnished on or after January 1, 2014, the Secretary shall, by comparing per patient utilization data from 2007 with such data from 2012, make reductions to the single payment that would otherwise apply under this paragraph for renal dialysis services to reflect the Secretary's estimate of the change in the utilization of drugs and biologicals described in clauses (ii), (iii), and (iv) of subparagraph (B) (other than oral-only ESRD-related drugs, as such term is used in the final rule promulgated by the Secretary in the Federal Register on August 12, 2010 (75 Fed. Reg. 49030)). In making reductions under the preceding sentence, the Secretary shall take into account the most recently available data on average sales prices and changes in prices for drugs and biological reflected in the ESRD market basket percentage increase factor under subparagraph (F)."

(b) <42 USC 1395rr note> Two-year Delay of Implementation of Oral-Only ESRD-Related Drugs in the ESRD Prospective Payment System; Monitoring.--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(1) Delay.-- The Secretary of Health and Human Services may not implement the policy under section 413.174(f)(6) of title 42, Code of Federal Regulations (relating to oral-only ESRD-related drugs in the ESRD prospective payment system), prior to January 1, 2016.

(2) Monitoring.-- With respect to the implementation of oral-only ESRD-related drugs in the ESRD prospective payment system under subsection (b)(14) of section 1881 of the Social Security Act (42 U.S.C. 1395rr(b)(14)), the Secretary of Health and Human Services shall monitor the bone and mineral metabolism of individuals with end stage renal disease.

(c) <42 USC 1395rr note> Analysis of Case Mix Payment Adjustments.--By not later than January 1, 2016, the Secretary of Health and Human Services shall--

(1) conduct an analysis of the case mix payment adjustments being used under section 1881(b)(14)(D)(i) of the Social Security Act (42 U.S.C. 1395rr(b)(14)(D)(i)); and

(2) make appropriate revisions to such case mix payment adjustments.

(d) Updated GAO Report.--Not later than December 31, 2015, the Comptroller General of the United States shall submit to Congress a report that updates the report submitted to Congress under section 10336 of the Patient Protection and Affordable Care Act (Public Law 111-148; 124 Stat. 974). The updated report shall include an analysis of how the Secretary of Health and Human Services has addressed points raised in the report submitted under [**2355] such section 10336 with respect to the Secretary's preparations to implement payment for oral-only ESRD-related drugs in the bundled prospective payment system under section 1881(b)(14) of the Social Security Act (42 U.S.C. 1395rr(b)(14)).

[*633] Sec. 633. TREATMENT OF MULTIPLE SERVICE PAYMENT POLICIES FOR THERAPY SERVICES.

(a) Services Furnished by Physicians and Certain Other Providers.--Section 1848(b)(7) of the Social Security Act (42 U.S.C. 1395w-4(b)(7)) is amended--

(1) by striking "2011," and inserting "2011, and before April 1, 2013,"; and

(2) by adding at the end the following new sentence: "In the case of such services furnished on or after April 1, 2013, and for which payment is made under such fee schedules, instead of the 25 percent multiple procedure payment reduction specified in such final rule, the reduction percentage shall be 50 percent."

(b) Services Furnished by Other Providers.--Section 1834(k) of the Social Security Act (42 U.S.C. 1395m(k)) is amended by adding at the end the following new paragraph:

"(7) Adjustment in discount for certain multiple therapy services.-- In the case of therapy services furnished on or after April 1, 2013, and for which payment is made under this subsection pursuant to the applicable fee schedule amount (as defined in paragraph (3)), instead of the 25 percent multiple procedure payment reduction specified in the final rule published by the Secretary in the Federal Register on November 29, 2010, the reduction percentage shall be 50 percent."

[*634] Sec. 634. PAYMENT FOR CERTAIN RADIOLOGY SERVICES FURNISHED UNDER THE MEDICARE HOSPITAL OUTPATIENT DEPARTMENT PROSPECTIVE PAYMENT SYSTEM.

Section 1833(t)(16) of the Social Security Act (42 U.S.C. 1395l(t)(16)) is amended by adding at the end the following new subparagraph:

"(D) Special payment rule.--

"(i) In general.--In the case of covered OPD services furnished on or after April 1, 2013, in a hospital described in clause (ii), if--

"(I) the payment rate that would otherwise apply under this subsection for stereotactic radiosurgery, complete course of treatment of cranial lesion(s) consisting of 1 session that is multi-source Cobalt 60 based (identified as of January 1, 2013, by HCPCS code 77371 (and any succeeding code) and reimbursed as of such date under APC 0127 (and any succeeding classification group)); exceeds

"(II) the payment rate that would otherwise apply under this subsection for linear accelerator based stereotactic radiosurgery, complete course of therapy in one session (identified as of January 1, 2013, by HCPCS code G0173

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(and any succeeding code) and reimbursed as of such date under APC 0067 (and any succeeding classification group)), [**2356] the payment rate for the service described in subclause (I) shall be reduced to an amount equal to the payment rate for the service described in subclause (II).

"(ii) Hospital described.--A hospital described in this clause is a hospital that is not--

"(I) located in a rural area (as defined in section 1886(d)(2)(D));

"(II) classified as a rural referral center under section 1886(d)(5)(C); or

"(III) a sole community hospital (as defined in section 1886(d)(5)(D)(iii)).

"(iii) Not budget neutral.--In making any budget neutrality adjustments under this subsection for 2013 (with respect to covered OPD services furnished on or after April 1, 2013, and before January 1, 2014) or a subsequent year, the Secretary shall not take into account the reduced expenditures that result from the application of this subparagraph."

[*635] Sec. 635. ADJUSTMENT OF EQUIPMENT UTILIZATION RATE FOR ADVANCED IMAGING SERVICES.

Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended--

(1) in subsection (b)(4)(C)--

(A) by striking "and subsequent years" and inserting ", 2012, and 2013"; and

(B) by adding at the end the following new sentence: "With respect to fee schedules established for 2014 and subsequent years, in such methodology, the Secretary shall use a 90 percent utilization rate."; and

(2) in subsection (c)(2)(B)(v)(III), by striking "change in the utilization rate applicable to 2011, as described in" and inserting "changes in the utilization rate applicable to 2011 and 2014, as described in the first and second sentence, respectively, of".

[*636] Sec. 636. MEDICARE PAYMENT OF COMPETITIVE PRICES FOR DIABETIC SUPPLIES AND ELIMINATION OF OVERPAYMENT FOR DIABETIC SUPPLIES.

(a) Application of Competitive Bidding Prices for Diabetic Supplies.--Section 1834(a)(1) of the Social Security Act (42 U.S.C. 1395m(a)(1)) is amended--

(1) in subparagraph (F), in the matter preceding clause (i), by striking "subparagraph (G)" and inserting "subparagraphs (G) and (H)"; and

(2) by adding at the end the following new subparagraph:

"(H) Diabetic supplies.--

"(i) In general.--On or after the date described in clause (ii), the payment amount under this part for diabetic supplies, including testing strips, that are non-mail order items (as defined by the Secretary) shall be equal to the single payment amounts established under the national mail order competition for diabetic supplies under section 1847.

"(ii) Date described.--The date described in this clause is the date of the implementation of the single payment amounts under the national mail order competition for diabetic supplies under section 1847."

[**2357] (b) Overpayment Elimination for Diabetic Supplies.--Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

"(22) Special payment rule for diabetic supplies.-- Notwithstanding the preceding provisions of this subsection, for purposes of determining the payment amount under this subsection for diabetic supplies furnished on or after the first day of the calendar quarter during 2013 that is at least 30 days after the date of the enactment of this paragraph and before the date described in paragraph (1)(H)(ii), the Secretary shall recalculate and apply the covered item update under paragraph (14) as if subparagraph (J)(i) of such paragraph was amended by striking 'but only if furnished through mail order'."

[*637] Sec. 637. MEDICARE PAYMENT ADJUSTMENT FOR NON-EMERGENCY AMBULANCE TRANSPORTS FOR ESRD BENEFICIARIES.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

Section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)) is amended by adding at the end the following new paragraph:

"(15) Payment adjustment for non-emergency ambulance transports for ESRD beneficiaries.-- The fee schedule amount otherwise applicable under the preceding provisions of this subsection shall be reduced by 10 percent for ambulance services furnished on or after October 1, 2013, consisting of non-emergency basic life support services involving transport of an individual with end-stage renal disease for renal dialysis services (as described in section 1881(b)(14)(B)) furnished other than on an emergency basis by a provider of services or a renal dialysis facility."

[*638] Sec. 638. REMOVING OBSTACLES TO COLLECTION OF OVERPAYMENTS.

(a) In General.--The last sentence of subsections (b) and (c) of section 1870 of the Social Security Act (42 U.S.C. 1395gg) are each amended--

- (1) by striking "third year" and inserting "fifth year"; and
- (2) by striking "three-year" and inserting "five-year".

(b) <42 USC 1395gg note> Effective Date.--The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

[*639] Sec. 639. MEDICARE ADVANTAGE CODING INTENSITY ADJUSTMENT.

Section 1853(a)(1)(C)(ii)(III) of the Social Security Act (42 U.S.C. 1395w-23(a)(1)(C)(ii)(III)) is amended--

- (1) by striking "1.3 percentage points" and inserting "1.5 percentage points"; and
- (2) by striking "5.7 percent" and inserting "5.9 percent".

[*640] Sec. 640. ELIMINATION OF ALL FUNDING FOR THE MEDICARE IMPROVEMENT FUND.

Section 1898(b)(1) of the Social Security Act (42 U.S.C. 1395iii(b)(1)) is amended by striking subparagraphs (A), (B), and (C) and inserting the following new subparagraphs:

- "(A) fiscal year 2014, \$ 0; and
- "(B) fiscal year 2015, \$ 0."

[*641] Sec. 641. REBASING OF STATE DSH ALLOTMENTS.

Section 1923(f)(8) of the Social Security Act (42 U.S.C. 1396r-4(f)(8)) is amended to read as follows:

[**2358] "(8) Special rules for calculating DSH allotments for certain fiscal years.----

"(A) Fiscal year 2021.--Only with respect to fiscal year 2021, the DSH allotment for a State, in lieu of the amount determined under paragraph (3) for the State for that year, shall be equal to the DSH allotment for the State as reduced under paragraph (7) for fiscal year 2020, increased, subject to subparagraphs (B) and (C) of paragraph (3), and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for fiscal year 2020.

"(B) Fiscal year 2022.--Only with respect to fiscal year 2022, the DSH allotment for a State, in lieu of the amount determined under paragraph (3) for the State for that year, shall be equal to the DSH allotment for the State for fiscal year 2021, as determined under subparagraph (A), increased, subject to subparagraphs (B) and (C) of paragraph (3), and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for fiscal year 2021.

"(C) Subsequent fiscal years.--The DSH allotment for a State for fiscal years after fiscal year 2022 shall be calculated under paragraph (3) without regard to this paragraph and paragraph (7)."

[*642] Sec. 642. REPEAL OF CLASS PROGRAM.

(a) <42 USC 30011300119> Repeal.--Title XXXII of the Public Health Service Act (42 U.S.C. 30011 et seq.; relating to the CLASS program) is repealed.

(b) Conforming Changes.--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(1) Title VIII of the Patient Protection and Affordable Care <42 USC 201 note, 300ll notes> Act (Public Law 111-148; 124 Stat. 119, 846-847) is repealed.

(2) Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended--

(A) by striking paragraphs (81) and (82);

(B) in paragraph (80), by inserting "and" at the end; and

(C) by redesignating paragraph (83) as paragraph (81).

(3) Paragraphs (2) and (3) of section 6021(d) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396p note) are amended to read as such paragraphs were in effect on the day before the date of the enactment of section 8002(d) of the Patient Protection and Affordable Care Act (Public Law 111-148). Of the funds appropriated by paragraph (3) of such section 6021(d), as amended by the Patient Protection and Affordable Care Act, the unobligated balance is rescinded.

[*643] Sec. 643. COMMISSION ON LONG-TERM CARE.

(a) Establishment.--There is established a commission to be known as the Commission on Long-Term Care (referred to in this section as the "Commission").

(b) Duties.--

(1) In general.-- The Commission shall develop a plan for the establishment, implementation, and financing of a comprehensive, coordinated, and high-quality system that ensures the availability of long-term services and supports for individuals in need of such services and supports, including elderly individuals, individuals with substantial cognitive or functional limitations, other individuals who require assistance to perform [**2359] activities of daily living, and individuals desiring to plan for future long-term care needs.

(2) Existing health care programs.-- For purposes of developing the plan described in paragraph (1), the Commission shall provide recommendations for--

(A) addressing the interaction of a long-term services and support system with existing programs for long-term services and supports, including the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), and private long-term care insurance;

(B) improvements to such health care programs that are necessary for ensuring the availability of long-term services and supports; and

(C) issues related to workers who provide long-term services and supports, including--

(i) whether the number of such workers is adequate to provide long-term services and supports to individuals with long-term care needs;

(ii) workforce development necessary to deliver high-quality services to such individuals;

(iii) development of entities that have the capacity to serve as employers and fiscal agents for workers who provide long-term services and supports in the homes of such individuals; and

(iv) addressing gaps in Federal and State infrastructure that prevent delivery of high-quality long term services and supports to such individuals.

(3) Additional considerations.-- For purposes of developing the plan described in paragraph (1), the Commission shall take into account projected demographic changes and trends in the population of the United States, as well as the potential for development of new technologies, delivery systems, or other mechanisms to improve the availability and quality of long-term services and supports.

(4) Consultation.-- For purposes of developing the plan described in paragraph (1), the Commission shall consult with the Medicare Payment Advisory Commission, the Medicaid and CHIP Payment and Access Commission, the National Council on Disability, and relevant consumer groups.

(c) Membership.--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(1) In general.-- The Commission shall be composed of 15 members, to be appointed not later than 30 days after the date of enactment of this Act, as follows:

- (A) The President of the United States shall appoint 3 members.
- (B) The majority leader of the Senate shall appoint 3 members.
- (C) The minority leader of the Senate shall appoint 3 members.
- (D) The Speaker of the House of Representatives shall appoint 3 members.
- (E) The minority leader of the House of Representatives shall appoint 3 members.

(2) Representation.-- The membership of the Commission shall include individuals who--

- [**2360] (A) represent the interests of--
- (i) consumers of long-term services and supports and related insurance products, as well as their representatives;
 - (ii) older adults;
 - (iii) individuals with cognitive or functional limitations;
 - (iv) family caregivers for individuals described in clause (i), (ii), or (iii);
 - (v) the health care workforce who directly provide long-term services and supports;
 - (vi) private long-term care insurance providers;
 - (vii) employers;
 - (viii) State insurance departments; and
 - (ix) State Medicaid agencies;
- (B) have demonstrated experience in dealing with issues related to long-term services and supports, health care policy, and public and private insurance; and
- (C) represent the health care interests and needs of a variety of geographic areas and demographic groups.

(3) Chairman and vice-chairman.-- The Commission shall elect a chairman and vice chairman from among its members.

(4) Vacancies.-- Any vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made and shall not affect the power of the remaining members to execute the duties of the Commission.

(5) Quorum.-- A quorum shall consist of 8 members of the Commission, except that 4 members may conduct a hearing under subsection (e)(1).

(6) Meetings.-- The Commission shall meet at the call of its chairman or a majority of its members.

(7) Compensation and reimbursement of expenses.----

(A) In general.--To enable the Commission to exercise its powers, functions, and duties, there are authorized to be disbursed by the Senate the actual and necessary expenses of the Commission approved by the chairman and vice chairman, subject to subparagraph (B) and the rules and regulations of the Senate.

(B) Members.--Members of the Commission are not entitled to receive compensation for service on the Commission. Members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Commission.

(d) Staff and Ethical Standards.--

(1) Staff.-- The chairman and vice chairman of the Commission may jointly appoint and fix the compensation of staff as they deem necessary, within the guidelines for employees of the Senate and following all applicable rules and employment requirements of the Senate.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(2) Ethical standards.-- Members of the Commission who serve in the House of Representatives shall be governed by the ethics rules and requirements of the House. Members of the Senate who serve on the Commission and staff of the Commission shall comply with the ethics rules of the Senate.

(e) Powers.--

(1) Hearings and other activities.-- For the purpose of carrying out its duties, the Commission may hold such hearings [**2361] and undertake such other activities as the Commission determines to be necessary to carry out its duties.

(2) Studies by general accounting office.-- Upon the request of the Commission, the Comptroller General of the United States shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties.

(3) Cost estimates by congressional budget office.-- Upon the request of the Commission, the Director of the Congressional Budget Office shall provide to the Commission such cost estimates as the Commission determines to be necessary to carry out its duties.

(4) Detail of federal employees.-- Upon the request of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(5) Technical assistance.-- Upon the request of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

(6) Use of mails.-- The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

(7) Obtaining information.-- The Commission may secure directly from any Federal agency information necessary to enable it to carry out its duties, if the information may be disclosed under section 552 of title 5, United States Code. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

(8) Administrative support services.-- Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(f) Commission Consideration.--

(1) Approval of report and legislative language.----

(A) In general.--Not later than 6 months after appointment of the members of the Commission (as described in subsection (c)(1)), the Commission shall vote on a comprehensive and detailed report based on the long-term care plan described in subsection (b)(1) that contains any recommendations or proposals for legislative or administrative action as the Commission deems appropriate, including proposed legislative language to carry out the recommendations or proposals (referred to in this section as the "Commission bill").

(B) Approval by majority of members.--The Commission bill shall require the approval of a majority of the members of the Commission.

(2) Transmission of commission bill.----

(A) In general.--If the Commission bill is approved by the Commission pursuant to paragraph (1), then not later than 10 days after such approval, the Commission [**2362] shall submit the Commission bill to the President, the Vice President, the Speaker of the House of Representatives, and the majority and minority Leaders of each House on Congress.

(B) Commission bill to be made public.--Upon the approval or disapproval of the Commission bill pursuant to paragraph (1), the Commission shall promptly make such proposal, and a record of the vote, available to the public.

(g) Termination.--The Commission shall terminate 30 days after the vote described in subsection (f)(1).

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(h) Consideration of Commission Recommendations.--If approved by the majority required by subsection (f)(1), the Commission bill that has been submitted pursuant to subsection (f)(2)(A) shall be introduced in the Senate (by request) on the next day on which the Senate is in session by the majority leader of the Senate or by a Member of the Senate designated by the majority leader of the Senate and shall be introduced in the House of Representatives (by request) on the next legislative day by the majority leader of the House or by a member of the House designated by the majority leader of the House.

[*644] Sec. 644. CONSUMER OPERATED AND ORIENTED PLAN PROGRAM CONTINGENCY FUND.

(a) <42 USC 18042 note> Establishment.--The Secretary of Health and Human Services shall establish a fund to be used to provide assistance and oversight to qualified nonprofit health insurance issuers that have been awarded loans or grants under section 1322 of the Patient Protection and Affordable Care Act (42 U.S.C. 18042) prior to the date of enactment of this Act.

(b) Transfer and Rescission.--

(1) Transfer.-- From the unobligated balance of funds appropriated under section 1322(g) of the Patient Protection and Affordable Care Act (42 U.S.C. 18042(g)), 10 percent of such sums are hereby transferred to the fund established under subsection (a) to remain available until expended.

(2) Rescission.-- Except as provided for in paragraph (1), amounts appropriated under section 1322(g) of the Patient Protection and Affordable Care Act (42 U.S.C. 18042(g)) that are unobligated as of the date of enactment of this Act are rescinded.

TITLE VII--EXTENSION OF AGRICULTURAL PROGRAMS

[*701] Sec. 701. <7 USC 8701 note> 1-YEAR EXTENSION OF AGRICULTURAL PROGRAMS.

(a) Extension.--Except as otherwise provided in this section and amendments made by this section and notwithstanding any other provision of law, the authorities provided by each provision of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 1651) and each amendment made by that Act (and for mandatory programs at such funding levels), as in effect on September 30, 2012, shall continue, and the Secretary of Agriculture shall carry out the authorities, until the later of--

(1) September 30, 2013; or

[**2363] (2) the date specified in the provision of that Act or amendment made by that Act.

(b) Commodity Programs.--

(1) In general.-- The terms and conditions applicable to a covered commodity or loan commodity (as those terms are defined in section 1001 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8702)) or to peanuts, sugarcane, or sugar beets for the 2012 crop year pursuant to title I of that Act (7 U.S.C. 8702 et seq.) and each amendment made by that title shall be applicable to the 2013 crop year for that covered commodity, loan commodity, peanuts, sugarcane, or sugar beets.

(2) Milk.----

(A) In general.--Notwithstanding subsection (a), the Secretary of Agriculture shall carry out the dairy product price support program under section 1501 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8771) through December 31, 2013.

(B) Milk income loss contract program.--Section 1506 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8773) is amended by striking "2012" each place <7 USC 8773 note> it appears in subsections (c)(3), (d)(1), (d)(2), (e)(2)(A), (g), and (h)(1) and inserting "2013".

(3) Suspension of permanent price support authorities.-- The provisions of law specified in subsections (a) through (c) of section 1602 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8782) shall be suspended--

(A) for the 2013 crop or production year of a covered commodity (as that term is defined in section 1001 of that Act (7 U.S.C. 8702)), peanuts, sugarcane, and sugar, as appropriate; and

(B) in the case of milk, through December 31, 2013.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(c) Conservation Programs.--

(1) Conservation reserve.-- Section 1231(d) of the Food Security Act of 1985 (16 U.S.C. 3831(d)) is amended in the second sentence by striking "and 2012" and inserting "2012, and 2013".

(2) Voluntary public access.-- Section 1240R of the Food Security Act of 1985 (16 U.S.C. 3839bb-5) is amended by striking subsection (f) and inserting the following:

"(f) Funding.--

"(1) Fiscal years 2009 through 2012.-- Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section, to the maximum extent practicable, \$ 50,000,000 for the period of fiscal years 2009 through 2012.

"(2) Authorization of appropriations.-- There is authorized to be appropriated to carry out this section \$ 10,000,000 for fiscal year 2013."

(d) Supplemental Nutrition Assistance Program.--

(1) Employment and training program.-- Section 16(h)(1)(A) of the Food and Nutrition Act of 2008 (7 U.S.C. 2025(h)(1)(A)) is amended by inserting ", except that for fiscal year 2013, the amount shall be \$ 79,000,000" before the period at the end.

(2) Nutrition education.-- Section 28(d)(1) of the Food and Nutrition Act of 2008 (7 U.S.C. 2036a(d)(1)) is amended--

(A) in subparagraph (A), by striking "and" after the semicolon at the end; and

[**2364] (B) by striking subparagraph (B) and inserting the following:

"(B) for fiscal year 2012, \$ 388,000,000;

"(C) for fiscal year 2013, \$ 285,000,000;

"(D) for fiscal year 2014, \$ 401,000,000;

"(E) for fiscal year 2015, \$ 407,000,000; and

"(F) for fiscal year 2016 and each subsequent fiscal year, the applicable amount during the preceding fiscal year, as adjusted to reflect any increases for the 12-month period ending the preceding June 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor."

(e) Research Programs.--

(1) Organic agriculture research and extension initiative.-- Section 1672B(f) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5925b(f)) is amended--

(A) in the heading of paragraph (1), by striking "In general" and inserting "Mandatory funding for fiscal years 2009 through 2012";

(B) in the heading of paragraph (2), by striking "Additional funding" and inserting "Discretionary funding for fiscal years 2009 through 2012"; and

(C) by adding at the end the following:

"(3) Fiscal year 2013.-- There is authorized to be appropriated to carry out this section \$ 25,000,000 for fiscal year 2013."

(2) Specialty crop research initiative.-- Section 412(h) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7632(h)) is amended--

(A) in the heading of paragraph (1), by striking "In general" and inserting "Mandatory funding for fiscal years 2008 through 2012";

(B) in the heading of paragraph (2), by inserting "for fiscal years 2008 through 2012" after "Appropriations";

(C) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(D) by inserting after paragraph (2) the following:

"(3) Fiscal year 2013.-- There is authorized to be appropriated to carry out this section \$ 100,000,000 for fiscal year 2013."

(3) Beginning farmer and rancher development program.-- Section 7405(h) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3319f(h)) is amended--

(A) in the heading of paragraph (1), by striking "In general" and inserting "Mandatory funding for fiscal years 2009 through 2012";

(B) in the heading of paragraph (2), by inserting "for fiscal years 2008 through 2012" after "Appropriations"; and

(C) by adding at the end the following:

"(3) Fiscal year 2013.-- There is authorized to be appropriated to carry out this section \$ 30,000,000 for fiscal year 2013."

(f) Energy Programs.--

(1) Biobased markets program.-- Section 9002(h) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8102(h)) [**2365] is amended in paragraph (2) by striking "2012" and inserting "2013".

(2) Biorefinery assistance.-- Section 9003(h)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8103(h)(2)) is amended by striking "2012" and inserting "2013".

(3) Repowering assistance.-- Section 9004(d)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8104(d)(2)) is amended by striking "2012" and inserting "2013".

(4) Bioenergy program for advanced biofuels.-- Section 9005(g)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8105(g)(2)) is amended by striking "2012" and inserting "2013".

(5) Biodiesel fuel education program.-- Section 9006 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106) is amended by striking subsection (d) and inserting the following:

"(d) Funding.--

"(1) Fiscal years 2009 through 2012.-- Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section \$ 1,000,000 for each of fiscal years 2008 through 2012.

"(2) Authorization of appropriations.-- There is authorized to be appropriated to carry out this section \$ 1,000,000 for fiscal year 2013."

(6) Rural energy for America program.-- Section 9007(g)(3) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8107(g)(3)) is amended by striking "2012" and inserting "2013".

(7) Biomass research and development.-- Section 9008(h)(2) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8108(h)(2)) is amended by striking "2012" and inserting "2013".

(8) Rural energy self-sufficiency initiative.-- Section 9009(d) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8109(d)) is amended by striking "2012" and inserting "2013".

(9) Feedstock flexibility program for bioenergy producers.-- Section 9010(b) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8110(b)) is amended in paragraphs (1)(A) and (2)(A) by striking "2012" each place it appears and inserting "2013".

(10) Biomass crop assistance program.-- Section 9011(f) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8111(f)) is amended--

(A) by striking " (f) Funding.--Of the funds" and inserting " (f) Funding.--

"(1) Fiscal years 2008 through 2012.-- Of the funds"; and

(B) adding at the end the following:

"(2) Fiscal year 2013.----

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

"(A) In general.--There is authorized to be appropriated to carry out this section \$ 20,000,000 for fiscal year 2013.

"(B) Multiyear contracts.--For each multiyear contract entered into by the Secretary during a fiscal year under this paragraph, the Secretary shall ensure that sufficient funds are obligated from the amounts appropriated [**2366] for that fiscal year to fully cover all payments required by the contract for all years of the contract."

(11) Forest biomass for energy.-- Section 9012(d) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8112(d)) is amended by striking "2012" and inserting "2013".

(12) Community wood energy program.-- Section 9013(e) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8113(e)) is amended by striking "2012" and inserting "2013".

(g) Horticulture and Organic Agriculture Programs.--

(1) Farmers market promotion program.-- Section 6(e) of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3005(e)) is amended--

(A) in the heading of paragraph (1), by striking "In general" and inserting "Fiscal years 2008 through 2012";

(B) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(C) by inserting after paragraph (1) the following:

"(2) Fiscal year 2013.-- There is authorized to be appropriated to carry out this section \$ 10,000,000 for fiscal year 2013.";

(D) in paragraph (3) (as so redesignated), by striking "paragraph (1)" and inserting "paragraph (1) or (2)"; and

(E) in paragraph (5) (as so redesignated), by striking "paragraph (2)" and inserting "paragraph (3)".

(2) National clean plant network.-- Section 10202(e) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7761(e)) is amended--

(A) by striking "Of the funds" and inserting the following:

"(1) Fiscal years 2009 through 2012.-- Of the funds"; and

(B) by adding at the end the following:

"(2) Fiscal year 2013.-- There is authorized to be appropriated to carry out the Program \$ 5,000,000 for fiscal year 2013.".

(3) National organic certification cost-share program.-- Section 10606 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 6523) is amended--

(A) in subsection (a), by striking "Of funds of the Commodity Credit Corporation, the Secretary of Agriculture (acting through the Agricultural Marketing Service) shall use \$ 22,000,000 for fiscal year 2008, to remain available until expended, to" and inserting "The Secretary of Agriculture (acting through the Agricultural Marketing Service) shall"; and

(B) by adding at the end the following:

"(d) Funding.--

"(1) Mandatory funding for fiscal years 2008 through 2012.-- Of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this section \$ 22,000,000 for the period of fiscal years 2008 through 2012.

"(2) Fiscal year 2013.-- There is authorized to be appropriated to carry out this section \$ 22,000,000 for fiscal year 2013, to remain available until expended.".

(4) Organic production and market data initiatives.-- Section 7407(d) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 5925c(d)) is amended--

[**2367] (A) in the heading of paragraph (1), by striking "In general" and inserting "Mandatory funding through fiscal year 2012";

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(B) in the heading of paragraph (2), by striking "Additional funding" and inserting "Discretionary funding for fiscal years 2008 through 2012"; and

(C) by adding at the end the following:

"(3) Fiscal year 2013.-- There is authorized to be appropriated to carry out this section \$ 5,000,000, to remain available until expended."

(h) Outreach and Technical Assistance for Socially Disadvantaged Farmers or Ranchers.--Section 2501(a)(4) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)(4)) is amended--

(1) in the heading of subparagraph (A), by striking "In general" and inserting "Fiscal years 2009 through 2012";

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(3) by inserting after subparagraph (A) the following:

"(B) Fiscal year 2013.--There is authorized to be appropriated to carry out this section \$ 20,000,000 for fiscal year 2013.";

(4) in subparagraph (C) (as so redesignated), by striking "subparagraph (A)" and inserting "subparagraph (A) or (B)"; and

(5) in subparagraph (D) (as so redesignated), by striking "subparagraph (A)" and inserting "subparagraph (A) or (B)".

(i) Exceptions.--

(1) In general.-- Subsection (a) does not apply with respect to mandatory funding provided by programs authorized by provisions of law amended by subsections (d) through (h).

(2) Conservation.-- Subsection (a) does not apply with respect to the programs specified in paragraphs (3)(B), (4), (6), and (7) of section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)), relating to the conservation stewardship program, farmland protection program, environmental quality incentives program, and wildlife habitat incentives program, for which program authority was extended through fiscal year 2014 by section 716 of Public Law 112-55 (125 Stat. 582).

(3) Trade.-- Subsection (a) does not apply with respect to the following provisions of law:

(A) Section 3206 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1726c) relating to the use of Commodity Credit Corporation funds to support local and regional food aid procurement projects.

(B) Section 3107(l)(1) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o-1(l)(1)) relating to the use of Commodity Credit Corporation funds to carry out the McGovern-Dole International Food for Education and Child Nutrition Program.

(4) Survey of foods purchased by school food authorities.-- Subsection (a) does not apply with respect to section 4307 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 1893) relating to the use of Commodity Credit Corporation funds for a survey and report regarding foods purchased by school food authorities.

[**2368] (5) Rural development.-- Subsection (a) does not apply with respect to the following provisions of law:

(A) Section 379E(d)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008s(d)(1)), relating to funding of the rural microentrepreneur assistance program.

(B) Section 6029 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 1955) relating to funding of pending rural development loan and grant applications.

(C) Section 231(b)(7)(A) of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1632a(b)(7)(A)), relating to funding of value-added agricultural market development program grants.

(D) Section 375(e)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j(e)(6)(B)) relating to the use of Commodity Credit Corporation funds for the National Sheep Industry Improvement Center.

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(6) Market loss assistance for asparagus producers.-- Subsection (a) does not apply with respect to section 10404(d) of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 2112).

(7) Supplemental agricultural disaster assistance.-- Subsection (a) does not apply with respect to section 531 of the Federal Crop Insurance Act (7 U.S.C. 1531) and title IX of the Trade Act of 1974 (19 U.S.C. 2497 et seq.) relating to the provision of supplemental agricultural disaster assistance.

(8) Pigford claims.-- Subsection (a) does not apply with respect to section 14012 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 2209) relating to determination on the merits of Pigford claims.

(9) Heartland, habitat, harvest, and horticulture act of 2008.-- Subsection (a) does not apply with respect to title XV of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 2246), and amendments made by that title, relating to the provision of supplemental agricultural disaster assistance under title IX of the Trade Act of 1974 (19 U.S.C. 2497 et seq.), certain revenue and tax provisions, and certain trade benefits and other matters.

(j) Effective Date.--Except as otherwise provided in this section, this section and the amendments made by this section take effect on the earlier of--

- (1) the date of the enactment of this Act; or
- (2) September 30, 2012.

[*702] Sec. 702. SUPPLEMENTAL AGRICULTURAL DISASTER ASSISTANCE.

(a) In General.--Section 531 of the Federal Crop Insurance Act (7 U.S.C. 1531) is amended--

(1) in subsection (a)(5)--

(A) in the matter preceding clause (i), by striking the first "under"; and

(B) by redesignating clauses (i) through (iii) as subparagraphs (A), (B), and (C), respectively, and indenting appropriately;

(2) in subsection (c)--

(A) in paragraph (1), by striking "use such sums as are necessary from the Trust Fund to"; and

[**2369] (B) by adding at the end the following:

"(3) Authorization of appropriations.-- There is authorized to be appropriated to carry out this subsection \$ 80,000,000 for each of fiscal years 2012 and 2013.";

(3) in subsection (d)--

(A) in paragraph (2), by striking "use such sums as are necessary from the Trust Fund to"; and

(B) by adding at the end the following:

"(7) Authorization of appropriations.-- There is authorized to be appropriated to carry out this subsection \$ 400,000,000 for each of fiscal years 2012 and 2013.";

(4) in subsection (e)--

(A) in paragraph (1), by striking "use up to \$ 50,000,000 per year from the Trust Fund to"; and

(B) by adding at the end the following:

"(4) Authorization of appropriations.-- There is authorized to be appropriated to carry out this subsection \$ 50,000,000 for each of fiscal years 2012 and 2013.";

(5) in subsection (f)--

(A) in paragraph (2)(A), by striking "use such sums as are necessary from the Trust Fund to"; and

(B) by adding at the end the following:

"(5) Authorization of appropriations.-- There is authorized to be appropriated to carry out this subsection \$ 20,000,000 for each of fiscal years 2012 and 2013."; and

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

(6) in subsection (i), by inserting "or, in the case of subsections (c) through (f), September 30, 2013" after "2011,".

(b) <7 USC 1531 note> Effective Date.--The amendments made by subsection (a) shall take effect on October 1, 2012.

TITLE VIII--MISCELLANEOUS PROVISIONS

[*801] Sec. 801. STRATEGIC DELIVERY SYSTEMS.

(a) In General.--Paragraph 3 of section 495(c) of title 10, United States Code,, as added by section 1035 of the National Defense Authorization Act for Fiscal Year 2013, is amended--

(1) by striking "that" before "the Russian Federation" and inserting "whether"; and

(2) by inserting "strategic" before "arms control obligations".

(b) <10 USC 495 note> Effective Date.--The amendments made by subsection (a) shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2013.

[*802] Sec. 802. NO COST OF LIVING ADJUSTMENT IN PAY OF MEMBERS OF CONGRESS.

Notwithstanding any other provision of law, no adjustment <2 USC 31 note> shall be made under section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31) (relating to cost of living adjustments for Members of Congress) during fiscal year 2013.

[**2370]

TITLE IX--BUDGET PROVISIONS

Subtitle A--Modifications of Sequestration

[*901] Sec. 901. TREATMENT OF SEQUESTER.

(a) <2 USC 901a> Adjustment.--Section 251A(3) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended--

(1) in subparagraph (C), by striking "and" after the semicolon;

(2) in subparagraph (D), by striking the period and inserting " ; and"; and

(3) by inserting at the end the following:

"(E) for fiscal year 2013, reducing the amount calculated under subparagraphs (A) through (D) by \$ 24,000,000,000."

(b) After Session Sequester.--Notwithstanding any other provision of law, the fiscal year 2013 spending reductions required by section 251(a)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be evaluated and implemented on March 27, 2013.

(c) Postponement of Budget Control Act Sequester for Fiscal Year 2013.--Section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended--

(1) in paragraph (4), by striking "January 2, 2013" and inserting "March 1, 2013"; and

(2) in paragraph (7)(A), by striking "January 2, 2013" and inserting "March 1, 2013".

(d) Additional Adjustments.--

(1) Section 251.-- Paragraphs (2) and (3) of section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 <2 USC 901> are amended to read as follows:

"(2) for fiscal year 2013--

"(A) for the security category, as defined in section 250(c)(4)(B), \$ 684,000,000,000 in budget authority; and

"(B) for the nonsecurity category, as defined in section 250(c)(4)(A), \$ 359,000,000,000 in budget authority;

"(3) for fiscal year 2014--

112 P.L. 240, *; 126 Stat. 2313, **;
2013 Enacted H.R. 8; 112 Enacted H.R. 8

"(A) for the security category, \$ 552,000,000,000 in budget authority; and

"(B) for the nonsecurity category, \$ 506,000,000,000 in budget authority;"

(e) <2 USC 901a note> 2013 Sequester.--On March 1, 2013, the President shall order a sequestration for fiscal year 2013 pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by this section, pursuant to which, only for the purposes of the calculation in sections 251A(5)(A), 251A(6)(A), and 251A(7)(A), section 251(c)(2) shall be applied as if it read as follows:

"(2) For fiscal year 2013--

"(A) for the security category, \$ 544,000,000,000 in budget authority; and

"(B) for the nonsecurity category, \$ 499,000,000,000 in budget authority;"

[*902] [**2371] Sec. 902. AMOUNTS IN APPLICABLE RETIREMENT PLANS MAY BE TRANSFERRED TO DESIGNATED ROTH ACCOUNTS WITHOUT DISTRIBUTION.

(a) <26 USC 402A> In General.--Section 402A(c)(4) is amended by adding at the end the following:

"(E) Special rule for certain transfers.--In the case of an applicable retirement plan which includes a qualified Roth contribution program--

"(i) the plan may allow an individual to elect to have the plan transfer any amount not otherwise distributable under the plan to a designated Roth account maintained for the benefit of the individual,

"(ii) such transfer shall be treated as a distribution to which this paragraph applies which was contributed in a qualified rollover contribution (within the meaning of section 408A(e)) to such account, and

"(iii) the plan shall not be treated as violating the provisions of section 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), or 457(d)(1)(A), or of section 8433 of title 5, United States Code, solely by reason of such transfer."

(b) <26 USC 402A note> Effective Date.--The amendment made by this section shall apply to transfers after December 31, 2012, in taxable years ending after such date.

Subtitle B--Budgetary Effects

[*911] Sec. 911. BUDGETARY EFFECTS.

(a) PAYGO Scorecard.--The budgetary effects of this Act shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) Senate PAYGO Scorecard.--The budgetary effects of this Act shall not be entered on any PAYGO scorecard maintained for purposes of section 201 of S. Con. Res. 21 (110th Congress).

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

DESCRIPTORS: AGRICULTURAL POLICIES; AGRICULTURAL SUBSIDIES; BUDGET DEFICITS; CHILDREN; COMMODITIES; CONGRESS; CORPORATE TAX; COST OF LIVING; DAIRY INDUSTRY AND PRODUCTS; DEPARTMENT OF AGRICULTURE; DIESEL FUEL; DISASTER RELIEF; EMPLOYMENT; ENERGY CONSERVATION; ENERGY RESOURCES; FARMS AND FARMERS; FEDERAL AID TO RURAL AREAS; FOOD ASSISTANCE; GIFTS AND DONATIONS; INCOME TAXES; MEDICAID; MEDICAL ECONOMICS; MEDICAL REGULATION; MEDICARE; MINES AND MINING; MORTGAGES; MOTION PICTURES; NATIVE AMERICANS; NEW YORK CITY; PHYSICIANS; PUERTO RICO; RAILROADS; RESEARCH; SALES TAX; SECURITIES; SYNTHETIC FUELS; TAX INCENTIVES AND SHELTERS; TELEVISION; TUITION AND FEES; UNEMPLOYMENT COMPENSATION; 112 PL 240



DEC 20 2012

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Implications of Ongoing Fiscal Cliff Negotiations

We are providing you this information regarding the potential impact of sequestration here at DoD. As you are all likely aware, the Administration and Congress are continuing to work to resolve a series of economic or fiscal events, collectively referred to as the "fiscal cliff," that are scheduled to occur around the end of the year. One of the key issues involves potential across-the-board reductions in Federal spending—also known as "sequestration"—which were put in place by the Budget Control Act of 2011. Under current law, these reductions are scheduled to take effect on January 2, 2013. Many of you have raised questions regarding the impact of a potential sequestration for the Department of Defense, and I would like to take a moment to clarify a few things.

I want to start by noting that this past summer, the President indicated his intent to exercise his legal authority to exempt military personnel funding from sequestration. This means that military endstrength will not be affected by sequestration in FY2013.

Our civilian employees should keep in mind that the Administration remains focused on working with Congress to reach agreement on a balanced deficit reduction plan that avoids such cuts. Sequestration was never intended to be implemented, and there is no reason why both sides should not be able to come together and prevent this scenario.

Nevertheless, with only a couple of weeks left before sequestration could occur should a deal not be reached, it is important to clarify the potential implications. Let me start by explaining what sequestration is and what it is not. Sequestration is an across-the-board reduction in budgetary resources for all accounts within the Department of Defense that have not been exempted by Congress. If it occurs, sequestration will reduce our budgetary resources for the remainder of the fiscal year (which runs through September 30). These cuts, while significant and harmful to our collective mission as an agency, would not necessarily require immediate reductions in spending. Under sequestration, we would still have funds available after January 2, 2013, but our overall funding for the remainder of the year would be reduced. Accordingly, this situation is different from other scenarios we have encountered in recent years, such as threats of government shutdown due to a lapse in appropriations.

For these reasons, I do not expect our day-to-day operations to change dramatically on or immediately after January 2, 2013, should sequestration occur. This means that we will not be executing any immediate civilian personnel actions, such as furloughs, on that date. Should we have to operate under reduced funding levels for an extended period of time, we may have to consider furloughs or other actions in the future. But let me assure you that we will carefully examine other options to reduce costs within the agency before taking such action, taking into



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consideration our obligation to execute our core mission. Moreover, if such action proves to be necessary, we would provide affected employees the requisite advance notice before a furlough or other personnel action would occur. We would also immediately cancel any scheduled personnel actions should a deficit reduction agreement be reached that restores our agency funding.

I want to assure you that we will do our very best to provide clear information about the status of events as they unfold.

Finally, let me express my gratitude during this holiday season for your continued hard work and dedication to the vital mission of the Department of Defense. Your contributions touch people's lives in many significant ways, and I want you to know how deeply appreciative the President and myself are for all that you do.

A handwritten signature in black ink, appearing to be "Johnston", written in a cursive style with a long horizontal line extending to the right.

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DCMA Administrative Record for FY 2013 Furlough Appeals



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

SEP 25 2012

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Guidance on Fiscal Year 2013 Joint Committee Sequestration

The Budget Control Act of 2011 (BCA) established the Joint Select Committee on Deficit Reduction (Joint Committee) and charged it with developing a proposal that would achieve at least \$1.2 trillion in deficit reduction. Last November, the Joint Committee announced that it could not reach agreement on a deficit reduction plan. This failure triggered an enforcement mechanism of automatic funding cuts in Fiscal Year (FY) 2013, known as sequestration, above and beyond the reductions already reflected in the FY 2013 budget the Department submitted in February. The law requires the President to issue a sequestration order on January 2, 2013, to implement the required cuts unless Congress acts to avoid it.

The additional funding cuts required under the BCA are very large. A recent report by the Office of Management and Budget (OMB) estimates that the cuts in the Department of Defense (DoD) budget would exceed \$50 billion in FY 2013 alone. The law further requires that the FY 2013 cuts be implemented in an indiscriminate, across-the-board manner that will greatly exacerbate their adverse effects. These large cuts would lead to devastating effects on the Department and virtually every other Federal agency. For this reason, the Administration strongly believes that Congress needs to act to avoid sequestration by passing a balanced deficit reduction package that the President can sign.

If Congress fails to enact balanced deficit reduction and avoid sequestration, DoD and other affected agencies must be prepared, under the BCA, to implement sequestration on January 2, 2013. On July 31, 2012, OMB issued the attached guidance informing agencies that OMB will be consulting with them on matters related to the issuance of the sequestration order. Over the longer term, in the absence of congressional action on a balanced deficit reduction plan in advance of January 2, 2013, OMB will undertake additional activities related to the implementation of the sequestration. Within DoD, the Under Secretary of Defense (Comptroller) will take the lead in these efforts and, working with OMB as necessary, will ensure that the Department is ready to implement sequestration in January if it occurs.

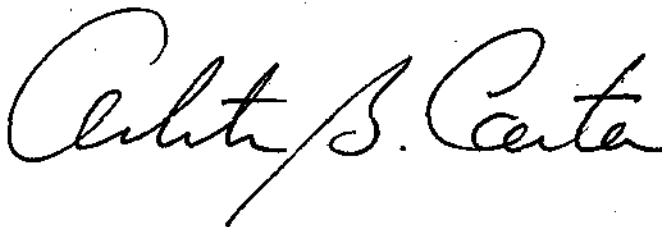


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DCMA Administrative Record for FY 2013 Furlough Appeals

In the meantime, consistent with OMB guidance, DoD needs to continue normal spending and operations. We do not want our programs, personnel, and activities to begin to suffer the harmful effects of sequestration while there is still a chance it can be avoided. I am therefore directing that all commanders and managers in the Department of Defense continue the defense mission under current laws and policies, without taking any steps that assume sequestration will occur. Commanders should not, for example, curtail planned training, maintenance, healthcare or family programs. Commanders and managers should not alarm our employees and their families by announcing personnel actions related to sequestration or by suggesting that these actions are likely. Nor should commanders and managers hold back on the obligation of funds – either for investments or for operating programs – if those funds would have been obligated in the absence of the sequester threat.

If you have questions about this guidance, please consult your chain of command. Addressees on this memo who have questions should direct them to the Under Secretary of Defense (Comptroller).

A handwritten signature in black ink, reading "Curtis B. Carter". The signature is written in a cursive style with a large, sweeping initial "C".

Attachment:
As stated

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DIRECTORS OF THE DOD FIELD ACTIVITIES**



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

July 31, 2012

M-12-17

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Jeffrey D. Zients
Acting Director

SUBJECT: Issues Raised by Potential Sequestration Pursuant To Section 251A of the
Balanced Budget and Emergency Deficit Control Act of 1985

Passed by bipartisan majorities in both houses of the Congress, the Budget Control Act of 2011 (BCA; Public Law 112-25) amended the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) to put into place an automatic process of across-the-board reductions in budgetary resources, known as a sequestration, specified in an order to be issued on January 2, 2013, if the Joint Select Committee on Deficit Reduction failed to propose, and the Congress failed to enact, a bill containing at least \$1.2 trillion in deficit reduction.

The President has made clear that the Congress should act to avoid such a sequestration. If allowed to occur, the sequestration would be highly destructive to national security and domestic priorities, as well as to core government functions. To avoid this, the President submitted a budget for 2013 that includes a comprehensive and balanced set of proposals that contain greater deficit reduction than the Congress was charged with achieving. The Administration believes the Congress should redouble its efforts to reduce the deficit in a bipartisan, balanced, and fiscally responsible manner and avoid the sequestration.

If Congress were to enact the requisite deficit reduction measures and avoid the sequestration, there would be no need to take steps to issue the sequestration order, and then to develop plans for agency operations for the remainder of FY 2013 within the constraints of that order. These sequestration planning and implementation activities, once undertaken, will necessarily divert scarce resources from other important agency activities and priorities. The President remains confident that Congress will act, but because it has not yet made progress towards enacting sufficient deficit reduction, the Office of Management and Budget (OMB) will work with agencies, as necessary, on issues raised by a sequestration of this magnitude.

To that end, OMB will be holding discussions on these issues with you and your staff over the coming months. In the near term, OMB will consult with you on such topics as the application to your agency's accounts and programs of the exemptions from sequestration contained in section 255 of BBEDCA and the applicable sequestration rules specified in section 256 of BBEDCA. These discussions should be informed by your General Counsel's analysis of how the requirements of BBEDCA, as amended by the BCA, and other statutory authorities



OSD009393-12

DCMA Administrative Record for FY 2013 Furlough Appeals

apply to a particular issue involving your agency. OMB will also engage with agencies on anticipated reporting requirements established by Congress that are related to, but separate from, planning for or implementing a sequestration order under the BCA.

Over the longer term, in the absence of Congressional action on a balanced deficit reduction plan in advance of January 2, 2013, OMB will undertake additional activities related to the implementation of the BCA. OMB will work with agencies, as necessary, on issues surrounding the sequestration order and its implementation. For example, sequestrable amounts can only be calculated once FY 2013 funding levels are known; therefore, shortly before any sequestration order is issued, OMB will collect information from agencies on sequestrable amounts and, where applicable, unobligated balances, and calculate the percentage reductions necessary to implement the sequestration. In the meantime, agencies should continue normal spending and operations since more than 5 months remain for Congress to act.

The steps described above are necessary to prepare for the contingency of having to issue a sequestration order, but they do not change the fact that sequestration is bad policy, was never meant to be implemented, and should be avoided through the enactment of bipartisan, balanced deficit legislation. The Administration urges the Congress to take this course.

DCMA Administrative Record for FY 2013 Furlough Appeals
DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010



MEMORANDUM FOR: SEE DISTRIBUTION

JUN 03 2012

SUBJECT: Guidance for Limitation on Aggregate Annual Amount Available for Contracted Services

This memorandum provides guidance (Attachment 1) regarding compliance with section 808 of the National Defense Authorization Act for Fiscal Year 2012, P.L. 112-81. Section 808 limits the amount of funds the Department may obligate for contract services in FY 2012 and FY 2013. Consistent with this statutory language, the Department's obligations for all contracted services shall not exceed, in FY 2012 and FY 2013, the total amount requested for the Department for all contracted services in the President's FY 2010 budget submission, excluding contracted services relating to overseas contingency operations, military construction, and research and development. Each Component must take action to ensure compliance with the limitation on the aggregate amount for contracted services reflected in your FY 2012-enacted budget and FY 2013 President's Budget request.

Given the nature of how appropriated funds are allocated to fulfill requirements for contracted services and the fact we are well into the year of execution for FY 2012, compliance with section 808 will require close coordination among all stakeholders. Execution will be measured using obligations from base funds, reported semi-annually in the Department's accounting systems as described in Attachment 2, to ensure that there is no migration or growth of contracted services that were excluded from the FY 2010 baseline and as tracked against Component services portfolios and contractor inventories.

Questions regarding this guidance should be directed to the following points of contact: Office of the Under Secretary of Defense (OUSD) (Comptroller): Mr. Keith Anderson (keith.anderson@osd.mil); OUSD (Personnel and Readiness): Ms. Amy Parker (amy.parker@osd.mil) and Mr. Thomas Hessel (thomas.hessel@osd.mil); and OUSD (Acquisition, Technology and Logistics): Mr. John Tenaglia (john.tenaglia@osd.mil) and Mr. Jeffrey Grover (jeffrey.grover@osd.mil).

Attachments:
As stated

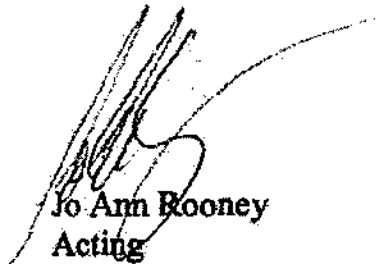


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The Department is currently precluded, under a moratorium, from conducting public-private competitions. This prohibits the conversion of any work currently performed (or designated for performance) by civilian personnel to contract performance. This prohibition applies to functions and work assigned to civilians, regardless of whether or not the position is encumbered. When new requirements arise, such as those that may occur as military end-strength levels are reduced, special consideration must first be provided, consistent with section 2463 of title 10, U.S.C., and applicable Department policies, to using Department of Defense civilian employees. This includes billets and work that may have been unencumbered for an extended period of time.

Please ensure maximum distribution of this memorandum across your organization, particularly to your manpower, personnel, and acquisition communities. Questions regarding implementation/enforcement of this memo should be addressed to my points of contact: Mr. Thomas Hessel (thomas.hessel@osd.mil or 703-697-3402) and Ms. Amy Parker (amy.parker@osd.mil or 703-697-1735).



Jo Ann Rooney
Acting

DCMA Administrative Record for FY 2013 Furlough Appeals
UNDER SECRETARY OF DEFENSE
 4000 DEFENSE PENTAGON
 WASHINGTON, D.C. 20301-4000



PERSONNEL AND
 READINESS

MAR 2 2012

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
 CHAIRMAN OF THE JOINT CHIEFS OF STAFF
 UNDER SECRETARIES OF DEFENSE
 DEPUTY CHIEF MANAGEMENT OFFICER
 COMMANDERS OF THE COMBATANT COMMANDS
 ASSISTANT SECRETARIES OF DEFENSE
 GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
 DIRECTOR, OPERATIONAL TEST AND EVALUATION
 DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
 INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
 ASSISTANTS TO THE SECRETARY OF DEFENSE
 DIRECTOR, ADMINISTRATION AND MANAGEMENT
 DIRECTOR, NET ASSESSMENT
 DIRECTORS OF THE DEFENSE AGENCIES
 DIRECTORS OF THE DoD FIELD ACTIVITIES**

SUBJECT: Guidance Related to the Utilization of Military Manpower to Perform Certain Functions

This memorandum addresses the use of “repurposed”, or “borrowed”, military manpower (both active and reserve) to perform new, expanding, or existing missions, and most specifically work that is most appropriately aligned to non-military resources, including work recently performed by government civilians or through contracted services.

The Department’s “sourcing” of necessary functions and work between military, civilian, and contracted services must be consistent with applicable laws and policies; as well as workload requirements, funding availability, readiness and management needs. Declining operating tempos may result in a perception that military personnel will be available to fill staffing shortfalls for non-military essential functions or workload. This is particularly true as the Department faces declining budgets and continues to implement efficiency initiatives. While there may be instances where military personnel can be used to appropriately satisfy a near-term demand, the Department must be vigilant in ensuring military personnel are not inappropriately utilized, particularly in a manner that may degrade readiness. To ensure efficient and effective Total Force Management, Components shall balance these needs and consider the following in shaping their workforce and assigned military personnel.

Consistent with DoD Instruction 1100.22, “*Policy and Procedures for Determining Workforce Mtx*” (April 2010), tasks that are not military essential in nature must be designated for government civilian personnel, or contract performance where appropriate. Exceptions will be based upon a demonstrated and documented military need e.g., to provide a reasonable overseas rotation or career progression base. Components shall refer to DoD Instruction 1100.22 for the criteria to determine appropriateness of military personnel utilization.

DISTRIBUTION:

**SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
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DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
DIRECTOR, OPERATIONAL TEST AND EVALUATION
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES
PRESIDENT, DEFENSE ACQUISITION UNIVERSITY
PRESIDENT, NATIONAL DEFENSE UNIVERSITY**

**Guidance to Implement Section 808 of the National Defense Authorization Act for
Fiscal Year 2012, P.L. 112-81**

1. The primary means by which the Department is to meet or be below the aggregate annual limitation for contracted services is for the individual Military Departments and Defense Components to limit obligations for contracted services to the FY 2012 enacted budget amount and FY 2013 President's Budget request. The following adjustments apply:
 - a. Excluding amounts allocated for overseas contingency operations, military construction, and research, development, test and evaluation;
 - b. Including all object classification code 25 categories, except 25.3 (Other goods and services from Federal sources) and 25.6 (Medical Care) as defined in DoD Financial Management Regulation 7000.14-R Volume 1: General Financial Management Information, Systems and Requirements, Appendix A;
 - c. Excluding statutory exceptions for offsetting cost increases associated with the number of civilian billets approved above the number of billets in the FY 2010 civilian personnel baseline as part of the Department's efficiencies initiatives; and
 - d. Excluding amounts adjusted for net transfer from funding for overseas contingency operations.

Except where approved increases to the current limitations on civilian personnel occur, each Military Department and Defense Agency will not exceed the FY 2012 President's Budget enacted amount for contract services and FY 2013 President's Budget request for the Department to meet the aggregate limitation, as reflected in this attachment.

2. For all contracts or task orders with an estimated value of more than \$10,000,000 awarded for contracted services in FY 2012 or FY 2013, contracting officers shall establish negotiation objectives for direct labor and overhead rates that are less than or equal to direct labor and overhead rates paid to that contractor for the same or similar contracted services in FY 2010. Contracting officers shall coordinate with the Defense Contract Management Agency and the Defense Contract Audit Agency to determine the applicable rates. In the event such contracts or task orders are to be awarded that provide for continuing services at an annual cost that exceeds the annual cost paid by the Military Department or Defense Agency/Field Activity for the same or similar services paid in FY 2010, the Secretary of the Military Department or the Head of the Defense Agency/Field Activity must provide written approval prior to contract award or order issuance.
3. The Secretaries of the Military Departments and the Heads of the Defense Agencies/Field Activities (to include the Offices of the Secretary of Defense, the Joint Staff, the Combatant Commands, and all other organizations of the Department of Defense) shall identify and eliminate any instance where such organization is utilizing contracted services to perform inherently governmental functions. In instances where inherently governmental functions are found to be performed under contract, the department or

agency shall take immediate actions to either in-source the work to government civilian performance or immediately divest the function and associated workload, reducing the scope of the contract. The term "inherently governmental functions" is defined in the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions, available online at (http://www.whitehouse.gov/omb/procurement_index_work_performance/).

4. The Secretaries of the Military Departments and the Heads of the Defense Components (to include the Offices of the Secretary of Defense, the Joint Staff, the Combatant Commands, and all other organizations of the Department of Defense) shall reduce by 10 percent per fiscal year in FY 2012 and FY 2013 obligations for staff augmentation contracts and contracts for the performance of functions closely associated with inherently governmental functions (as defined in section 2383(b)(3) of title 10, U.S.C., and described in OFPP Policy Letter 11-01).
 - a. Section 808 defines staff augmentation contracts as contracts for personnel who are subject to the direction of a government official other than the contracting officer for the contract, including but not limited to contractor personnel who perform personal service contracts. The reductions for staff augmentation contracts have already been factored into the budget documentation for FY 2012 and FY 2013. However, the aforementioned senior officials are responsible for ensuring those reductions are sustained.
 - b. For the purpose of fulfilling the requirement to reduce by 10 percent the amount of contracted services spent acquiring functions that are closely associated with inherently governmental functions, Components should use the classification in the FY 2010 Inventory of Contract Services as the baseline amount. If this data is unknown in the FY 2010 inventory, Components should use the classification in the FY 2011 Inventory of Contract Services.
5. The Secretaries of the Military Departments and the Heads of the Defense Agencies shall assign responsibility for overseeing and implementing this guidance to the officials designated pursuant to section 2330 of title 10, U.S.C., and section 812(b) of the National Defense Authorization Act for Fiscal Year 2006, P.L. 109-163, and ensure that the contractor inventory and program and budget proponents provide appropriate support.
6. As required by section 235 of title 10, U.S.C., this information must be consistent with a component's contractor inventory compiled pursuant to section 2330a.

DCMA Administrative Record for FY 2013 Furlough Appeals

(\$\$ in Thousands)

Contract Services
(Includes all appropriations except MILCON and RDT&E)
Object Class 25.xxx (excluding .3 and .8)

	FY 2012 PB Enacted (PRCP Base only)	FY 2013 PB Request (CIS (00-FEB-2012 Final))
Army		
Aircraft Procurement, Army	252,176	213,510
Army General Gift Fund (Trust)		5,448
Environmental Restoration, Army	346,031	
Family Housing Construction, Army		
Family Housing Operation and Maintenance, Army	128,417	127,423
Joint Improvised Explosive Device Defeat Fund	185,328	172,328
Military Personnel, Army	11,143	10,171
Missile Procurement, Army	53,182	48,212
National Science Center, Army	25	25
Operation and Maintenance, Army	7,162,514	10,107,139
Operation and Maintenance, Army National Guard	1,246,324	1,280,219
Operation and Maintenance, Army Reserve	628,184	502,257
Other Procurement, Army	128,062	112,259
Procurement of Ammunition, Army	173,597	151,504
Procurement of Weapons and Tracked Combat Vehicles, Army	23,500	20,394
Restoration of the Rocky Mountain Arsenal		8,000
TOTAL	10,337,483	12,758,877

Air Force		
Aircraft Procurement, Air Force	77,598	75,868
Family Housing Operation and Maintenance, Air Force	131,836	216,713
Military Personnel, Air Force	109,931	114,901
Missile Procurement, Air Force	174,439	168,922
Operation and Maintenance, Air Force	13,376,274	13,485,354
Operation and Maintenance, Air Force Reserve	399,743	378,144
Operation and Maintenance, Air Force, Recovery Act		
Operation and Maintenance, Air National Guard	1,405,440	1,309,815
Other Procurement, Air Force	179,978	164,412
Procurement of Ammunition, Air Force	2,694	2,536
TOTAL	15,857,933	15,914,653

Navy		
Aircraft Procurement, Navy	388,734	323,708
Family Housing Operation and Maintenance, Navy and Marine Corps	124,701	118,519
Military Personnel, Marine Corps	11,343	10,021
Military Personnel, Navy	6,008	5,700
National Defense Sealift Fund	19,280	9,896
Operation and Maintenance, Marine Corps	1,382,289	1,377,606
Operation and Maintenance, Marine Corps Reserve	75,740	84,184
Operation and Maintenance, Marine Corps Reserve, Recovery Act		
Operation and Maintenance, Marine Corps, Recovery Act		
Operation and Maintenance, Navy	9,231,443	10,879,377
Operation and Maintenance, Navy Reserve	393,188	337,913
Operation and Maintenance, Navy Reserve, Recovery Act		
Operation and Maintenance, Navy, Recovery Act		
Other Procurement, Navy	306,890	271,510
Procurement of Ammunition, Navy and Marine Corps	4,437	2,871
Procurement, Marine Corps	42,275	33,755
Shipbuilding and Conversion, Navy	333,268	331,183
Weapons Procurement, Navy	49,878	42,823
TOTAL	12,349,484	13,629,076

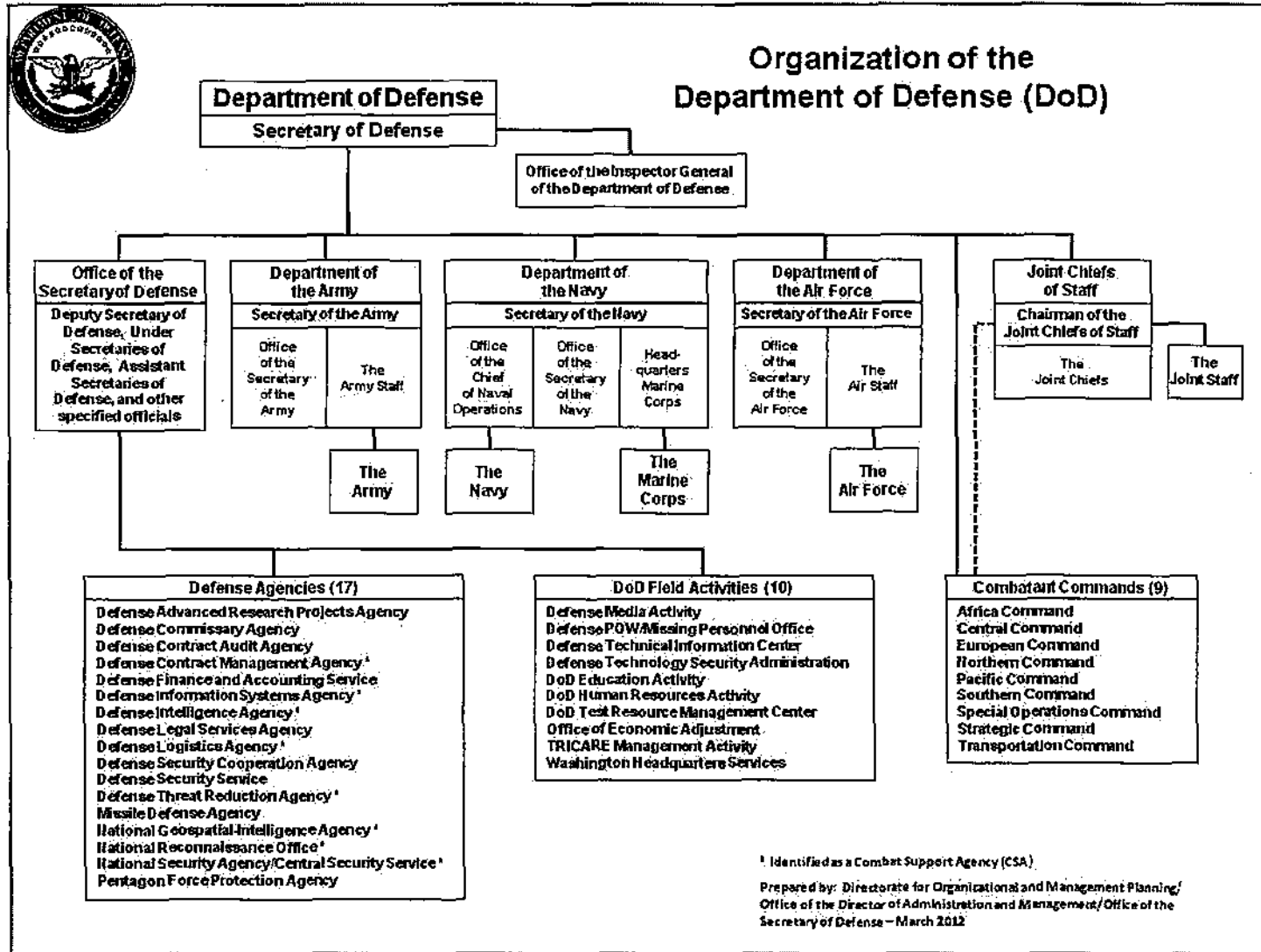
DCMA Administrative Record for FY 2013 Furlough Appeals

(\$\$ in Thousands)	Contract Services (Includes all appropriations except MILCON and RDT&E) Object Class 25.xxx (excluding .3 and .6)	
	FY 2012 PB Enacted (PRCP Base only)	FY 2013 PB Request (CIS (00-FEB-2012 Final))
Defense		
Chemical Agents and Munitions Destruction, Army	1,162,846	989,579
Cooperative Threat Reduction Account	455,175	421,379
Defense Coalition Support, Defense		
Defense Production Act Purchases	213,558	94,316
Department of Defense Acquisition Workforce Development Fund	181,074	456,287
Department of Defense Family Housing Improvement Fund	2,184	1,788
Disposal of Department of Defense Real Property	91,202	7,855
DoD Overseas Military Facility Investment Recovery	7,295	229
Drug Interdiction and Counter-drug Activities, Defense	347,796	299,842
Family Housing Operation and Maintenance, Defense-Wide	3,103	2,006
Lease of Department of Defense Real Property	91,816	12,029
Office of the Inspector General, Recovery Act		
Office of the Inspector General	47,072	19,032
Operation and Maintenance, Defense-Wide		
DAU	19,544	19,259
DCAA	15,226	17,287
DCMA	41,113	44,238
DFAS	11,975	17,513
DHRA	424,308	459,284
DIA	1,156,881	1,039,683
DISA	841,094	849,558
DLA	124,457	71,014
DLSA	2,608	1,788
DMACT	81,554	70,562
DQDEA	280,111	297,403
DPMO	622	693
DSCA	58,936	80,482
OSS	68,894	84,871
DTRA	200,578	210,139
DTSA	6,408	6,727
MDA	202,342	255,729
NDU	6,780	7,316
NGA	1,384,321	1,499,319
NSA	2,941,862	2,558,101
OEA	36,172	141,193
OSD	886,144	849,882
SOCOM	1,095,167	1,859,037
TJS	249,664	199,037
WHS	156,036	136,136
Overseas Humanitarian, Disaster and Civic Aid	108,078	57,847
Procurement, Defense-Wide	107,433	80,299
United States Court of Appeals for the Armed Forces	390	490
Defense Health Program	3,017,197	3,073,269
TOTAL	16,197,016	16,062,204
Department TOTAL	53,741,916	58,554,820

Section 808 Exceptions

FY 2010 PB Request Baseline	50,876,880	50,876,880
Adjustment for Civilian Pay Increase from FY:2010 PB	3,030,446	3,809,489
OCO to Base Transfer	2,561,644	4,352,887
FY 2010 PB Request Adjusted IAW Sec 808	56,468,970	59,039,256
Below Section 808 Annual Aggregate Limitation	-1,726,854	-471,246

Excludes Civil Functions, MILCON and RDT&E appropriations
 Excludes Overseas Contingency Operations (Afghanistan Security Funds and Iraq Security Forces Fund)
 Includes Major Category 25 - Contract Services
 Excludes Minor Category: 310 - GDS/Service from other Agencies; 320 - Pay Foreign Nationals; and 330 - Buy from Revolving Funds
 Excludes Minor Category: 610 - Medical Care



Related Links:

- DoD Organizational Charts
- Information about DoDD 5100.01 Functions of the Department of Defense and Its Major Components



UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

DEC 1 2011

**PERSONNEL AND
READINESS**

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
COMMANDERS OF THE COMBATANT COMMANDS
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DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DoD FIELD ACTIVITIES**

SUBJECT: Prohibition on Converting Certain Functions to Contract Performance

This memorandum provides clarification regarding statutory language as related to the conversion of certain functions to contract performance. While the Department is holding civilian funding at fiscal year (FY) 2010 levels through FY 2013, with some exceptions, the Congress and the Secretary also remain concerned that the Department not be overly reliant on contracted services.

As the Department adapts to declining budgets and operating in a constrained fiscal environment, we must ensure that we make analytically-based spending choices based on sound strategy and policies. In particular, as we implement the results of organizational assessments; continue to assess missions and functions in terms of priority; and revisit both our civilian and military force structures, we must be particularly vigilant to prevent the inappropriate conversion of work to contract performance.

Under section 2461 of title 10, United States Code (U.S.C.) the Department is prohibited from converting work currently performed (or designated for performance) by civilian personnel to private sector (contract) performance without first conducting a public-private competition. The National Defense Authorization Act for fiscal year 2010 (Public Law 111-84) included a significant modification to this statute, extending the requirement for a public-private competition prior to the conversion of work by any number of civilian employees. Prior to this change, functions performed by fewer than 10 civilian employees could be converted to contract performance absent a public-private competition, known as a "direct conversion".

Table 1. Categories of Approved Near-Term Actions

- Freeze civilian hiring (with exceptions for mission-critical activities*).
- Provide authority to terminate employment of temporary hires and to notify term employees that their contracts will not be renewed (with exceptions for mission-critical activities and when appropriate in terms of personnel timing*).
- Reduce base operating funding.
- Curtail travel, training, and conferences (all with exceptions for mission-critical activities* including those required to maintain professional licensure or equivalent certifications).
- Curtail facilities maintenance or Facilities Sustainment, Restoration, and Modernization (FSRM) (with exceptions for mission-critical activities*).
 - If necessary, services/agencies are authorized to fund FSRM at levels below current guidance.
- Curtail administrative expenses such as supply purchases, business IT, ceremonies, etc. (with exceptions for mission-critical activities*).
- Review contracts and studies for possible cost-savings.
- Cancel 3rd and 4th quarter ship maintenance availabilities and aviation and ground depot-level maintenance activities. Take this action no earlier than February 15, 2013.
- Clear all R&D and production contracts and contract modifications that obligate more than \$500 million with the USD(AT&L) prior to award.
- For Science and Technology accounts, provide the USD(AT&L) and the Assistant Secretary of Defense (Research & Engineering) with an assessment of the impact that budgetary uncertainty may have on meeting Departmental research priorities.

*Approvals will be granted by Component heads or by senior officials designated by the Component head.

Components with personnel serving Combatant Commanders (COCOMs) must consult with the COCOMs before implementing actions that affect them. Disputes will be brought to the attention of the Chairman of the Joint Chiefs of Staff for further resolution.

Components receiving reimbursements should coordinate with customer before taking actions that would affect the customer's mission.

Table 2. Information to Be Included in Draft Implementation Plans

The following information should be provided at the Component level. Information by commands and bases/installations is not required.

- For operating accounts, identify major actions to include, at a minimum:
 - Extent of civilian hiring freezes; expected number of temps/terms released; expected number, duration, and nature of furloughs.
 - Reductions in flying hours, steaming days, vehicle miles, and other operations/training/support activities that affect force readiness.
 - Areas of budgets experiencing disproportionate cuts.
- For investment accounts:
 - Plans for large programs (ACAT 1D and 1C, and MAIS programs).
 - Include major changes in unit buys, delays, etc.
 - Significant changes in all joint programs.
- Identify and prioritize any essential reprogramming actions with offsets.

- To the extent feasible, protect funding most directly associated with readiness; focus the necessary cuts on later deploying units.
- For the investment portions of the DoD budget (procurement, RDT&E, construction):
 - Protect investments funded in Overseas Contingency Operations if associated with urgent operational needs.
 - To the extent feasible, protect programs mostly closely associated with the new defense strategy.
 - Take prudent steps to minimize disruption and added costs (e.g., avoid penalties associated with potential contract cancellations where feasible; prudently manage construction projects funded with prior-year monies).

While we are hopeful of avoiding budgetary problems, draft Component plans should reflect the possibility that we may have to operate under a year-long CR and that sequestration takes place. Table 2 shows the types of information that should be included in the plans. Components should submit these draft plans to the Under Secretary of Defense (Comptroller) by February 1, 2013. The Under Secretary of Defense (Comptroller) will work with the Components to adjust this schedule if changes are required due to the deadlines for the preparation of the FY 2014 President's Budget submission.

I appreciate your patience as we work through these difficult budgetary times. The Department will continue to do its best to resolve these budgetary uncertainties in a manner that permits us to support our current defense strategy and maintain a strong defense.

If addressees have questions about this memorandum, they should direct them to the Under Secretary of Defense (Comptroller).

A handwritten signature in black ink that reads "Ashton Carter". The signature is written in a cursive, flowing style.

Attachments:
As stated



UNITED STATES PUBLIC LAWS

112th Congress -- 1st Session

(c) 2011, LEXIS-NEXIS, A DIVISION OF REED ELSEVIER INC. AND REED ELSEVIER PROPERTIES INC.

PUBLIC LAW 112-25 [S. 365]

AUG. 02, 2011

BUDGET CONTROL ACT OF 2011

112 P.L. 25; 125 Stat. 240; 2011 Enacted S. 365; 112 Enacted S. 365

BILL TRACKING REPORT: 112 Bill Tracking S. 365
FULL TEXT VERSION(S) OF BILL: 112 S. 365
CIS LEGIS. HISTORY DOCUMENT: 112 CIS Legis. Hist. P.L. 25

An Act

To provide for budget control.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[*1] SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) <2 USC 900 note> Short Title.--This Act may be cited as the "Budget Control Act of 2011".

(b) Table of Contents.--The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Severability.

TITLE I--TEN-YEAR DISCRETIONARY CAPS WITH SEQUESTER

Sec. 101. Enforcing discretionary spending limits.

Sec. 102. Definitions.

Sec. 103. Reports and orders.

Sec. 104. Expiration.

Sec. 105. Amendments to the Congressional Budget and Impoundment Control Act of 1974.

Sec. 106. Senate budget enforcement.

TITLE II--VOTE ON THE BALANCED BUDGET AMENDMENT

Sec. 201. Vote on the balanced budget amendment.

Sec. 202. Consideration by the other House.

TITLE III--DEBT CEILING DISAPPROVAL PROCESS

Sec. 301. Debt ceiling disapproval process.

Sec. 302. Enforcement of budget goal.

TITLE IV--JOINT SELECT COMMITTEE ON DEFICIT REDUCTION

Sec. 401. Establishment of Joint Select Committee.

Sec. 402. Expedited consideration of joint committee recommendations.

Sec. 403. Funding.

Sec. 404. Rulemaking.

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

TITLE V--PELL GRANT AND STUDENT LOAN PROGRAM CHANGES

Sec. 501. Federal Pell grants.

Sec. 502. Termination of authority to make interest subsidized loans to graduate and professional students.

Sec. 503. Termination of direct loan repayment incentives.

Sec. 504. Inapplicability of title IV negotiated rulemaking and master calendar exception.

[*2] Sec. 2. <2 USC 900 note> SEVERABILITY.

If any provision of this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the application of this Act to any other person or circumstance shall not be affected.

TITLE I--TEN-YEAR DISCRETIONARY CAPS WITH SEQUESTER

[*101] Sec. 101. ENFORCING DISCRETIONARY SPENDING LIMITS.

Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended to read as follows: <2 USC 901>

"Sec. 251. ENFORCING DISCRETIONARY SPENDING LIMITS.

"(a) Enforcement.--

"(1) Sequestration.-- Within 15 calendar days after Congress adjourns to end a session there shall be a sequestration to eliminate a budget-year breach, if any, within any category.

"(2) Eliminating a breach.-- Each non-exempt account within a category shall be reduced by a dollar amount calculated by multiplying the enacted level of sequestrable budgetary resources in that account at that time by the uniform percentage necessary to eliminate a breach within that category.

"(3) Military personnel.-- If the President uses the authority to exempt any personnel account from sequestration under section 255(f), each account within subfunctional category 051 (other than those military personnel accounts for which the authority provided under section 255(f) has been exercised) shall be further reduced by a dollar amount calculated by multiplying the enacted level of non-exempt budgetary resources in that account at that time by the uniform percentage necessary to offset the total dollar amount by which outlays are not reduced in military personnel accounts by reason of the use of such authority.

"(4) Part-year appropriations.-- If, on the date specified in paragraph (1), there is in effect an Act making or continuing appropriations for part of a fiscal year for any budget account, then the dollar sequestration calculated for that account under paragraphs (2) and (3) shall be subtracted from--

"(A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

"(B) when a full-year appropriation for that account is enacted, from the amount otherwise provided by the full-year appropriation for that account.

"(5) Look-back.-- If, after June 30, an appropriation for the fiscal year in progress is enacted that causes a breach within a category for that year (after taking into account any sequestration of amounts within that category), the discretionary spending limits for that category for the next fiscal year shall be reduced by the amount or amounts of that breach.

"(6) Within-session sequestration.-- If an appropriation for a fiscal year in progress is enacted (after Congress adjourns to end the session for that budget year and before July 1 of that fiscal year) that causes a breach within a category for that year (after taking into account any prior sequestration of amounts within that category), 15 days later there shall be a sequestration to eliminate that breach within that category following the procedures set forth in paragraphs (2) through (4).

"(7) Estimates.----

"(A) CBO estimates.--As soon as practicable after Congress completes action on any discretionary appropriation, CBO, after consultation with the Committees on the Budget of the House of Representatives and the Senate, shall

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

provide OMB with an estimate of the amount of discretionary new budget authority and outlays for the current year, if any, and the budget year provided by that legislation.

"(B) OMB estimates and explanation of differences.--Not later than 7 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of enactment of any discretionary appropriation, OMB shall transmit a report to the House of Representatives and to the Senate containing the CBO estimate of that legislation, an OMB estimate of the amount of discretionary new budget authority and outlays for the current year, if any, and the budget year provided by that legislation, and an explanation of any difference between the 2 estimates. If during the preparation of the report OMB determines that there is a significant difference between OMB and CBO, OMB shall consult with the Committees on the Budget of the House of Representatives and the Senate regarding that difference and that consultation shall include, to the extent practicable, written communication to those committees that affords such committees the opportunity to comment before the issuance of the report.

"(C) Assumptions and guidelines.--OMB estimates under this paragraph shall be made using current economic and technical assumptions. OMB shall use the OMB estimates transmitted to the Congress under this paragraph. OMB and CBO shall prepare estimates under this paragraph in conformance with scorekeeping guidelines determined after consultation among the Committees on the Budget of the House of Representatives and the Senate, CBO, and OMB.

"(D) Annual appropriations.--For purposes of this paragraph, amounts provided by annual appropriations shall include any discretionary appropriations for the current year, if any, and the budget year in accounts for which funding is provided in that legislation that result from previously enacted legislation.

"(b) Adjustments to Discretionary Spending Limits.--

"(1) Concepts and definitions.-- When the President submits the budget under section 1105 of title 31, United States Code, OMB shall calculate and the budget shall include adjustments to discretionary spending limits (and those limits as cumulatively adjusted) for the budget year and each outyear to reflect changes in concepts and definitions. Such changes shall equal the baseline levels of new budget authority and outlays using up-to-date concepts and definitions, minus those levels using the concepts and definitions in effect before such changes. Such changes may only be made after consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate, and that consultation shall include written communication to such committees that affords such committees the opportunity to comment before official action is taken with respect to such changes.

"(2) Sequestration reports.-- When OMB submits a sequestration report under section 254(e), (f), or (g) for a fiscal year, OMB shall calculate, and the sequestration report and subsequent budgets submitted by the President under section 1105(a) of title 31, United States Code, shall include adjustments to discretionary spending limits (and those limits as adjusted) for the fiscal year and each succeeding year, as follows:

"(A) Emergency appropriations; overseas contingency operations/global war on terrorism.--If, for any fiscal year, appropriations for discretionary accounts are enacted that--

"(i) the Congress designates as emergency requirements in statute on an account by account basis and the President subsequently so designates, or

"(ii) the Congress designates for Overseas Contingency Operations/Global War on Terrorism in statute on an account by account basis and the President subsequently so designates,

the adjustment shall be the total of such appropriations in discretionary accounts designated as emergency requirements or for Overseas Contingency Operations/Global War on Terrorism, as applicable.

"(B) Continuing disability reviews and redeterminations.--(i) If a bill or joint resolution making appropriations for a fiscal year is enacted that specifies an amount for continuing disability reviews under titles II and XVI of the Social Security Act and for the cost associated with conducting redeterminations of eligibility under title XVI of the Social Security Act, then the adjustments for that fiscal year shall be the additional new budget authority provided in that Act for such expenses for that fiscal year, but shall not exceed--

"(I) for fiscal year 2012, \$ 623,000,000 in additional new budget authority;

"(II) for fiscal year 2013, \$ 751,000,000 in additional new budget authority;

"(III) for fiscal year 2014, \$ 924,000,000 in additional new budget authority;

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

- "(IV) for fiscal year 2015, \$ 1,123,000,000 in additional new budget authority;
- "(V) for fiscal year 2016, \$ 1,166,000,000 in additional new budget authority;
- "(VI) for fiscal year 2017, \$ 1,309,000,000 in additional new budget authority;
- "(VII) for fiscal year 2018, \$ 1,309,000,000 in additional new budget authority;
- "(VIII) for fiscal year 2019, \$ 1,309,000,000 in additional new budget authority;
- "(IX) for fiscal year 2020, \$ 1,309,000,000 in additional new budget authority; and
- "(X) for fiscal year 2021, \$ 1,309,000,000 in additional new budget authority.

"(ii) As used in this subparagraph--

"(I) the term 'continuing disability reviews' means continuing disability reviews under sections 221(i) and 1614(a)(4) of the Social Security Act;

"(II) the term 'redetermination' means redetermination of eligibility under sections 1611(c)(1) and 1614(a)(3)(H) of the Social Security Act; and

"(III) the term 'additional new budget authority' means the amount provided for a fiscal year, in excess of \$ 273,000,000, in an appropriation Act and specified to pay for the costs of continuing disability reviews and redeterminations under the heading 'Limitation on Administrative Expenses' for the Social Security Administration.

"(C) Health care fraud and abuse control.--(i) If a bill or joint resolution making appropriations for a fiscal year is enacted that specifies an amount for the health care fraud abuse control program at the Department of Health and Human Services (75-8393-0-7-571), then the adjustments for that fiscal year shall be the amount of additional new budget authority provided in that Act for such program for that fiscal year, but shall not exceed--

- "(I) for fiscal year 2012, \$ 270,000,000 in additional new budget authority;
- "(II) for fiscal year 2013, \$ 299,000,000 in additional new budget authority;
- "(III) for fiscal year 2014, \$ 329,000,000 in additional new budget authority;
- "(IV) for fiscal year 2015, \$ 361,000,000 in additional new budget authority;
- "(V) for fiscal year 2016, \$ 395,000,000 in additional new budget authority;
- "(VI) for fiscal year 2017, \$ 414,000,000 in additional new budget authority;
- "(VII) for fiscal year 2018, \$ 434,000,000 in additional new budget authority;
- "(VIII) for fiscal year 2019, \$ 454,000,000 in additional new budget authority;
- "(IX) for fiscal year 2020, \$ 475,000,000 in additional new budget authority; and
- "(X) for fiscal year 2021, \$ 496,000,000 in additional new budget authority.

"(ii) As used in this subparagraph, the term 'additional new budget authority' means the amount provided for a fiscal year, in excess of \$ 311,000,000, in an appropriation Act and specified to pay for the costs of the health care fraud and abuse control program.

"(D) Disaster funding.--

"(i) If, for fiscal years 2012 through 2021, appropriations for discretionary accounts are enacted that Congress designates as being for disaster relief in statute, the adjustment for a fiscal year shall be the total of such appropriations for the fiscal year in discretionary accounts designated as being for disaster relief, but not to exceed the total of--

"(I) the average funding provided for disaster relief over the previous 10 years, excluding the highest and lowest years; and

"(II) the amount, for years when the enacted new discretionary budget authority designated as being for disaster relief for the preceding fiscal year was less than the average as calculated in subclause (I) for that fiscal year, that is the difference between the enacted amount and the allowable adjustment as calculated in such subclause for that fiscal year.

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

"(ii) OMB shall report to the Committees on Appropriations and Budget in each House the average calculated pursuant to clause (i)(II), not later than 30 days after the date of the enactment of the Budget Control Act of 2011.

"(iii) For the purposes of this subparagraph, the term 'disaster relief' means activities carried out pursuant to a determination under section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

"(iv) Appropriations considered disaster relief under this subparagraph in a fiscal year shall not be eligible for adjustments under subparagraph (A) for the fiscal year.

"(c) Discretionary Spending Limit.--As used in this part, the term 'discretionary spending limit' means--

"(1) with respect to fiscal year 2012--

"(A) for the security category, \$ 684,000,000,000 in new budget authority; and

"(B) for the nonsecurity category, \$ 359,000,000,000 in new budget authority;

"(2) with respect to fiscal year 2013--

"(A) for the security category, \$ 686,000,000,000 in new budget authority; and

"(B) for the nonsecurity category, \$ 361,000,000,000 in new budget authority;

"(3) with respect to fiscal year 2014, for the discretionary category, \$ 1,066,000,000,000 in new budget authority;

"(4) with respect to fiscal year 2015, for the discretionary category, \$ 1,086,000,000,000 in new budget authority;

"(5) with respect to fiscal year 2016, for the discretionary category, \$ 1,107,000,000,000 in new budget authority;

"(6) with respect to fiscal year 2017, for the discretionary category, \$ 1,131,000,000,000 in new budget authority;

"(7) with respect to fiscal year 2018, for the discretionary category, \$ 1,156,000,000,000 in new budget authority;

"(8) with respect to fiscal year 2019, for the discretionary category, \$ 1,182,000,000,000 in new budget authority;

"(9) with respect to fiscal year 2020, for the discretionary category, \$ 1,208,000,000,000 in new budget authority; and

"(10) with respect to fiscal year 2021, for the discretionary category, \$ 1,234,000,000,000 in new budget authority;

as adjusted in strict conformance with subsection (b)."

[*102] Sec. 102. DEFINITIONS.

Section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended as follows: <2 USC 900>

(1) Strike paragraph (4) and insert the following new paragraph:

"(4)(A) The term 'nonsecurity category' means all discretionary appropriations not included in the security category defined in subparagraph (B).

"(B) The term 'security category' includes discretionary appropriations associated with agency budgets for the Department of Defense, the Department of Homeland Security, the Department of Veterans Affairs, the National Nuclear Security Administration, the intelligence community management account (95-0401-0-1-054), and all budget accounts in budget function 150 (international affairs).

"(C) The term 'discretionary category' includes all discretionary appropriations."

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

(2) In paragraph (8)(C), strike "the food stamp program" and insert "the Supplemental Nutrition Assistance Program".

(3) Strike paragraph (14) and insert the following new paragraph:

"(14) The term 'outyear' means a fiscal year one or more years after the budget year."

(4) At the end, add the following new paragraphs:

"(20) The term 'emergency' means a situation that--

"(A) requires new budget authority and outlays (or new budget authority and the outlays flowing therefrom) for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security; and

"(B) is unanticipated.

"(21) The term 'unanticipated' means that the underlying situation is--

"(A) sudden, which means quickly coming into being or not building up over time;

"(B) urgent, which means a pressing and compelling need requiring immediate action;

"(C) unforeseen, which means not predicted or anticipated as an emerging need; and

"(D) temporary, which means not of a permanent duration."

[*103] Sec. 103. REPORTS AND ORDERS.

Section 254 of the Balanced Budget and Emergency Deficit <2 USC 904> Control Act of 1985 is amended as follows:

(1) In subsection (c)(2), strike "2002" and insert "2021".

(2) At the end of subsection (e), insert "This report shall also contain a preview estimate of the adjustment for disaster funding for the upcoming fiscal year."

(3) In subsection (f)(2)(A), strike "2002" and insert "2021"; before the concluding period insert ", including a final estimate of the adjustment for disaster funding".

[*104] Sec. 104. EXPIRATION.

(a) Repealer.--Section 275 of the Balanced Budget and Emergency <2 USC 900 note> Deficit Control Act of 1985 is repealed.

(b) <2 USC 902 note> Conforming Change.--Sections 252(d)(1), 254(c), 254(f)(3), and 254(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall not apply to the Congressional Budget Office.

[*105] Sec. 105. AMENDMENTS TO THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974.

(a) Adjustments.--Section 314 of the Congressional Budget <2 USC 645> Act of 1974 is amended as follows:

(1) Strike subsection (a) and insert the following:

"(a) Adjustments.--After the reporting of a bill or joint resolution or the offering of an amendment thereto or the submission of a conference report thereon, the chairman of the Committee on the Budget of the House of Representatives or the Senate may make appropriate budgetary adjustments of new budget authority and the outlays flowing therefrom in the same amount as required by section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985."

(2) Strike subsections (b) and (e) and redesignate subsections (c) and (d) as subsections (b) and (c), respectively.

(3) At the end, add the following new subsections:

"(d) Emergencies in the House of Representatives.-- (1) In the House of Representatives, if a reported bill or joint resolution, or amendment thereto or conference report thereon, contains a provision providing new budget authority and outlays or reducing revenue, and a designation of such provision as an emergency requirement pursuant to 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, the chair of the Committee on the Budget of the

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

House of Representatives shall not count the budgetary effects of such provision for purposes of title III and title IV of the Congressional Budget Act of 1974 and the Rules of the House of Representatives.

"(2)(A) In the House of Representatives, if a reported bill or joint resolution, or amendment thereto or conference report thereon, contains a provision providing new budget authority and outlays or reducing revenue, and a designation of such provision as an emergency pursuant to paragraph (1), the chair of the Committee on the Budget shall not count the budgetary effects of such provision for purposes of this title and title IV and the Rules of the House of Representatives.

"(B) In the House of Representatives, a proposal to strike a designation under subparagraph (A) shall be excluded from an evaluation of budgetary effects for purposes of this title and title IV and the Rules of the House of Representatives.

"(C) An amendment offered under subparagraph (B) that also proposes to reduce each amount appropriated or otherwise made available by the pending measure that is not required to be appropriated or otherwise made available shall be in order at any point in the reading of the pending measure.

"(e) Enforcement of Discretionary Spending Caps.--It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause the discretionary spending limits as set forth in section 251 of the Balanced Budget and Emergency Deficit Control Act to be exceeded."

(b) Definitions.--Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the <2 USC 622> end the following new paragraph:

"(11) The terms 'emergency' and 'unanticipated' have the meanings given to such terms in section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985."

(c) Appeals for Discretionary Caps.--Section 904(c)(2) of the Congressional Budget Act of 1974 is amended by striking "and <2 USC 621 note> 312(c)" and inserting "312(c), and 314(e)".

[*106] Sec. 106. SENATE BUDGET ENFORCEMENT. <2 USC 631 note>

(a) In General.--

(1) For the purpose of enforcing the Congressional Budget Act of 1974 through April 15, 2012, including section 300 of that Act, and enforcing budgetary points of order in prior concurrent resolutions on the budget, the allocations, aggregates, and levels set in subsection (b)(1) shall apply in the Senate in the same manner as for a concurrent resolution on the budget for fiscal year 2012 with appropriate budgetary levels for fiscal years 2011 and 2013 through 2021.

(2) For the purpose of enforcing the Congressional Budget Act of 1974 after April 15, 2012, including section 300 of that Act, and enforcing budgetary points of order in prior concurrent resolutions on the budget, the allocations, aggregates, and levels set in subsection (b)(2) shall apply in the Senate in the same manner as for a concurrent resolution on the budget for fiscal year 2013 with appropriate budgetary levels for fiscal years 2012 and 2014 through 2022.

(b) Committee Allocations, Aggregates, and Levels.--

(1) As soon as practicable after the date of enactment of this section, the Chairman of the Committee on the Budget shall file--

(A) for the Committee on Appropriations, committee allocations for fiscal years 2011 and 2012 consistent with the discretionary spending limits set forth in this Act for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(B) for all committees other than the Committee on Appropriations, committee allocations for fiscal years 2011, 2012, 2012 through 2016, and 2012 through 2021 consistent with the Congressional Budget Office's March 2011 baseline adjusted to account for the budgetary effects of this Act and legislation enacted prior to this Act but not included in the Congressional Budget Office's March 2011 baseline, for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(C) aggregate spending levels for fiscal years 2011 and 2012 and aggregate revenue levels for fiscal years 2011, 2012, 2012 through 2016, 2012 through 2021 consistent with the Congressional Budget Office's March 2011 baseline adjusted to account for the budgetary effects of this Act and legislation enacted prior to this Act but not in-

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

cluded in the Congressional Budget Office's March 2011 baseline, and the discretionary spending limits set forth in this Act for the purpose of enforcing section 311 of the Congressional Budget Act of 1974; and

(D) levels of Social Security revenues and outlays for fiscal years 2011, 2012, 2012 through 2016, and 2012 through 2021 consistent with the Congressional Budget Office's March 2011 baseline adjusted to account for the budgetary effects of this Act and legislation enacted prior to this Act but not included in the Congressional Budget Office's March 2011 baseline, for the purpose of enforcing sections 302 and 311 of the Congressional Budget Act of 1974.

(2) Not later than April 15, 2012, the Chairman of the Committee on the Budget shall file--

(A) for the Committee on Appropriations, committee allocations for fiscal years 2012 and 2013 consistent with the discretionary spending limits set forth in this Act for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(B) for all committees other than the Committee on Appropriations, committee allocations for fiscal years 2012, 2013, 2013 through 2017, and 2013 through 2022 consistent with the Congressional Budget Office's March 2012 baseline for the purpose of enforcing section 302 of the Congressional Budget Act of 1974;

(C) aggregate spending levels for fiscal years 2012 and 2013 and aggregate revenue levels for fiscal years 2012, 2013, 2013-2017, and 2013-2022 consistent with the Congressional Budget Office's March 2012 baseline and the discretionary spending limits set forth in this Act for the purpose of enforcing section 311 of the Congressional Budget Act of 1974; and

(D) levels of Social Security revenues and outlays for fiscal years 2012 and 2013, 2013-2017, and 2013-2022 consistent with the Congressional Budget Office's March 2012 baseline budget for the purpose of enforcing sections 302 and 311 of the Congressional Budget Act of 1974.

(c) Senate Pay-as-you-go Scorecard.--

(1) Effective on the date of enactment of this section, for the purpose of enforcing section 201 of S. Con. Res. 21 (110th Congress), the Chairman of the Senate Committee on the Budget shall reduce any balances of direct spending and revenues for any fiscal year to 0 (zero).

(2) Not later than April 15, 2012, for the purpose of enforcing section 201 of S. Con. Res. 21 (110th Congress), the Chairman of the Senate Committee on the Budget shall reduce any balances of direct spending and revenues for any fiscal year to 0 (zero).

(3) Upon resetting the Senate paygo scorecard pursuant to paragraph (2), the Chairman shall publish a notification of such action in the Congressional Record.

(d) Further Adjustments.--

(1) The Chairman of the Committee on the Budget of the Senate may revise any allocations, aggregates, or levels set pursuant to this section to account for any subsequent adjustments to discretionary spending limits made pursuant to this Act.

(2) With respect to any allocations, aggregates, or levels set or adjustments made pursuant to this section, sections 412 through 414 of S. Con. Res. 13 (111th Congress) shall remain in effect.

(e) Expiration.--

(1) Subsections (a)(1), (b)(1), and (c)(1) shall expire if a concurrent resolution on the budget for fiscal year 2012 is agreed to by the Senate and House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974.

(2) Subsections (a)(2), (b)(2), and (c)(2) shall expire if a concurrent resolution on the budget for fiscal year 2013 is agreed to by the Senate and House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974.

TITLE II--VOTE ON THE BALANCED BUDGET AMENDMENT

[*201] Sec. 201. VOTE ON THE BALANCED BUDGET AMENDMENT.

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

After September 30, 2011, and not later than December 31, 2011, the House of Representatives and Senate, respectively, shall vote on passage of a joint resolution, the title of which is as follows: "Joint resolution proposing a balanced budget amendment to the Constitution of the United States."

[*202] Sec. 202. CONSIDERATION BY THE OTHER HOUSE.

(a) House Consideration.--

(1) Referral.-- If the House receives a joint resolution described in section 201 from the Senate, such joint resolution shall be referred to the Committee on the Judiciary. If the committee fails to report the joint resolution within five legislative days, it shall be in order to move that the House discharge the committee from further consideration of the joint resolution. Such a motion shall not be in order after the House has disposed of a motion to discharge the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion except twenty minutes of debate equally divided and controlled by the proponent and an opponent. If such a motion is adopted, the House shall proceed immediately to consider the joint resolution in accordance with paragraph (3). A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(2) Proceeding to consideration.-- After the joint resolution has been referred to the appropriate calendar or the committee has been discharged (other than by motion) from its consideration, it shall be in order to move to proceed to consider the joint resolution in the House. Such a motion shall not be in order after the House has disposed of a motion to proceed with respect to the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(3) Consideration.-- The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent and one motion to limit debate on the joint resolution. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

(b) Senate Consideration.--(1) If the Senate receives a joint resolution described in section 201 from the House of Representatives, such joint resolution shall be referred to the appropriate committee of the Senate. If such committee has not reported the joint resolution at the close of the fifth session day after its receipt by the Senate, such committee shall be automatically discharged from further consideration of the joint resolution and it shall be placed on the appropriate calendar.

(2) Consideration of the joint resolution and on all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order. Any debatable motion or appeal is debatable for not to exceed 1 hour, to be divided equally between those favoring and those opposing the motion or appeal. All time used for consideration of the joint resolution, including time used for quorum calls and voting, shall be counted against the total 20 hours of consideration.

(3) If the Senate has voted to proceed to a joint resolution, the vote on passage of the joint resolution shall be taken on or before the close of the seventh session day after such joint resolution has been reported or discharged or immediately following the conclusion of consideration of the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

TITLE III--DEBT CEILING DISAPPROVAL PROCESS

[*301] Sec. 301. DEBT CEILING DISAPPROVAL PROCESS.

(a) In General.--Subchapter I of chapter 31 of subtitle III of title 31, United States Code, is amended--

(1) in section 3101(b), by striking "or otherwise" and inserting "or as provided by section 3101A or otherwise";
and

(2) by inserting after section 3101 the following:

"§ 3101A. Presidential modification of the debt ceiling

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

"(a) In General.--

"(1) \$ 900 billion.----

"(A) Certification.--If, not later than December 31, 2011, the President submits a written certification to Congress that the President has determined that the debt subject to limit is within \$ 100,000,000,000 of the limit in section 3101(b) and that further borrowing is required to meet existing commitments, the Secretary of the Treasury may exercise authority to borrow an additional \$ 900,000,000,000, subject to the enactment of a joint resolution of disapproval enacted pursuant to this section. Upon submission of such certification, the limit on debt provided in section 3101(b) (referred to in this section as the 'debt limit') is increased by \$ 400,000,000,000.

"(B) Resolution of disapproval.--Congress may consider a joint resolution of disapproval of the authority under subparagraph (A) as provided in subsections (b) through (f). The joint resolution of disapproval considered under this section shall contain only the language provided in subsection (b)(2). If the time for disapproval has lapsed without enactment of a joint resolution of disapproval under this section, the debt limit is increased by an additional \$ 500,000,000,000.

"(2) Additional amount.----

"(A) Certification.--If, after the debt limit is increased by \$ 900,000,000,000 under paragraph (1), the President submits a written certification to Congress that the President has determined that the debt subject to limit is within \$ 100,000,000,000 of the limit in section 3101(b) and that further borrowing is required to meet existing commitments, the Secretary of the Treasury may, subject to the enactment of a joint resolution of disapproval enacted pursuant to this section, exercise authority to borrow an additional amount equal to--

"(i) \$ 1,200,000,000,000, unless clause (ii) or (iii) applies;

"(ii) \$ 1,500,000,000,000 if the Archivist of the United States has submitted to the States for their ratification a proposed amendment to the Constitution of the United States pursuant to a joint resolution entitled 'Joint resolution proposing a balanced budget amendment to the Constitution of the United States'; or

"(iii) if a joint committee bill to achieve an amount greater than \$ 1,200,000,000,000 in deficit reduction as provided in section 401(b)(3)(B)(i)(II) of the Budget Control Act of 2011 is enacted, an amount equal to the amount of that deficit reduction, but not greater than \$ 1,500,000,000,000, unless clause (ii) applies.

"(B) Resolution of disapproval.--Congress may consider a joint resolution of disapproval of the authority under subparagraph (A) as provided in subsections (b) through (f). The joint resolution of disapproval considered under this section shall contain only the language provided in subsection (b)(2). If the time for disapproval has lapsed without enactment of a joint resolution of disapproval under this section, the debt limit is increased by the amount authorized under subparagraph (A).

"(b) Joint Resolution of Disapproval.--

"(1) In general.-- Except for the \$ 400,000,000,000 increase in the debt limit provided by subsection (a)(1)(A), the debt limit may not be raised under this section if, within 50 calendar days after the date on which Congress receives a certification described in subsection (a)(1) or within 15 calendar days after Congress receives the certification described in subsection (a)(2) (regardless of whether Congress is in session), there is enacted into law a joint resolution disapproving the President's exercise of authority with respect to such additional amount.

"(2) Contents of joint resolution.-- For the purpose of this section, the term 'joint resolution' means only a joint resolution--"(A)

(i) for the certification described in subsection (a)(1), that is introduced on September 6, 7, 8, or 9, 2011 (or, if the Senate was not in session, the next calendar day on which the Senate is in session); and

"(ii) for the certification described in subsection (a)(2), that is introduced between the date the certification is received and 3 calendar days after that date;

"(B) which does not have a preamble;

"(C) the title of which is only as follows: 'Joint resolution relating to the disapproval of the President's exercise of authority to increase the debt limit, as submitted under section 3101A of title 31, United States Code, on G7XXXXXX' (with the blank containing the date of such submission); and

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

"(D) the matter after the resolving clause of which is only as follows: 'That Congress disapproves of the President's exercise of authority to increase the debt limit, as exercised pursuant to the certification under section 3101A(a) of title 31, United States Code.'

"(c) Expedited Consideration in House of Representatives.--

"(1) Reconvening.-- Upon receipt of a certification described in subsection (a)(2), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this section, the House shall convene not later than the second calendar day after receipt of such certification.

"(2) Reporting and discharge.-- Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House without amendment not later than 5 calendar days after the date of introduction of a joint resolution described in subsection (a). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

"(3) Proceeding to consideration.-- After each committee authorized to consider a joint resolution reports it to the House or has been discharged from its consideration, it shall be in order, not later than the sixth day after introduction of a joint resolution under subsection (a), to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on a joint resolution addressing a particular submission. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

"(4) Consideration.-- The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

"(d) Expedited Procedure in Senate.--

"(1) Reconvening.-- Upon receipt of a certification under subsection (a)(2), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

"(2) Placement on calendar.-- Upon introduction in the Senate, the joint resolution shall be immediately placed on the calendar.

"(3) Floor consideration.----

"(A) In general.--Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the day after the date on which Congress receives a certification under subsection (a) and, for the certification described in subsection (a)(1), ending on September 14, 2011, and for the certification described in subsection (a)(2), on the 6th day after the date on which Congress receives a certification under subsection (a) (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

"(B) Consideration.--Consideration of the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

"(C) Vote on passage.--If the Senate has voted to proceed to a joint resolution, the vote on passage of the joint resolution shall occur immediately following the conclusion of consideration of the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

"(D) Rulings of the chair on procedure.--Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

"(e) Amendment Not in Order.--A joint resolution of disapproval considered pursuant to this section shall not be subject to amendment in either the House of Representatives or the Senate.

"(f) Coordination With Action by Other House.--

"(1) In general.-- If, before passing the joint resolution, one House receives from the other a joint resolution--

"(A) the joint resolution of the other House shall not be referred to a committee; and

"(B) the procedure in the receiving House shall be the same as if no joint resolution had been received from the other House until the vote on passage, when the joint resolution received from the other House shall supplant the joint resolution of the receiving House.

"(2) Treatment of joint resolution of other house.-- If the Senate fails to introduce or consider a joint resolution under this section, the joint resolution of the House shall be entitled to expedited floor procedures under this section.

"(3) Treatment of companion measures.-- If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

"(4) Consideration after passage.-- (A) If Congress passes a joint resolution, the period beginning on the date the President is presented with the joint resolution and ending on the date the President signs, allows to become law without his signature, or vetoes and returns the joint resolution (but excluding days when either House is not in session) shall be disregarded in computing the appropriate calendar day period described in subsection (b)(1).

"(B) Debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

"(5) Veto override.-- If within the appropriate calendar day period described in subsection (b)(1), Congress overrides a veto of the joint resolution with respect to authority exercised pursuant to paragraph (1) or (2) of subsection (a), the limit on debt provided in section 3101(b) shall not be raised, except for the \$ 400,000,000,000 increase in the limit provided by subsection (a)(1)(A).

"(6) Sequestration.-- (A) If within the 50-calendar day period described in subsection (b)(1), the President signs the joint resolution, the President allows the joint resolution to become law without his signature, or Congress overrides a veto of the joint resolution with respect to authority exercised pursuant to paragraph (1) of subsection (a), there shall be a sequestration to reduce spending by \$ 400,000,000,000. OMB shall implement the sequestration forthwith.

"(B) OMB shall implement each half of such sequestration in accordance with section 255, section 256, and subsections (c), (d), (e), and (f) of section 253 of the Balanced Budget and Emergency Deficit Control Act of 1985, and for the purpose of such implementation the term 'excess deficit' means the amount specified in subparagraph (A).

"(g) Rules of House of Representatives and Senate.--This subsection and subsections (b), (c), (d), (e), and (f) (other than paragraph (6)) are enacted by Congress--

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House."

(b) Conforming Amendment.--The table of sections for chapter 31 of title 31, United States Code, is amended by inserting after the item relating to section 3101 the following new item:

"3101A. Presidential modification of the debt ceiling."

[*302] Sec. 302. ENFORCEMENT OF BUDGET GOAL.

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

(a) In General.--The Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting after section 251 the following new section:

"Sec. 251A. <2 USC 901a> ENFORCEMENT OF BUDGET GOAL.

"Unless a joint committee bill achieving an amount greater than \$ 1,200,000,000,000 in deficit reduction as provided in section 401(b)(3)(B)(i)(II) of the Budget Control Act of 2011 is enacted by January 15, 2012, the discretionary spending limits listed in section 251(c) shall be revised, and discretionary appropriations and direct spending shall be reduced, as follows:

"(1) Revised security category; revised nonsecurity category.-- (A) The term 'revised security category' means discretionary appropriations in budget function 050.

"(B) The term 'revised nonsecurity category' means discretionary appropriations other than in budget function 050.

"(2) Revised discretionary spending limits.-- The discretionary spending limits for fiscal years 2013 through 2021 under section 251(c) shall be replaced with the following:

"(A) For fiscal year 2013--

"(i) for the security category, \$ 546,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 501,000,000,000 in budget authority.

"(B) For fiscal year 2014--

"(i) for the security category, \$ 556,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 510,000,000,000 in budget authority.

"(C) For fiscal year 2015--

"(i) for the security category, \$ 566,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 520,000,000,000 in budget authority.

"(D) For fiscal year 2016--

"(i) for the security category, \$ 577,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 530,000,000,000 in budget authority.

"(E) For fiscal year 2017--

"(i) for the security category, \$ 590,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 541,000,000,000 in budget authority.

"(F) For fiscal year 2018--

"(i) for the security category, \$ 603,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 553,000,000,000 in budget authority.

"(G) For fiscal year 2019--

"(i) for the security category, \$ 616,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 566,000,000,000 in budget authority.

"(H) For fiscal year 2020--

"(i) for the security category, \$ 630,000,000,000 in budget authority; and

"(ii) for the nonsecurity category, \$ 578,000,000,000 in budget authority.

"(I) For fiscal year 2021--

"(i) for the security category, \$ 644,000,000,000 in budget authority; and

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

"(ii) for the nonsecurity category, \$ 590,000,000,000 in budget authority.

"(3) Calculation of total deficit reduction.-- OMB shall calculate the amount of the deficit reduction required by this section for each of fiscal years 2013 through 2021 by--

"(A) starting with \$ 1,200,000,000,000;

"(B) subtracting the amount of deficit reduction achieved by the enactment of a joint committee bill, as provided in section 401(b)(3)(B)(i)(II) of the Budget Control Act of 2011;

"(C) reducing the difference by 18 percent to account for debt service; and

"(D) dividing the result by 9.

"(4) Allocation to functions.-- On January 2, 2013, for fiscal year 2013, and in its sequestration preview report for fiscal years 2014 through 2021 pursuant to section 254(c), OMB shall allocate half of the total reduction calculated pursuant to paragraph (3) for that year to discretionary appropriations and direct spending accounts within function 050 (defense function) and half to accounts in all other functions (nondefense functions).

"(5) Defense function reduction.-- OMB shall calculate the reductions to discretionary appropriations and direct spending for each of fiscal years 2013 through 2021 for defense function spending as follows:

"(A) Discretionary.--OMB shall calculate the reduction to discretionary appropriations by--

"(i) taking the total reduction for the defense function allocated for that year under paragraph (4);

"(ii) multiplying by the discretionary spending limit for the revised security category for that year; and

"(iii) dividing by the sum of the discretionary spending limit for the security category and OMB's baseline estimate of nonexempt outlays for direct spending programs within the defense function for that year.

"(B) Direct spending.--OMB shall calculate the reduction to direct spending by taking the total reduction for the defense function required for that year under paragraph (4) and subtracting the discretionary reduction calculated pursuant to subparagraph (A).

"(6) Nondefense function reduction.-- OMB shall calculate the reduction to discretionary appropriations and to direct spending for each of fiscal years 2013 through 2021 for programs in nondefense functions as follows:

"(A) Discretionary.--OMB shall calculate the reduction to discretionary appropriations by--

"(i) taking the total reduction for nondefense functions allocated for that year under paragraph (4);

"(ii) multiplying by the discretionary spending limit for the revised nonsecurity category for that year; and

"(iii) dividing by the sum of the discretionary spending limit for the revised nonsecurity category and OMB's baseline estimate of nonexempt outlays for direct spending programs in nondefense functions for that year.

"(B) Direct spending.--OMB shall calculate the reduction to direct spending programs by taking the total reduction for nondefense functions required for that year under paragraph (4) and subtracting the discretionary reduction calculated pursuant to subparagraph (A).

"(7) Implementing discretionary reductions.----

"(A) Fiscal year 2013.--On January 2, 2013, for fiscal year 2013, OMB shall calculate and the President shall order a sequestration, effective upon issuance and under the procedures set forth in section 253(f), to reduce each account within the security category or nonsecurity category by a dollar amount calculated by multiplying the baseline level of budgetary resources in that account at that time by a uniform percentage necessary to achieve--

"(i) for the revised security category, an amount equal to the defense function discretionary reduction calculated pursuant to paragraph (5); and

"(ii) for the revised nonsecurity category, an amount equal to the nondefense function discretionary reduction calculated pursuant to paragraph (6).

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

"(B) Fiscal years 2014-2021.--On the date of the submission of its sequestration preview report for fiscal years 2014 through 2021 pursuant to section 254(c) for each of fiscal years 2014 through 2021, OMB shall reduce the discretionary spending limit--

"(i) for the revised security category by the amount of the defense function discretionary reduction calculated pursuant to paragraph (5); and

"(ii) for the revised nonsecurity category by the amount of the nondefense function discretionary reduction calculated pursuant to paragraph (6).

"(8) Implementing direct spending reductions.-- On the date specified in paragraph (4) during each applicable year, OMB shall prepare and the President shall order a sequestration, effective upon issuance, of nonexempt direct spending to achieve the direct spending reduction calculated pursuant to paragraphs (5) and (6). When implementing the sequestration of direct spending pursuant to this paragraph, OMB shall follow the procedures specified in section 6 of the Statutory Pay-As-You-Go Act of 2010, the exemptions specified in section 255, and the special rules specified in section 256, except that the percentage reduction for the Medicare programs specified in section 256(d) shall not be more than 2 percent for a fiscal year.

"(9) Adjustment for medicare.-- If the percentage reduction for the Medicare programs would exceed 2 percent for a fiscal year in the absence of paragraph (8), OMB shall increase the reduction for all other discretionary appropriations and direct spending under paragraph (6) by a uniform percentage to a level sufficient to achieve the reduction required by paragraph (6) in the non-defense function.

"(10) Implementation of reductions.-- Any reductions imposed under this section shall be implemented in accordance with section 256(k).

"(11) Report.-- On the dates specified in paragraph (4), OMB shall submit a report to Congress containing information about the calculations required under this section, the adjusted discretionary spending limits, a listing of the reductions required for each nonexempt direct spending account, and any other data and explanations that enhance public understanding of this title and actions taken under it."

(b) Conforming Amendment.--The table of contents set forth in section 250(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting after the item relating to section 251 the following:

"Sec. 251A. Enforcement of budget goal."

TITLE IV--JOINT SELECT COMMITTEE ON DEFICIT REDUCTION

[*401] Sec. 401. ESTABLISHMENT OF JOINT SELECT COMMITTEE. <2 USC 900 note>

(a) Definitions.--In this title:

(1) Joint committee.-- The term "joint committee" means the Joint Select Committee on Deficit Reduction established under subsection (b)(1).

(2) Joint committee bill.-- The term "joint committee bill" means a bill consisting of the proposed legislative language of the joint committee recommended under subsection (b)(3)(B) and introduced under section 402(a).

(b) Establishment of Joint Select Committee.--

(1) Establishment.-- There is established a joint select committee of Congress to be known as the "Joint Select Committee on Deficit Reduction".

(2) Goal.-- The goal of the joint committee shall be to reduce the deficit by at least \$ 1,500,000,000,000 over the period of fiscal years 2012 to 2021.

(3) Duties.----

(A) In general.--

(i) Improving the short-term and long-term fiscal imbalance.--The joint committee shall provide recommendations and legislative language that will significantly improve the short-term and long-term fiscal imbalance of the Federal Government.

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

(ii) Recommendations of committees.--Not later than October 14, 2011, each committee of the House of Representatives and the Senate may transmit to the joint committee its recommendations for changes in law to reduce the deficit consistent with the goal described in paragraph (2) for the joint committee's consideration.

(B) Report, recommendations, and legislative language.--

(i) In general.--Not later than November 23, 2011, the joint committee shall vote on--

(I) a report that contains a detailed statement of the findings, conclusions, and recommendations of the joint committee and the estimate of the Congressional Budget Office required by paragraph (5)(D)(ii); and

(II) proposed legislative language to carry out such recommendations as described in subclause (I), which shall include a statement of the deficit reduction achieved by the legislation over the period of fiscal years 2012 to 2021. Any change to the Rules of the House of Representatives or the Standing Rules of the Senate included in the report or legislative language shall be considered to be merely advisory.

(ii) Approval of report and legislative language.--The report of the joint committee and the proposed legislative language described in clause (i) shall require the approval of a majority of the members of the joint committee.

(iii) Additional views.--A member of the joint committee who gives notice of an intention to file supplemental, minority, or additional views at the time of final joint committee vote on the approval of the report and legislative language under clause (ii) shall be entitled to 3 calendar days in which to file such views in writing with the staff director of the joint committee. Such views shall then be included in the joint committee report and printed in the same volume, or part thereof, and their inclusion shall be noted on the cover of the report. In the absence of timely notice, the joint committee report may be printed and transmitted immediately without such views.

(iv) Transmission of report and legislative language.--If the report and legislative language are approved by the joint committee pursuant to clause (ii), then not later than December 2, 2011, the joint committee shall submit the joint committee report and legislative language described in clause (i) to the President, the Vice President, the Speaker of the House of Representatives, and the majority and minority Leaders of each House of Congress.

(v) Report and legislative language to be made public.--Upon the approval or disapproval of the joint committee report and legislative language pursuant to clause (ii), the joint committee shall promptly make the full report and legislative language, and a record of the vote, available to the public.

(4) Membership.----

(A) In general.--The joint committee shall be composed of 12 members appointed pursuant to subparagraph (B).

(B) Appointment.--Members of the joint committee shall be appointed as follows:

(i) The majority leader of the Senate shall appoint three members from among Members of the Senate.

(ii) The minority leader of the Senate shall appoint three members from among Members of the Senate.

(iii) The Speaker of the House of Representatives shall appoint three members from among Members of the House of Representatives.

(iv) The minority leader of the House of Representatives shall appoint three members from among Members of the House of Representatives.

(C) Co-chairs.--

(i) In general.--There shall be two Co-Chairs of the joint committee. The majority leader of the Senate shall appoint one Co-Chair from among the members of the joint committee. The Speaker of the House of Representatives shall appoint the second Co-Chair from among the members of the joint committee. The Co-Chairs shall be appointed not later than 14 calendar days after the date of enactment of this Act.

(ii) Staff director.--The Co-Chairs, acting jointly, shall hire the staff director of the joint committee.

(D) Date.--Members of the joint committee shall be appointed not later than 14 calendar days after the date of enactment of this Act.

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

(E) Period of appointment.--Members shall be appointed for the life of the joint committee. Any vacancy in the joint committee shall not affect its powers, but shall be filled not later than 14 calendar days after the date on which the vacancy occurs, in the same manner as the original designation was made. If a member of the joint committee ceases to be a Member of the House of Representatives or the Senate, as the case may be, the member is no longer a member of the joint committee and a vacancy shall exist.

(5) Administration.----

(A) In general.--To enable the joint committee to exercise its powers, functions, and duties, there are authorized to be disbursed by the Senate the actual and necessary expenses of the joint committee approved by the co-chairs, subject to the rules and regulations of the Senate.

(B) Expenses.--In carrying out its functions, the joint committee is authorized to incur expenses in the same manner and under the same conditions as the Joint Economic Committee is authorized by section 11 of Public Law 79-304 (15 U.S.C. 1024 (d)).

(C) Quorum.--Seven members of the joint committee shall constitute a quorum for purposes of voting, meeting, and holding hearings.

(D) Voting.--

(i) Proxy voting.--No proxy voting shall be allowed on behalf of the members of the joint committee.

(ii) Congressional budget office estimates.--The Congressional Budget Office shall provide estimates of the legislation (as described in paragraph (3)(B)) in accordance with sections 308(a) and 201(f) of the Congressional Budget Act of 1974 (2 U.S.C. 639(a) and 601(f))(including estimates of the effect of interest payment on the debt). In addition, the Congressional Budget Office shall provide information on the budgetary effect of the legislation beyond the year 2021. The joint committee may not vote on any version of the report, recommendations, or legislative language unless such estimates are available for consideration by all members of the joint committee at least 48 hours prior to the vote as certified by the Co-Chairs.

(E) Meetings.--

(i) Initial meeting.--Not later than 45 calendar days after the date of enactment of this Act, the joint committee shall hold its first meeting.

(ii) Agenda.--The Co-Chairs of the joint committee shall provide an agenda to the joint committee members not less than 48 hours in advance of any meeting.

(F) Hearings.--

(i) In general.--The joint committee may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, require attendance of witnesses and production of books, papers, and documents, take such testimony, receive such evidence, and administer such oaths as the joint committee considers advisable.

(ii) Hearing procedures and responsibilities of co-chairs.--

(I) Announcement.--The Co-Chairs of the joint committee shall make a public announcement of the date, place, time, and subject matter of any hearing to be conducted, not less than 7 days in advance of such hearing, unless the Co-Chairs determine that there is good cause to begin such hearing at an earlier date.

(II) Written statement.--A witness appearing before the joint committee shall file a written statement of proposed testimony at least 2 calendar days before the appearance of the witness, unless the requirement is waived by the Co-Chairs, following their determination that there is good cause for failure to comply with such requirement.

(G) Technical assistance.--Upon written request of the Co-Chairs, a Federal agency shall provide technical assistance to the joint committee in order for the joint committee to carry out its duties.

(c) Staff of Joint Committee.--

(1) In general.-- The Co-Chairs of the joint committee may jointly appoint and fix the compensation of staff as they deem necessary, within the guidelines for employees of the Senate and following all applicable rules and employment requirements of the Senate.

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

(2) Ethical standards.-- Members on the joint committee who serve in the House of Representatives shall be governed by the ethics rules and requirements of the House. Members of the Senate who serve on the joint committee and staff of the joint committee shall comply with the ethics rules of the Senate.

(d) Termination.--The joint committee shall terminate on January 31, 2012.

[*402] Sec. 402. EXPEDITED CONSIDERATION OF JOINT COMMITTEE RECOMMENDATIONS. <2 USC 900 note>

(a) Introduction.--If approved by the majority required by section 401(b)(3)(B)(ii), the proposed legislative language submitted pursuant to section 401(b)(3)(B)(iv) shall be introduced in the Senate (by request) on the next day on which the Senate is in session by the majority leader of the Senate or by a Member of the Senate designated by the majority leader of the Senate and shall be introduced in the House of Representatives (by request) on the next legislative day by the majority leader of the House or by a Member of the House designated by the majority leader of the House.

(b) Consideration in the House of Representatives.--

(1) Referral and reporting.-- Any committee of the House of Representatives to which the joint committee bill is referred shall report it to the House without amendment not later than December 9, 2011. If a committee fails to report the joint committee bill within that period, it shall be in order to move that the House discharge the committee from further consideration of the bill. Such a motion shall not be in order after the last committee authorized to consider the bill reports it to the House or after the House has disposed of a motion to discharge the bill. The previous question shall be considered as ordered on the motion to its adoption without intervening motion except 20 minutes of debate equally divided and controlled by the proponent and an opponent. If such a motion is adopted, the House shall proceed immediately to consider the joint committee bill in accordance with paragraphs (2) and (3). A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(2) Proceeding to consideration.-- After the last committee authorized to consider a joint committee bill reports it to the House or has been discharged (other than by motion) from its consideration, it shall be in order to move to proceed to consider the joint committee bill in the House. Such a motion shall not be in order after the House has disposed of a motion to proceed with respect to the joint committee bill. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(3) Consideration.-- The joint committee bill shall be considered as read. All points of order against the joint committee bill and against its consideration are waived. The previous question shall be considered as ordered on the joint committee bill to its passage without intervening motion except 2 hours of debate equally divided and controlled by the proponent and an opponent and one motion to limit debate on the joint committee bill. A motion to reconsider the vote on passage of the joint committee bill shall not be in order.

(4) Vote on passage.-- The vote on passage of the joint committee bill shall occur not later than December 23, 2011.

(c) Expedited Procedure in the Senate.--

(1) Committee consideration.-- A joint committee bill introduced in the Senate under subsection (a) shall be jointly referred to the committee or committees of jurisdiction, which committees shall report the bill without any revision and with a favorable recommendation, an unfavorable recommendation, or without recommendation, not later than December 9, 2011. If any committee fails to report the bill within that period, that committee shall be automatically discharged from consideration of the bill, and the bill shall be placed on the appropriate calendar.

(2) Motion to proceed.-- Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order, not later than 2 days of session after the date on which a joint committee bill is reported or discharged from all committees to which it was referred, for the majority leader of the Senate or the majority leader's designee to move to proceed to the consideration of the joint committee bill. It shall also be in order for any Member of the Senate to move to proceed to the consideration of the joint committee bill at any time after the conclusion of such 2-day period. A motion to proceed is in order even though a previous motion to the same effect has been disagreed to. All points of order against the motion to proceed to the joint committee bill are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

order. If a motion to proceed to the consideration of the joint committee bill is agreed to, the joint committee bill shall remain the unfinished business until disposed of.

(3) Consideration.-- All points of order against the joint committee bill and against consideration of the joint committee bill are waived. Consideration of the joint committee bill and of all debatable motions and appeals in connection therewith shall not exceed a total of 30 hours which shall be divided equally between the Majority and Minority Leaders or their designees. A motion further to limit debate on the joint committee bill is in order, shall require an affirmative vote of three-fifths of the Members duly chosen and sworn, and is not debatable. Any debatable motion or appeal is debatable for not to exceed 1 hour, to be divided equally between those favoring and those opposing the motion or appeal. All time used for consideration of the joint committee bill, including time used for quorum calls and voting, shall be counted against the total 30 hours of consideration.

(4) No amendments.-- An amendment to the joint committee bill, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint committee bill, is not in order.

(5) Vote on passage.-- If the Senate has voted to proceed to the joint committee bill, the vote on passage of the joint committee bill shall occur immediately following the conclusion of the debate on a joint committee bill, and a single quorum call at the conclusion of the debate if requested. The vote on passage of the joint committee bill shall occur not later than December 23, 2011.

(6) Rulings of the chair on procedure.-- Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint committee bill shall be decided without debate.

(d) Amendment.--The joint committee bill shall not be subject to amendment in either the House of Representatives or the Senate.

(e) Consideration by the Other House.--

(1) In general.-- If, before passing the joint committee bill, one House receives from the other a joint committee bill--

(A) the joint committee bill of the other House shall not be referred to a committee; and

(B) the procedure in the receiving House shall be the same as if no joint committee bill had been received from the other House until the vote on passage, when the joint committee bill received from the other House shall supplant the joint committee bill of the receiving House.

(2) Revenue measure.-- This subsection shall not apply to the House of Representatives if the joint committee bill received from the Senate is a revenue measure.

(f) Rules to Coordinate Action With Other House.--

(1) Treatment of joint committee bill of other house.-- If the Senate fails to introduce or consider a joint committee bill under this section, the joint committee bill of the House shall be entitled to expedited floor procedures under this section.

(2) Treatment of companion measures in the senate.-- If following passage of the joint committee bill in the Senate, the Senate then receives the joint committee bill from the House of Representatives, the House-passed joint committee bill shall not be debatable. The vote on passage of the joint committee bill in the Senate shall be considered to be the vote on passage of the joint committee bill received from the House of Representatives.

(3) Vetoes.-- If the President vetoes the joint committee bill, debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

(g) Loss of Privilege.--The provisions of this section shall cease to apply to the joint committee bill if--

(1) the joint committee fails to vote on the report or proposed legislative language required under section 401(b)(3)(B)(i) not later than November 23, 2011; or

(2) the joint committee bill does not pass both Houses not later than December 23, 2011.

[*403] Sec. 403. FUNDING. <2 USC 900 note>

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

Funding for the joint committee shall be derived in equal portions from--

- (1) the applicable accounts of the House of Representatives; and
- (2) the contingent fund of the Senate from the appropriations account "Miscellaneous Items", subject to the rules and regulations of the Senate.

[*404] Sec. 404. RULEMAKING. <2 USC 900 note>

The provisions of this title are enacted by Congress--

- (1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and
- (2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

TITLE V--PELL GRANT AND STUDENT LOAN PROGRAM CHANGES

[*501] Sec. 501. FEDERAL PELL GRANTS.

Section 401(b)(7)(A)(iv) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(7)(A)(iv)) is amended--

- (1) in subclause (II), by striking "\$ 3,183,000,000" and inserting "\$ 13,183,000,000"; and
- (2) in subclause (III), by striking "\$ 0" and inserting "\$ 7,000,000,000".

[*502] Sec. 502. TERMINATION OF AUTHORITY TO MAKE INTEREST SUBSIDIZED LOANS TO GRADUATE AND PROFESSIONAL STUDENTS.

Section 455(a) of the Higher Education Act of 1965 (20 U.S.C. 1087e(a)) is amended by adding at the end the following new paragraph:

"(3) Termination of authority to make interest subsidized loans to graduate and professional students.----

"(A) In general.--Subject to subparagraph (B) and notwithstanding any provision of this part or part B, for any period of instruction beginning on or after July 1, 2012--

"(i) a graduate or professional student shall not be eligible to receive a Federal Direct Stafford loan under this part; and

"(ii) the maximum annual amount of Federal Direct Unsubsidized Stafford loans such a student may borrow in any academic year (as defined in section 481(a)(2)) or its equivalent shall be the maximum annual amount for such student determined under section 428H, plus an amount equal to the amount of Federal Direct Stafford loans the student would have received in the absence of this subparagraph.

"(B) Exception.--Subparagraph (A) shall not apply to an individual enrolled in course work specified in paragraph (3)(B) or (4)(B) of section 484(b).".

[*503] Sec. 503. TERMINATION OF DIRECT LOAN REPAYMENT INCENTIVES.

Section 455(b)(8) of the Higher Education Act of 1965 (20 U.S.C. 1087e(b)(8)) is amended--

(1) in subparagraph (A)--

(A) by amending the header to read as follows: "(A) Incentives for loans disbursed before July 1, 2012.--"; and

(B) by inserting "with respect to loans for which the first disbursement of principal is made before July 1, 2012," after "of this part";

(2) in subparagraph (B), by inserting "with respect to loans for which the first disbursement of principal is made before July 1, 2012" after "repayment incentives"; and

(3) by adding at the end the following new subparagraph:

112 P.L. 25, *; 125 Stat. 240;
2011 Enacted S. 365; 112 Enacted S. 365

"(C) No repayment incentives for new loans disbursed on or after July 1, 2012.--Notwithstanding any other provision of this part, the Secretary is prohibited from authorizing or providing any repayment incentive not otherwise authorized under this part to encourage on-time repayment of a loan under this part for which the first disbursement of principal is made on or after July 1, 2012, including any reduction in the interest or origination fee rate paid by a borrower of such a loan, except that the Secretary may provide for an interest rate reduction for a borrower who agrees to have payments on such a loan automatically electronically debited from a bank account."

[*504] Sec. 504. INAPPLICABILITY OF TITLE IV NEGOTIATED RULEMAKING <20 USC 1089 note> AND MASTER CALENDAR EXCEPTION.

Sections 482(c) and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the amendments made by this title, or to any regulations promulgated under those amendments.

Speaker of the House of Representatives.
Vice President of the United States and President of the Senate.

DESCRIPTORS: BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT; BUDGET CONTROL ACT; BUDGET OF THE U.S.; COMMITTEE ON DEFICIT REDUCTION, SELECT. JOINT; CONGRESS; CONGRESSIONAL BUDGET ACT; CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT; CONGRESSIONAL-EXECUTIVE RELATIONS; CONSTITUTIONAL AMENDMENTS; DEPARTMENT OF TREASURY; GOVERNMENT SPENDING; HIGHER EDUCATION ACT; OFFICE OF MANAGEMENT AND BUDGET; PELL GRANT PROGRAM; PUBLIC DEBT; PUBLIC DEBT; SEQUESTRATION OF APPROPRIATED FUNDS; STUDENT AID; 112 PL 25



Department of Defense INSTRUCTION

NUMBER 1100.22

April 12, 2010

USD(P&R)

SUBJECT: Policy and Procedures for Determining Workforce Mix

References: See Enclosure 1

1. **PURPOSE.** In accordance with the authority in DoD Directive 5124.02 (Reference (a)), this Instruction:

a. Establishes policy, assigns responsibilities, and prescribes procedures for determining the appropriate mix of manpower (military and DoD civilian) and private sector support.

b. Implements policy established in DoD Directive 1100.4 (Reference (b)).

c. Incorporates and cancels DoD Instruction 3020.37 (Reference (c)).

d. Provides manpower mix criteria and guidance for risk assessments to be used to identify and justify activities that are inherently governmental (IG); commercial (exempt from private sector performance); and commercial (subject to private sector performance).

e. Reconciles and consolidates the definitions and examples of IG from section 306 of title 5, United States Code (U.S.C.) (Reference (d)); sections 501 (note), 1115, and 1116 of title 31, U.S.C. (Reference (e)); Attachment A of Office of Management and Budget (OMB) Circular A-76 (Reference (f)); and Subparts 2 and 7.503(c) of the Federal Acquisition Regulation (Reference (g)) into a set of criteria for Defense-wide use.

f. Implements aspects of sections 113, 118(b), 129a, and 2463 of title 10, U.S.C. (Reference (h)).

g. Reissues and cancels DoD Instruction 1100.22 (Reference (i)).

2. **APPLICABILITY.** This Instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy that:

a. Consistent with Reference (a) and section 118(b) of Reference (h), the workforce of the Department of Defense shall be established to successfully execute Defense missions at a low to moderate level of risk. Accordingly, risk mitigation shall take precedence over cost savings when necessary to maintain appropriate control of Government operations and missions. Consistent with Reference (a) and section 113 of Reference (h), the Defense workforce shall have sufficient flexibility to reconstitute or expand the capabilities of the Military Services on short notice to meet a resurgent or increased threat to U.S. national security. Accordingly, risk mitigation shall take precedence over cost savings when necessary to maintain core capabilities and readiness.

b. The Department shall provide ready forces. Accordingly, the peacetime workforce shall be structured with sufficient manpower to satisfy projected mobilization and crisis demands that cannot be met in sufficient time by mobilizing, hiring, recruiting, or reassigning DoD personnel or contracting for additional support.

c. Functions that are IG cannot be legally contracted. The Manpower Mix Criteria codes in this Instruction reconcile and consolidate definitions and examples for what is IG from References (d) through (g) and shall serve as the DoD standard for determining what is IG. Functions that are IG shall be designated for DoD civilian or military performance consistent with the criteria.

d. Functions that are not IG are commercial in nature. Commercial activities (CAs) that are exempted from private sector performance by law, Executive Order (E.o.), treaty, or international agreement (IA) shall be designated for DoD civilian or military performance. Consistent with Reference (a) and section 129a of Reference (h), CAs shall be exempted from private sector performance and designated for DoD civilian or military performance, as necessary, to provide for the readiness and workforce management needs of the Department - i.e., functions shall be exempted from private sector performance to mitigate operational risk and to provide sufficient personnel for wartime assignments, overseas or sea-to-shore rotation, career development, continuity of operations, and esprit de corps.

e. Consistent with sections 129a and 2463 of Reference (h) and with Deputy Secretary of Defense memorandum (Reference (j)), even if a function is not IG or exempted from private sector performance, it shall be designated for DoD civilian performance (subject to paragraph 4.g. of this section) unless an approved analysis for either of the following exceptions has been addressed consistent with the DoD Component's regulatory guidelines:

(1) A cost comparison required by Reference (j), or a public-private competition required by Reference (f), shows that DoD civilian personnel are not the low-cost provider.

(2) There is a legal, regulatory, or procedural impediment to using DoD civilian personnel. This shall include determinations by Human Resource (HR) officials that DoD civilians cannot be hired, hired in time, or retained to perform the work.

f. Consistent with Reference (a), manpower shall be designated as civilian except when one or more of the following conditions apply:

(1) Military-unique knowledge and skills are required for performance of the duties.

(2) Military incumbency is required by law, E.o., treaty, or IA.

(3) Military performance is required for command and control, risk mitigation, or esprit de corps.

(4) Military manpower is needed to provide for overseas and sea-to-shore rotation, career development, or wartime assignments.

(5) Unusual working conditions or costs are not conducive to civilian employment.

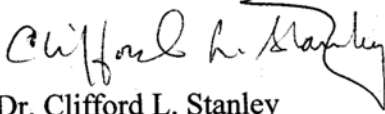
g. Consistent with DoD Instruction 1400.25, Volume 250 (Reference (k)), Civilian Strategic Human Capital Plans shall provide for the development of a DoD civilian workforce with competencies needed to meet missions requirements.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3.

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Instruction is effective immediately.


Dr. Clifford L. Stanley
Under Secretary of Defense for
Personnel and Readiness

Enclosures

1. References

2. Responsibilities
 3. Procedures
 4. Manpower Mix Criteria
 5. Guidance for Risk Assessments
- Glossary

TABLE OF CONTENTS

ENCLOSURE 1: REFERENCES.....7

ENCLOSURE 2: RESPONSIBILITIES.....9

 UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS
 (USD(P&R)).....9

 USD(AT&L).....9

 UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE (USD(I)).....9

 HEADS OF THE DoD COMPONENTS10

 CHAIRMAN OF THE JOINT CHIEFS OF STAFF11

 COMMANDERS OF THE COMBATANT COMMANDS (CCDRs).....11

ENCLOSURE 3: PROCEDURES.....12

 WORKFORCE MIX DECISION PROCESS.....12

 IG FUNCTIONS AND ACTIVITIES CLOSELY ASSOCIATED WITH IG
 FUNCTIONS14

 PERSONAL SERVICES14

 PERSONNEL SHORTFALLS15

 COST AS A DECIDING FACTOR IN WORKFORCE MIX DECISIONS15

 NON-AVAILABILITY OF DoD CIVILIAN EMPLOYEES.....15

 ORDER OF PRECEDENCE FOR CODING MANPOWER IN DOD MANPOWER
 DATABASES15

 CODING MILITARY-TO-CIVILIAN AND CIVILIAN-TO-MILITARY
 CONVERSIONS.....16

 CODING MILITARY MANPOWER LOCATED IN ACTIVITIES OUTSIDE THE
 MILITARY DEPARTMENTS.....16

ENCLOSURE 4: MANPOWER MIX CRITERIA17

 CRITERION A - DIRECTION AND CONTROL OF COMBAT/CRISIS SITUATIONS....17

 CRITERION B - EXEMPTION OF COMBAT SUPPORT (CS) AND COMBAT
 SERVICE SUPPORT (CSS) DUE TO OPERATIONAL RISK.....24

 CRITERION D - EXEMPTION OF MANPOWER DUAL-TASKED FOR
 WARTIME ASSIGNMENTS26

 CRITERION E - DoD CIVILIAN AUTHORITY, DIRECTION, AND CONTROL27

 CRITERION F - MILITARY-UNIQUE KNOWLEDGE AND SKILLS.....33

 CRITERION G - EXEMPTION FOR ESPRIT DE CORPS.....37

 CRITERION H - EXEMPTION FOR CONTINUITY OF INFRASTRUCTURE
 OPERATIONS.....38

 CRITERION I - MILITARY AUGMENTATION OF THE INFRASTRUCTURE
 DURING WAR.....40

 CRITERION J - EXEMPTION FOR CIVILIAN/MILITARY ROTATION.....41

CRITERION K - EXEMPTION FOR CIVILIAN/MILITARY CAREER DEVELOPMENT	41
CRITERION L - EXEMPTED BY LAW, E.O., TREATY, OR IA.....	42
CRITERION M - EXEMPTED BY DoD MANAGEMENT DECISION	43
SUBJECT TO REVIEW FOR PRIVATE SECTOR PERFORMANCE OR DIVESTITURE.....	44
CRITERION P - PENDING RESTRUCTURING OF CA _s	44
CRITERION R - SUBJECT TO REVIEW FOR PUBLIC-PRIVATE COMPETITION	44
CRITERION W - NON-PACKAGEABLE CA	45
CRITERION X - ALTERNATIVES TO PUBLIC-PRIVATE COMPETITION.....	45
ENCLOSURE 5: GUIDANCE FOR RISK ASSESSMENTS	46
RISKS TO OVERSIGHT/CONTROL OF IG AND CA _s	46
RISKS TO COMMAND AND OPERATIONAL CONTROL	49
RISKS TO FISCAL RESPONSIBILITIES	53
GLOSSARY	54
ACRONYMS AND ABBREVIATIONS	54
DEFINITIONS.....	55
TABLE	
MANPOWER MIX CRITERIA.....	12

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 1100.4, “Guidance for Manpower Management,” February 12, 2005
- (b) DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008
- (c) DoD Instruction 3020.37, “Continuation of Essential DoD Contractor Services During Crisis,” November 6, 1990 (hereby cancelled)
- (d) Section 306 and Chapter 11 of title 5, United States Code
- (e) Sections 501 (note), 1115, 1116, 3711, and 3718 of title 31, United States Code
- (f) Office of Management and Budget (OMB) Circular A-76 (Revised), “Performance of Commercial Activities,” May 29, 2003
- (g) Federal Acquisition Regulation (FAR) sub-parts 2 and 7.5, current edition
- (h) Title 10, United States Code
- (i) DoD Instruction 1100.22, “Guidance for Determining Workforce Mix,” September 7, 2006 (hereby cancelled)
- (j) Deputy Secretary of Defense Memorandum, “Implementation of Section 324 of the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA)—Guidelines and Procedures of In-sourcing New and Contracted Out Functions,” April 4, 2008
- (k) DoD Instruction 1400.25, Volume 250, “DoD Civilian Personnel Management Systems: Volume 250, Civilian Strategic Human Capital Planning (SHCP),” November 18, 2008
- (l) Defense FAR Supplement (DFARS), current edition
- (m) DoD Instruction 5000.02, “Operation of the Defense Acquisition System,” December 8, 2008
- (n) DoD Instruction 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces,” October 3, 2005
- (o) DoD Instruction 3020.50, “Private Security Contractors Operating in Contingency Operations,” July 22, 2009
- (p) Sections 1038 and 1080 of Public Law 111-84, “The National Defense Authorization Act For Fiscal Year 2010,” October 28, 2009
- (q) Under Secretary of Defense for Personnel and Readiness Memorandum, “Interim Policy and Procedures for Strategic Manpower Planning and Development of Manpower Estimates,” December 10, 2003¹
- (r) DoD Instruction 7730.64, “Automated Extracts of Manpower and Unit Organizational Element File,” December 11, 2004
- (s) Deputy Under Secretary of Defense for Program Integration, “DoD Functions,” current edition²
- (t) DoD Directive 1404.10, “DoD Civilian Expeditionary Workforce,” January 23, 2009
- (u) DoD Directive 1200.7, “Screening the Ready Reserve,” November 18, 1999
- (v) Constitution of the United States
- (w) Articles 2, 3, 4, and 32 of the Geneva Convention Relative to the Treatment of Prisoners of War, of August 1949 (Third Geneva Convention)³

¹ Available at <http://www.defenselink.mil/prhome/pi.html>

² Available at <http://prhome.defense.gov/pi.html>

- (x) Articles 24, 28, and 30 of Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949, (GWS)⁴
- (y) DoD Directive 2310.01E, "The Department of Defense Detainee Program," September 5, 2006
- (z) DoD 5210.41-M, "Nuclear Weapon Security Manual (U)," November 22, 2004
- (aa) DoD Directive 3115.09, "DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning," October 9, 2008
- (ab) DoD Directive 5530.3, "International Agreements," June 11, 1987
- (ac) DoD Directive 2311.01E, "DoD Law of War Program," May 9, 2006
- (ad) DoD Instruction 1000.17, "Detail of DoD Personnel to Duty Outside the Department of Defense," April 16, 2008
- (ae) DoD Directive 1100.20, "Support and Services for Eligible Organizations and Activities Outside the Department of Defense," April 12, 2004
- (af) DoD Instruction 4000.19, "Interservice and Intragovernmental Support," August 9, 1995
- (ag) DoD Instruction 6025.5, "Personal Services Contracts (PSCS) for Health Care Providers (HCPS)," January 6, 1995
- (ah) DoD Directive 1315.07, "Military Personnel Assignments," January 12, 2005
- (ai) Section 1905 of title 18, United States Code
- (aj) Section 609 of title 40, United States Code
- (ak) Section 670(a) of title 16, United States Code
- (al) DoD Directive 8500.1E, "Information Assurance" October 24, 2002
- (am) Executive Order 12473, "Courts-Martial Manual, United States, 1984" April 13, 1984, as amended
- (an) Secretary of Defense Memorandum, "UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and a Contingency Operation," March 10, 2008
- (ao) DoD Directive 1000.20, "Active Duty Service Determinations for Civilian or Contractual Groups," September 11, 1989
- (ap) Joint Publication 1-02, "Department of Defense Dictionary of Military and Associated Terms," current edition

³ Available at: www.unhchr.ch/html/menu3/b/91.htm

⁴ Available at: www.unhchr.ch/html/menu3/b/q_genev2.htm

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R) shall:

a. Maintain oversight of programs that implement this Instruction and work with the Heads of DoD Components to ensure that the DoD Components establish policies and procedures consistent with this Instruction.

b. Coordinate with the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) to issue annual guidance for the Inherently Governmental Commercial Activities (IGCA) Inventory consistent with this Instruction.

2. USD(AT&L). The USD(AT&L) shall:

a. Ensure that policies and procedures governing the acquisition process are consistent with this Instruction. This shall include requiring the contracting officer, concurrent with the transmittal of the statement of work (or any modification thereof), to obtain a written statement from the requiring official that the work is appropriate to contract consistent with this Instruction and References (f), (g), (h), (j), and Defense FAR Supplement (DFARS) (Reference (l)).

b. Ensure that policies and procedures governing the Defense acquisition process in DoD Instruction 5000.02 (Reference (m)) are consistent with this Instruction.

c. Ensure that policies and procedures governing contractor personnel in DoD Instruction 3020.41 (Reference (n)) and DoD Instruction 3020.50 (Reference (o)) are consistent with this Instruction.

d. Ensure that policies and procedures governing the Commercial Activities Program are consistent with this Instruction.

e. In coordination with the USD(P&R), issue annual guidance for the IGCA Inventory consistent with the procedures in this Instruction and use the data from the IGCA Inventory to develop the inventories required by Reference (f).

3. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE (USD(I)). The USD(I) shall:

a. Ensure that policies and procedures governing DoD intelligence and counterintelligence operations (to include intelligence interrogations and debriefings) are consistent with this Instruction.

b. Issue procedures for obtaining waiver authority to the prohibition on the interrogation of detainees by contractor personnel provided under section 1038 of Public Law 111-84 (Reference (p)) that are consistent with this Instruction. All waiver requests shall be submitted through the responsible Geographic Combatant Commander and the Joint Staff to the USD(I) for approval by the Secretary of Defense. Not later than 5 days after the Secretary issues a waiver, notification of the waiver shall be submitted to Congress.

4. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall require their designated manpower authority to:

a. Issue implementing guidance requiring use of this Instruction when:

(1) Determining the workforce mix for current, new, or expanded missions, to include determining the workforce mix for capabilities or support elements requested during a mobilization or crisis.

(2) Developing manpower estimates for Defense acquisition programs covered by USD(P&R) Memorandum (Reference (q)).

(3) Revalidating manpower during reorganizations, mission area analyses, efficiency reviews, and streamlining, reengineering, or restructuring efforts (to include most efficient organizations, high-performing organizations, and business process reengineering studies covered by OMB guidance).

(4) Developing inter- and intra-governmental service support agreements.

(5) Acquiring service support.

(6) Considering the advantages of converting from one source of support (military, DoD civilian, and contractor) to another when developing the annual personnel authorization request to Congress, as required by section 129a of Reference (h).

(7) Assessing the force structure and end strength for assigned missions.

(8) Assisting with the development of Strategic Human Capital Plans consistent with the principles of this Instruction.

b. Ensure the Manpower Mix Criteria codes in Enclosure 4 are used to document manpower in the centralized DoD database as required by DoD Instruction 7730.64 (Reference (r)).

c. Issue procedures that require manpower officials to make determinations as to whether functions to be contracted are IG or exempt from private sector performance, based on the procedures in this Instruction. This will allow the agency head or designated requiring official to provide the contracting officer, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed under

contract are IG or exempt from private sector performance as required by subpart 7.503(e) of Reference (g) and subpart 207.503 of Reference (l).

d. Provide sufficient oversight to ensure compliance with this Instruction through periodic reviews of the DoD Component's workforce and reviews of annual IGCA Inventory submissions.

5. CHAIRMAN OF THE JOINT CHIEFS OF STAFF. The Chairman of the Joint Chiefs of Staff, in addition to the responsibilities in section 4 of this enclosure, shall:

a. When reviewing the adequacy of manpower and manpower policies of the Military Services as required by sections 153(a)(3)(C) and 153(a)(4)(E) of Reference (h), assess whether the workforce mix is appropriate consistent with this Instruction.

b. When reviewing the adequacy of critical contract services that support the Combatant Commanders' contingency plans during the deliberative planning process of the Joint Strategic Planning System, assess the risks of using contract support consistent with this Instruction and require Combatant Commanders to develop contingency plans if they have a reasonable doubt that a contractor will continue to provide essential services during a mobilization or crisis.

c. Ensure that joint doctrine governing the acquisition and use of private security contractors (PSCs) is consistent with this Instruction.

d. When conducting periodic reviews of combat agencies, as required by section 193 of Reference (h), assess the adequacy of the agency's manpower and contract support consistent with this Instruction.

6. COMMANDERS OF THE COMBATANT COMMANDS (CCDRs). The CCDRs, in addition to the responsibilities in section 4 of this enclosure, shall:

a. When determining if the authority, direction, and control they have of assigned commands or forces are sufficient to command effectively as required by section 164 of Reference (h), assess whether the authority, direction, and control they have of DoD civilian and private sector contract support elements are sufficient.

b. Ensure that procedures governing the use of PSCs during a military operation preclude PSCs from performing any IG or exempt function and restrict PSCs from areas of operation where, in the commander's judgment, PSCs would not have sufficient discretionary latitude, authority, equipment, weapons, or fire power to perform successfully their contract.

c. Ensure that the workforce mix (military, DoD civilian, or contractor support) for requests for forces, additional capabilities, or support elements during a military operation (e.g., contingency, humanitarian, peacekeeping) or crisis is based on the policy and procedures in this Instruction.

ENCLOSURE 3

PROCEDURES

1. WORKFORCE MIX DECISION PROCESS

a. Initial Steps. When establishing the workforce mix, manpower planners shall review all mission requirements and design units and/or organizations to accomplish baseline operations and transition quickly and easily to support military operations (e.g., contingency, humanitarian, peacekeeping) and crises. Manpower analysts shall identify the type of work from the list of DoD functions (Reference (s)). They shall use the manpower mix criteria at Enclosure 4 of this Instruction to distinguish between functions that are IG and commercial and to identify which IG and commercial functions will be performed by military personnel and which will be performed by DoD civilian personnel. Manpower analysts also shall use the guidance for risk assessments at Enclosure 5 of this Instruction to help identify risks. The Table lists the manpower mix criteria.

Table. Manpower Mix Criteria

A	Direction and Control of Combat and Crisis Situations	
B	Exemption of Combat Support and Combat Service Support due to Operational Risk	
D	Exemption of Manpower Dual-Tasked For Wartime Assignments	
E	DoD Civilian Authority Direction & Control	F Military-Unique Knowledge & Skills
G	Exemption for Esprit de Corps	
H	Exemption for Continuity of Infrastructure Operations	I Military Augmentation of the Infrastructure During War
J	Exemption for Civilian & Military Rotation	K Exemption for Civilian & Military Career Development
L	Exemption by Law, Executive Order, Treaty or International Agreement	
M	Exempted by DoD Management Decision	
P	Pending Restructuring of Commercial Activities	
R	Subject to Review for Public-Private Competition	
W	Non-Packageable Commercial Activity	
X	Alternative to Public-Private Competition	

b. IG Activities. In general, a function is IG if it is so intimately related to the public interest as to require performance by Federal Government personnel. IG functions shall include, among other things, activities that require either the exercise of substantial discretion when applying Federal Government authority, or value judgments when making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. Criteria A, E, F, and I identify activities that are IG consistent with section 306 of Reference (d); sections 501 (note), 1115, and 1116 of Reference (e); Attachment A of Reference (f); and subparts 2 and 7.503(c) of Reference (g). Criterion I identifies IG activities performed during a mobilization or other national emergency. Manpower authorities shall consult mobilization and crisis planners to identify these IG activities. Manpower analysts shall designate IG functions for performance by military or DoD civilian personnel as provided by criteria A, E, F, and I.

c. CAs That are Exempted from Private Sector Performance. Criterion L identifies CAs that are exempted from private sector performance due to a law, E.o., treaty, or IA. All other CAs are subject to private sector performance except when the work is exempted to provide for DoD readiness or workforce management needs.

(1) DoD Readiness Needs. Manpower analysts shall exempt service support functions performed in-theater from private sector performance for risk mitigation purposes as addressed by criterion B. Because operational risk is often dependent on the threat level in a geographical region, CCDRs shall reevaluate these exemptions as threat levels change and recommend workforce changes, as appropriate. Manpower analysts shall confer with mobilization and crisis planners within the DoD Component to exempt manpower dual-tasked for wartime assignments as addressed by criterion D. Manpower analysts also shall confer with mobilization and crisis planners to exempt commercial work from private sector performance that is needed for continuity of operations during a national emergency or war as addressed by criterion H.

(2) Workforce Management Needs of the Department. Criterion G identifies CAs that are exempted from private sector performance for esprit de corps reasons. Manpower analysts shall confer with personnel officials within the DoD Component to exempt commercial work from private sector performance to provide for overseas or sea-to-shore rotation (criterion J) and career development (criterion K). In addition, manpower analysts shall exempt CAs to provide for continuity of baseline operations as addressed by criterion H. CAs are also exempted based on DoD management decisions (criterion M). However, these exemptions are usually temporary, pending final resolution by the DoD Component and OSD.

d. CAs Subject to Private Sector Performance or Divestiture. All other CAs are subject to private sector performance or divestiture. These activities may be subject for review for a public-private competition (criterion R). They may be identified for divestiture or military to civilian conversion, or contracted without going through a public-private competition (criterion X). Also, CAs are sometimes temporarily retained in-house pending restructuring of the activity (criterion P), or because the CA cannot be packaged for public-private competition (criterion W).

2. IG FUNCTIONS AND ACTIVITIES CLOSELY ASSOCIATED WITH IG FUNCTIONS

a. How management responsibilities are delegated within an organization often has a direct impact on the workforce mix. For example, approval authority is an IG task. How approval authority is assigned (centralized or decentralized) has a direct bearing on the number of personnel performing IG work. Also, if a function entails both IG and commercial tasks, how the work is organized dictates the workforce mix. For instance, if IG and commercial tasks are non-severable (both have to be performed by all the manpower in the activity to accomplish the mission), then all of the manpower in the activity are designated IG to ensure that all IG tasks are performed by Government personnel. However, if IG and commercial tasks can be separated into sub-functions without adverse consequence to mission success, the manpower performing each sub-function shall be designated IG or commercial according to the sub-function performed. (See subparagraph 1.d.(2) of Enclosure 4 of this Instruction for an example.)

b. Particular attention should be paid to activities that are closely associated with IG functions. Functions listed at section 7.503(d) of Reference (g) are closely associated with IG functions (see section 2383 of Reference (h)). However, the list of functions at section 7.503(d) of Reference (g) is illustrative and not all-inclusive. Functions that are closely associated with IG functions (to include those listed in section 7.503(d) of Reference (g)) are addressed in the manpower mix criteria at Enclosure 4 of this Instruction.

(1) Although activities that are closely associated with IG functions are generally not considered to be IG, they may become IG because of the way they are performed or the circumstances under which they are performed. Decisions as to whether or not a function is IG should place emphasis on the degree to which the conditions or facts restrict or put at risk the discretionary authority, decision-making responsibility, or accountability of Defense officials. When an activity is so closely associated with an IG function that it cannot be separated or distinguished from the IG function, it should be identified as IG to preclude transferring governmental authority, responsibility, or accountability to the private sector. This includes situations where: a contractor could have to assume IG responsibilities to accomplish the job; a contractor's role with regard to an IG function would no longer be discernible from a DoD official's role; or a contractor's advice or direction could be mistaken for that of a DoD official's on a matter that involves IG responsibilities. These functions shall be designated IG as prescribed in paragraphs 1.d., 4.b., and 5.g. of Enclosure 4. The guidance for risk assessments at Enclosure 5 provides examples and additional clarification.

(2) Activities closely associated with IG functions are also exempted from private sector performance for risk mitigation purposes as addressed at paragraphs 2.b. and 7.b. of Enclosure 4.

3. PERSONAL SERVICES. Personal services shall be performed by military or DoD civilian personnel and not contracted unless specifically authorized (subpart 37.104 of Reference (g)). See subparagraph 1.b.(2) of Enclosure 5 of this Instruction for an explanation of personal services.

4. PERSONNEL SHORTFALLS

a. If a DoD Component has a military or DoD civilian personnel shortfall, the shortfall is not sufficient justification for contracting an IG function. Likewise, a personnel shortfall is not sufficient justification for contracting activities that are closely associated with IG functions if contracting the activity would result in an inappropriate risk as provided in subparagraph 2.b.(1) of this enclosure. Personnel shortfalls shall be addressed by hiring, recruiting, reassigning military or DoD civilian personnel; authorizing overtime or compensatory time; mobilizing all or part of the Reserve Component (when appropriate); or other similar actions.

b. Manpower authorities shall not designate manpower for military performance based on the assumption that DoD civilians cannot be recruited or will not deploy to perform activities during a mobilization or other national emergency. Manpower authorities shall consult the director of the DoD Component's Human Resource Office to verify whether DoD civilian employees are available or can be recruited and trained as emergency essential (E-E) employees to provide support during a mobilization or other national emergency. A sufficient number of E-E positions shall be established as are required to support a national emergency or war.

5. COST AS A DECIDING FACTOR IN WORKFORCE MIX DECISIONS. As provided in paragraph 4.f. above the signature of this Instruction, even if a function is not IG or exempt from private sector performance, DoD Components shall use DoD civilian personnel to perform the function unless DoD civilians are not the low-cost provider or there is a legal, regulatory, or procedural impediment to using DoD civilian personnel. When assessing workforce costs, manpower analysts shall not assume that one source of support (military, DoD civilian, or contractor) is less costly than another. DoD Components shall conduct a cost comparison as provided by Reference (j) to determine the low-cost provider for all new or expanding mission requirements and for functions that have been contracted but could be performed by DoD civilian employees. DoD Components shall perform public-private competitions as provided by Reference (f) to determine the low-cost provider for CAs.

6. NON-AVAILABILITY OF DoD CIVILIAN EMPLOYEES. If there is a legal or regulatory impediment to using DoD civilian employees, or the director of the local Human Resource Office certifies that DoD civilians cannot be hired, hired in sufficient time, or retained to perform a function, the function may be contracted provided it is not IG or exempt from private sector performance. If the function is IG, the activity shall be designated for military performance as provided by section 8 of this enclosure. If the function is exempted from private sector performance for other than IG reasons, the exemption shall be handled through normal management actions.

7. ORDER OF PRECEDENCE FOR CODING MANPOWER IN DoD MANPOWER DATABASES. The codes assigned to each manpower mix criterion at Enclosure 4 of this Instruction shall be used to document manpower in DoD manpower databases. Manpower mix criteria are listed in descending order of precedence at the Table in this enclosure. When two or

more criteria apply, the criterion highest on the list shall take precedence. The order of precedence at the Table is structured to give manpower officials visibility of why activities are performed by DoD civilian or military personnel. By understanding the underlying reason for the workforce mix, Defense officials can assess the risks that manpower shortfalls have on IG responsibilities, readiness, workforce management, and mission accomplishment.

8. CODING MILITARY-TO-CIVILIAN AND CIVILIAN-TO-MILITARY CONVERSIONS.

If manpower analysts decide that military personnel are performing functions that should be performed by DoD civilian personnel, or that DoD civilian personnel are performing functions that should be performed by military personnel, they shall use the appropriate code to show that the activity should be converted from military to civilian or from civilian to military performance. For example, manpower analysts shall designate military manpower with code “E,” “Civilian Authority Direction & Control,” if criterion “E” best describes the type of work. Also, civilian manpower that performs work that requires “Military-Unique Knowledge & Skills” shall be coded “F.”

9. CODING MILITARY MANPOWER LOCATED IN DoD ACTIVITIES OUTSIDE THE MILITARY DEPARTMENTS.

When manpower authorities from OSD, the Joint Staff, Combatant Commands, DoD Field Activities, Defense Agencies, or other organizations outside the Military Departments determine or revalidate their workforce mix, they shall consult officials from the Military Services to ensure that manpower needed for military rotation, career development, and wartime assignments are properly coded. This shall include manpower for interagency assignments.

ENCLOSURE 4

MANPOWER MIX CRITERIA

1. CRITERION A - DIRECTION AND CONTROL OF COMBAT/CRISIS SITUATIONS.

Manpower analysts shall code manpower in operating forces “A” if the manpower performs any of the IG functions addressed in this section. Civilian manpower in overseas locations that are coded “A” are also designated E-E as provided by DoD Directive 1404.10 (Reference (t)). E-E positions are also designated key following the procedures in DoD Directive 1200.7 (Reference (u)) to indicate they are not to be filled by Ready Reservists that can be called to active duty.

a. Command of Military Forces. Command of military forces is an IG function according to Reference (g). Command within the Military Services is implemented through a unique construct of command authority, known as the “military chain of command.” Within the operating forces, this authority begins with field commanders and extends to the lowest level of command responsible for discretionary decision making, personnel safety, and mission accomplishment. Accordingly, manpower in operational command or that may have to assume operational command of military forces is designated military and coded “A.”

b. Operational Control of Combat, Combat Support, and Combat Service Support Units. Operational control is derived, in part, from IG responsibilities assigned to commanders and their military subordinates as explained in subparagraphs 1.b.(1) and 1.b.(2) of this enclosure.

(1) Military Discipline. Military officers and enlisted personnel are subject to a strict form of discipline – i.e., they must obey all lawful orders at all times and are trained and prepared to immediately perform all duties as directed by military commanders. In addition, military personnel may not quit or abandon their duties. See subparagraphs 2.d.(1) through 2.d.(4) of Enclosure 5 concerning responsibilities inherent to military discipline that are uniquely military. This strict discipline provides military commanders with the control and flexibility needed to quickly reassign duties, reconstitute operations, provide relief and assistance to military forces during hostilities, and fight and win wars. It also provides for the orderly transfer of command and control of military operations if the commander is killed or incapacitated. This strict discipline is an IG responsibility unique to the military establishment. The unique nature of the military establishment and its role in defense of the Nation has been recognized by the Supreme Court—i.e., the differences between the military and civilian communities result from the fact that it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise.

(2) Uniform Code of Military Justice (UCMJ) Authority. Operational control is enforced, among other means, by Chapter 47 of Reference (h), also known and hereafter referred to as “the UCMJ.” Consistent with section 809 of Reference (h), commissioned officers have the authority to order the arrest or confinement of an enlisted Service member who violates the UCMJ. Commanding officers may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of their command or individuals subject to their authority who violate the UCMJ into arrest or confinement. Commissioned and warrant

officers, and those civilians subject to the UCMJ, may be ordered into arrest or confinement only by a commanding officer to whose authority they are subject. Civilians are subject to the UCMJ when serving with or accompanying U.S. armed forces in the field during a declared war or a qualifying contingency operation (as defined in Enclosure 5). The authority to order the arrest or confinement of civilians subject to the UCMJ, commissioned officers, and warrant officers may not be delegated by the commanding officer. UCMJ authority, together with the operational control it provides, entails substantial discretion and is IG-consistent with References (e), (f), and (g).

c. Combat Operations. When armed fighting or use of force is deemed necessary for national defense, the Department of Defense may authorize deliberate destructive and/or disruptive action against the armed forces or other military objectives of another sovereign government or against other armed actors on behalf of the United States. This entails the authority to plan, prepare, and execute operations to actively seek out, close with, and destroy a hostile force or other military objective by means of, among other things, the employment of firepower and other destructive and disruptive capabilities.

(1) Combat authorized by the U.S. Government is IG, coded “A,” and designated for military performance because:

(a) The U.S. Government has exclusive responsibility for discretionary decisions concerning the appropriate, measured use of combat power, including the offensive use of destructive or deadly force on behalf of the United States.

(b) Since combat operations authorized by the U.S. Government entail the exercise of sovereign Government authority and involve substantial discretion – i.e., can significantly affect the life, liberty, or property of private persons or international relations - they are IG-consistent with References (e), (f), and (g).

(c) The appropriate, measured use of combat power during hostilities is of critical national interest. Under certain circumstances, the United States can be liable for its misuse or compelled to make restitution due to its unintended collateral effects. The Department of Defense safeguards U.S. sovereign authority and reduces the risk of using destructive and/or disruptive force inappropriately by:

1. Delegating responsibility for combat operations only to military commanders through the military chain of command.

2. Holding military commanders and their forces accountable for the appropriate and controlled use of combat power and adherence to rules of engagement and the law of war. (See section 164 of Reference (h) concerning the responsibility of CCDRs for their authority, direction, and control of commands and forces assigned to their command. This responsibility entails substantial discretion and is IG-consistent with References (e), (f), and (g).)

3. Ensuring that the discretionary judgment, leadership, knowledge, and discipline necessary to perform effectively and responsibly under fire is developed and reinforced through extensive training of military commanders in tandem with their forces.

4. Holding commanders responsible for assessments of the training, discipline, and readiness of their forces to conduct assigned missions. (See section 117 of Reference (h) concerning the commanders' responsibility for force readiness. This responsibility entails substantial discretion and is IG-consistent with References (e), (f), and (g).)

(2) Consistent with subparagraph 1.c.(1) of this enclosure, manpower shall be designated military and coded "A" if the planned use of destructive combat capabilities is part of the mission assigned to this manpower (including destructive capabilities involved in offensive cyber operations, electronic attack, missile defense, and air defense). This includes manpower located both inside and outside a theater of operations if the personnel operate a weapon system against an enemy or hostile force (e.g., bomber crews, inter-continental ballistic missile crews, and unmanned aerial vehicle operators). This does not include technical advice on the operation of weapon systems or other support of a non-discretionary nature performed in direct support of combat operations.

d. Security Provided to Protect Resources and Operations in Hostile or Volatile Areas

(1) Security provided for the protection of resources (people, information, equipment, supplies, facilities, etc.) or operations in uncontrolled, unpredictable, unstable, high risk, or hostile environments inside or outside the United States entails a wide range of capabilities, some of which are IG and others of which are commercial. (See paragraph 2.b. of this enclosure for a discussion of security functions that are not IG but are exempted from private sector performance.) Subparagraphs 1.d.(1)(a) through (f) of this enclosure are examples of IG security functions.

(a) If security forces that operate in hostile environments as part of a larger, totally integrated and cohesive armed force perform operations in direct support of combat (e.g., battlefield circulation control and area security), the operations are IG. These operations entail the discretionary use of deadly force — i.e., although these operations are governed by rules of engagement, mission statements, and orders expressing the commander's intent, the military troops are still required to exercise initiative and substantial discretion when deciding how to accomplish the mission, particularly when unanticipated opportunities arise or when the original concept of operations no longer applies. These security operations require command decisions, military training, and operational control for reasons stated in subparagraph 1.c.(1) of this enclosure and must be provided through a military means. As PSCs may not perform these security operations, private security contracts are not a force structure substitute for these requirements.

(b) Security is IG if it is performed in environments where there is such a high likelihood of hostile fire, bombings, or biological or chemical attacks by groups using sophisticated weapons and devices that, in the judgment of the military commander, the situation could evolve into combat. Security performed in such high-risk environments requires command

decisions, military training, and operational control for reasons stated in subparagraph 1.c.(1) of this enclosure and shall be designated for military performance. In such situations, private security contracts are not a force structure substitute for these requirements.

(c) Security actions that entail assisting, reinforcing, or rescuing PSCs or military units who become engaged in hostilities are IG because they involve taking deliberate, offensive action against a hostile force on behalf of the United States. This type of security requires command decisions, military training, and operational control for reasons stated in subparagraph 1.c.(1) of this enclosure and shall be designated for military performance. As PSCs may not be given the discretionary latitude to engage in offensive actions, private security contracts are not a force structure substitute for these requirements. Nothing in this subparagraph of the Instruction shall preclude a PSC from defending another contractor or government entity of their own volition if consistent with U.S., international, and host nation (HN) law; Status of Forces Agreement (SOFA) and other IA; HN support agreement; and Federal regulation.

(d) Security is IG if, in the commander's judgment, an offensive response to hostile acts or demonstrated hostile intentions would be required to operate in, or move resources through, a hostile area of operation. Decisions to offensively respond to hostile acts or demonstrated hostile intentions (e.g., assault or preemptively attack) entail substantial discretion and are IG. (See subparagraph 2.d.(6)(a) of Enclosure 5 of this Instruction for additional information and an example.) This type of security requires command decisions, military training, and operational control for reasons stated in subparagraph 1.c.(1) of this enclosure and shall be designated for military performance. As PSCs may not be given the discretionary latitude to authorize or engage in offensive actions against an enemy or hostile force, private security contracts are not a force structure substitute for these requirements.

(e) Security is IG if, in the commander's judgment, decisions on the appropriate course of action would require substantial discretion, the outcome of which could significantly affect U.S. objectives with regard to the life, liberty, or property of private persons, a military mission, or international relations. Such actions typically require high-risk, on-the-spot judgments on the appropriate level of force, acceptable level of collateral damage, and whether the target is friend or foe in situations pivotal to U.S. interests. These actions are so intimately related to U.S. interests as to require government performance and, as provided by Reference (e), is IG. Private security contracts are not a force structure substitute for these requirements.

(f) If consistent with applicable U.S., international, and HN law; SOFAs and other IAs; HN support agreements; and Federal regulations, a DoD PSC may be authorized to provide security services so long as the services are not IG as provided by this Instruction. As provided by References (n) and (o), contractors may provide security services for other than uniquely military functions as identified in subparagraphs 1.d.(1)(a) through 1.d.(1)(e) of this enclosure, so long as the geographic CCDR can:

1. Clearly articulate rules on the use of force that preclude ceding governmental control and authority of IG functions to private sector contractors as addressed in subparagraphs 1.d.(1)(a) through 1.d.(1)(e) of this enclosure.

2. Set clear limits on the use of force based on U.S. law and policy, and applicable HN law, relevant SOFAs, IAs, and international law, including the law of war.

3. Include in the contract for security services a description of where the PSC will operate, a description of the anticipated threat, a description of any known or potentially hazardous situations, and a plan for how appropriate assistance will be provided to PSC personnel who become engaged in hostile situations.

(2) Security shall be designated for military performance and the manpower coded "A" if, in the judgment of the commander, it meets one or more of the criteria addressed in subparagraphs 1.d.(1)(a) through 1.d.(1)(e) of this enclosure. This includes combat support (CS) and combat service support (CSS) if all the manpower in the unit must perform one or more of these IG security functions to accomplish the mission. For example, manpower in Marine Corps CS and CSS units are coded "A" because they are required to use offensive tactics to defend the unit and accomplish the mission. In this example, two functions are performed by all of the manpower in the unit and the IG function (security) takes precedence over the commercial function for coding purposes so that IG work is always performed by government personnel. However, if IG security operations can be performed separately without adverse impact to mission success, only manpower performing IG security operations are coded "A." For example, if a Military Service has a new weapon system available for use during hostilities, but sufficient numbers of military maintainers are not yet trained, the commander might be able to use contract maintenance in a secure compound without degrading the operational capability of the system. In such cases, only the IG security forces at the compound are coded "A." However, in such cases, contractor personnel may be issued weapons for self-defense as provided by Reference (n).

(3) It should be in the sole discretion of the commander of the relevant combatant command to determine whether or not the performance by a PSC under a contract awarded for a particular activity, a series of activities, or activities in a particular location, within a designated area of combat operations, is appropriate. Such a determination shall not be delegated to any person who is not in the military chain of command.

e. Medical and Chaplain Services Performed in Hostile Areas. Services provided by military medical personnel and chaplains embedded in military units that engage in hostile action are IG. This manpower shall be designated military and coded "A" because:

(1) During hostilities, military medical personnel function as an inherent part of the unit and (as with other members of the unit) use substantial discretion when defending their patients.

(2) The First Amendment prohibits any law respecting the establishment of religion or prohibiting the free exercise thereof. Although the Department of Defense can and does contract for religious ministry from individual faiths, the Department of Defense cannot contract for the type of religious pluralism required in operational environments.

(3) The Department of Defense cannot impose upon civilian religious ministry professionals the type of religious pluralism exercised by military chaplains without risk of

challenge under the establishment clause of the First Amendment of the Constitution (Reference (v)). Accordingly, sections 3073, 5347, 5142, and 8067 of Reference (h) authorize the appointment of military chaplains. Chaplains provide for military members' religious "free exercise" rights and satisfy both the "establishment" and "free exercise" clauses of Reference (v). Legal efforts to invalidate this contention have been unsuccessful. In addition, military chaplains have support from over 230 endorsing bodies that represent over 300 faith groups to work cooperatively with other faith groups to provide for the pluralistic religious needs of military members.

(4) Even though many aspects of their duties are governed by policy and practice, military chaplains must use substantial discretion and make value judgments when interpreting DoD policy and ministering to the pluralistic religious needs of the military. To avoid proselytizing, chaplains often have to balance their personal religious beliefs with the requirements of ministering to members of different faiths or to persons of no particular faith who are brought to personal crises during war. Also, chaplains must use substantial discretion when requested for actions that certain faith groups consider essential but are inconsistent with the chaplain's personal religious beliefs, as opposed to civilian religious ministry professionals who provide specifically focused rites and sacraments according to their faith groups.

(5) Military chaplains also play an active, discretionary role in planning and preparation of activities when religion and other cultural issues and ideologies could have a pronounced influence on civil-military operations, psychological operations, or public affairs activities.

(6) If captured during an international armed conflict, unlike civilian or PSC employees performing religious or medical services, military chaplains and military medical personnel are not held as prisoners of war (POWs). They are retained persons who are permitted to attend to the religious and medical needs of U.S. POWs under the Geneva Convention. Their unique role is performed on behalf of the U.S. Government and cannot be delegated to DoD civilians or private sector contractors. (See Article 32 of the Third Geneva Convention (Reference (w)) and Articles 24, 28, and 30 of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Reference (x)).)

f. Criminal Justice and Law Enforcement Operations Performed in Operational Environments

(1) How enemy prisoners of war (EPWs), civilian internees (CIs), retained persons (RPs), other detainees, terrorists, and other criminals are to be treated when captured, transferred, detained, and interrogated during or in the aftermath of hostilities, as addressed in DoD Directive 2310.01E (Reference (y)), falls under the discretionary exercise of government authority. Responsibility for their handling as well as decisions concerning how they are treated cannot be transferred to private sector contractors.

(2) Consistent with Reference (g), control of prosecutions and performance of adjudicatory functions in support of UCMJ criminal justice proceedings are IG activities. Consistent with Reference (h) these activities must be performed by military personnel. Accordingly, this manpower shall be designated military and coded "A."

(3) Certain law enforcement operations, to include issuing warrants, making arrests, and preservation of crime scenes, are IG activities. According to Reference (g), direct conduct of criminal investigations is an IG activity. This includes interrogations and interviews conducted for law enforcement purposes. If these activities are carried out under the UCMJ as prescribed in Chapter 47 of Reference (h), or are performed in hostile areas where security necessary for DoD civilian performance cannot be provided, the operation shall use only military personnel. The Department of Defense shall build the appropriate mix of code "A" manpower and acquire and train the requisite military and civilian personnel to meet the requirements. Contractors, to include PSCs, are prohibited from performing law-enforcement activities. However, in areas where adequate security is available and expected to continue, properly trained and cleared contractors may perform special non-law-enforcement security activities that do not directly involve criminal investigations, so long as they are monitored by sufficiently trained government officials as required by Reference (g).

(4) Direction and control of confinement/correctional facilities for U.S. military prisoners in areas of operation are IG functions. Manpower performing these activities shall be designated military and coded "A" if the facility is for the confinement of offenders of the UCMJ as prescribed in section 951 of Reference (h) and the prisoners are under military command.

(5) Direction and control of detention facilities for EPWs, CIs, RPs, other detainees, terrorists, and other criminals in areas of operation are IG activities. Consistent with Chapter 47 of Reference (h) and Reference (y), these activities must be performed by military personnel. Manpower performing these activities shall be designated military and coded "A." This includes detention under the law of war as part of ongoing operations for their own protection or to remove potential threats from the battle space.

g. Intelligence and Counterintelligence Operations Performed in Operational Environments. Consistent with Reference (g), direction and control of intelligence and counterintelligence operations are IG activities. This includes the approval, supervision, and oversight of intelligence interrogations and detainee debriefings. Also, consistent with References (e), (f), and (g), intelligence and counterintelligence activities (to include intelligence interrogations and detainee debriefings) that require the exercise of substantial discretion in applying government authority and/or in making decisions for the government are IG. When performed in hostile areas where security necessary for DoD civilian performance cannot be provided, the manpower shall be designated military and coded "A." Otherwise, the manpower shall be designated DoD civilian and coded "A." (See subparagraph 2.a.(2) of this enclosure for exemptions.)

h. Federal Procurement Activities Performed in Operational Environments. According to Reference (g), Federal procurement activities with respect to prime contracts (to include determining what supplies or services are to be acquired; approving, awarding, administering, and terminating contracts; and determining whether contract costs are reasonable, allocable, and allowable) are IG. When performed in hostile areas where security necessary for DoD civilian performance cannot be provided, the operation shall use only military personnel. Otherwise, the operation shall be performed by DoD civilian manpower. The Department of Defense shall

build the appropriate mix of code “A” manpower and acquire and train the requisite military and civilian personnel to meet the requirements.

2. CRITERION B - EXEMPTION OF CS AND CSS DUE TO OPERATIONAL RISK. Section 118(b) of Reference (h) requires that the Department of Defense plan to successfully execute the full range of missions called for in the national defense strategy at a low to moderate level of risk. Consistent with Reference (a), certain commercial CS and CSS functions are exempted from private sector performance and designated for DoD civilian or military performance for risk mitigation purposes.

a. Exemption for Military CS and CSS

(1) Manpower authorities shall designate CS or CSS support functions for military performance and code the manpower “B” if, in the commander’s judgment, performance of the function by DoD civilians or contractors or total reliance on DoD civilians or contractors would constitute an unacceptable risk. This includes situations where there is a significant risk that:

(a) The threat level could increase and military personnel would be needed on short notice to provide or augment a military capability. (Section 113 of Reference (h) requires the Department to maintain the capability to reconstitute or expand the defense capabilities of the armed forces on short notice to meet a resurgent or increased threat.)

(b) There would be an unsafe number of personnel in hostile areas who are not combatants.

(c) Activities that are closely associated with IG functions would be put at an inappropriate level of risk if contracted as addressed at subparagraph 1.b.(3) of Enclosure 5.

(d) DoD civilians or private sector contractors will not or cannot continue to perform their work. This includes situations where, in the commander’s judgment:

1. The contractor can no longer fulfill the terms of the contract because the threat level, duration of hostilities, or other terms specified in the contract have changed significantly. (See paragraph 2.d. of Enclosure 5 of this Instruction for examples.)

2. A U.S., international, or HN law; SOFA or other IA; or HN support agreement has changed in a manner that affects the terms of the contract.

3. There is too great a risk that a contractor would default or not comply with the rules on the use of force.

(e) Security provided by contractors could prove inadequate due to the contractor’s weapons, operational security, communications systems, or training. For example, contract security may be inadequate for a large cache of conventional arms, ammunitions, or explosives. In addition, a commander may determine that contract security is inadequate because there is too

great a risk that an encounter with an enemy or hostile force would lead to hostilities and necessitate assistance, reinforcement, or rescue. Contractors shall not provide security for nuclear weapons (in accordance with DoD 5210.41-M (Reference (z))) or other weapons of mass destruction, e.g., captured chemical, biological, radiological, or high-explosive weapons.

(2) There are prohibitions on the use of contractors for intelligence interrogations.

(a) Consistent with section 1038 of Reference (p), no enemy prisoners of war, civilian internee, retained personnel, other detainee, or any other individual who is in the custody or under the effective control of the Department of Defense or otherwise under detention in a DoD facility in connection with hostilities may be interrogated by contractor personnel unless the following four conditions are met:

1. The Secretary of Defense determines that a waiver to this prohibition is vital to the national security interests of the United States and waives the prohibition for a period of 60 days; or determines that a renewal of the waiver is vital to the national security interests of the United States and renews the waiver for an additional 30-day period (see section 3 of Enclosure 2 concerning submission of requests for waivers to the USD(I)).

2. The contract interrogator is properly trained and certified to DoD standards consistent with DoD Directive 3115.09 (Reference (aa)).

3. A sufficient number of properly trained and certified DoD military and/or DoD civilian interrogators supervise and closely monitor the contract interrogator in real time throughout the interrogation process to ensure that the contract interrogator does not deviate from the government-approved interrogation plan or otherwise perform any IG function.

4. A video and audio recording is made of the interrogation to the extent required by section 1080 of Reference (p) and consistent with Reference (aa).

(b) Consistent with section 1038 of Reference (p), in areas where adequate security is available and is expected to continue, contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions (including as trainers of, and advisors to, interrogators) in the interrogation of persons described above if:

1. Such persons are subject to the same rules, procedures, policies, and laws pertaining to detainee operations and interrogations as apply to government personnel in such positions in such interrogations; and,

2. Appropriately qualified and trained military or civilian personnel of the Department of Defense are available to oversee the contractor's performance and to ensure that contractor personnel do not perform activities that are prohibited under this section.

(3) Manpower authorities also shall designate CS or CSS support functions for military performance and code the manpower "B" if there is a law, IA, HN support agreement, or

regulatory impediment to contracting the support service and DoD civilians cannot perform the work. For example, as explained at subparagraph 1.b.(2) of Enclosure 5 of this Instruction, DoD Components may not award personal services contracts unless specifically authorized by statute.

(4) This manpower provides a ready and controlled source of technical competence (core capability) necessary to ensure an effective and timely response to a national emergency or crisis. Decisions about the number of CS and CSS units necessary to provide a core capability are based on the guidance for risk assessments at Enclosure 5 of this Instruction.

b. Exemption for Civilian CS and CSS

(1) Manpower authorities shall designate CAs that support the operating forces for DoD civilian performance and code the manpower “B” if, in the commander’s judgment, performance of the function by PSCs or total reliance on PSCs would constitute an unacceptable risk.

(2) This includes:

(a) E-E manpower that provides continuity of operations for essential functions, maintains the availability of combat-essential systems, or performs duties critical to combat operations in overseas locations during a crisis when other civilians are evacuated as provided by Reference (t).

(b) Manpower that performs personal services, or that performs activities that are closely associated with IG functions that would be put at an inappropriate level of risk if contracted (see subparagraphs 1.b.(2) and (3) of Enclosure 5).

(3) This manpower is exempted from private sector performance and designated for DoD civilian performance. These positions cannot be vacated or eliminated during a mobilization or other national emergency without seriously impairing the ability of the activity to function effectively. These positions are also designated as key following the procedures in Reference (u) to indicate that they are not to be filled by Ready Reservists who can be called to active duty.

(4) Examples include supply and maintenance of strategic weapon systems, Army units at echelon above division, Army logistical support elements that deploy to hostile areas, technology escort units that retrieve chemical and biological weapons in forward areas, and Navy ships with CS missions that are part of the combat logistics force.

c. Threat Levels. Because operational risk often depends on the threat level in a geographic region, coding for this manpower should be reevaluated as threat levels change.

3. CRITERION D - EXEMPTION OF MANPOWER DUAL-TASKED FOR WARTIME ASSIGNMENTS. Consistent with Reference (a), manpower authorities shall establish sufficient manpower in the infrastructure so that an adequate pool of personnel is available for critical assignments in the operating forces during a mobilization or other national emergency. Manpower authorities shall consult mobilization and crisis planners within the DoD Component

to identify personnel in the infrastructure who are needed for assignments in the operating forces during such emergencies. The manpower shall be coded “D” to indicate the incumbents are dual-tasked for wartime assignments (i.e., assigned to positions in the infrastructure and also counted for assignments in the operating forces).

a. Military Manpower Designated for Wartime Assignments. Manpower in the infrastructure shall be designated military and coded “D” if the incumbents are active military or Active Guard and Reserve who are designated for assignments in the operating forces or serve as replacements for personnel in the operating forces during a mobilization or other national emergency, but perform CAs in the infrastructure during peacetime. For example, the Navy uses active-duty military from the shore establishment to stand-up fleet hospitals and to staff hospital ships with medical personnel during emergencies. Also, Air Force unit type code military are coded “D.” This manpower is designated military and exempted from private sector performance because the incumbents are needed for assignments in the operating forces during a mobilization or other national emergency before Reserve Component personnel are recalled and before post-mobilization recruits (i.e., personnel acquired after mobilization) can be trained and assigned to the operating forces to support or sustain a military operation.

b. Civilian Manpower Designated for Assignments During a Mobilization or Crisis. Manpower in the infrastructure shall be designated DoD civilian and coded “D” if the incumbents are designated for assignments in operating forces overseas or serve as alternates or replacements for personnel in overseas assignments in the operating forces during a mobilization or other national emergency. For example, E-E personnel who are assigned overseas during a crisis or who replace E-E personnel assigned to positions in overseas locations according to Reference (t) are coded “D.” These positions are also designated as key following the procedures in Reference (u) to indicate that they are not to be filled by Ready Reservists that can be called to active duty. Also, DoD civilians who are dual-status military technicians covered by section 115(c) of Reference (h) who train the Selected Reserve (SELRES) or maintain or repair equipment issued to the SELRES or Active Component forces during peacetime are coded “D” if they are designated for military wartime assignments in units of the SELRES.

c. Designations for Assignments. Manpower authorities shall consult mobilization and crisis planners within the DoD Component to determine the number and skills required for these assignments and centrally manage the coding for this manpower.

4. CRITERION E - DoD CIVILIAN AUTHORITY, DIRECTION, AND CONTROL. The IG duties in this section are inherent to DoD civilian authority, direction, control, and accountability of the Department of Defense consistent with Reference (h). Manpower analysts shall designate this work for civilian performance and code the manpower “E.” If the incumbents also have emergency-essential responsibilities, the manpower also shall be designated E-E as provided by Reference (t). If the positions cannot be vacated or eliminated during a mobilization or other national emergency without seriously impairing the ability of the activity to function effectively, the manpower shall be designated as key following the procedures in Reference (u) to indicate that they are not to be filled by Ready Reservists that can be called to active duty.

a. Civilian Leadership and Control. Manpower shall be designated civilian and coded “E” if the incumbents are directly and ultimately accountable for accomplishment of missions, discretionary exercise of DoD authority, or judgments relating to monetary transactions and entitlements. This includes ultimate control of the acquisition, use, or disposition of U.S. property (real or personal, tangible or intangible). It includes the authority to obligate Federal funds or to commit the Department of Defense to take or not take action by contract, policy, regulation, authorization, order, or otherwise. Examples include the duties and responsibilities vested in the Secretary of Defense; Secretaries of the Military Departments; Directors of Defense Agencies and DoD Field Activities; and other civilian officials specified in sections 131-142, 3013-3022, 5013-5026, and 8013-8022 of Reference (h). This also includes program/project managers, contracting officers, and other officials delegated management authority (direction and final decision making) and accountability for:

(1) Conduct of foreign relations and determination of foreign policy according to Reference (g), including implementation of IAs and treaties covered by DoD Directive 5530.3 (Reference (ab)), law of war under DoD Directive 2311.01E (Reference (ac)), and foreign military sales and security assistance programs.

(2) Recommendations and responses to Congress for changes to governing legislation and comments to draft legislation on matters concerning the Department of Defense.

(3) Determination of policies, directives, and regulatory guidance to include determining the content and application of regulations, consistent with Reference (g). However, contractors may perform services that involve or relate to the development of regulations so long as the work is properly reviewed by government personnel according to Reference (g).

(4) Approval of strategic plans according to section 306 of Reference (d), as well as program goals and objectives (including national security objectives).

(5) Determination of DoD program priorities for budget requests and determination of budget policy, guidance, and strategy according to Reference (g).

(6) Discretionary decisions concerning the effective, efficient, and economical organization, administration, and operation of the Department of Defense, such as decisions to transfer a function, power, or duty; delegate authority; or approve support agreements, cooperative agreements, and non-procurement transactions.

(7) Direction and control of certain functions and operations, to include intelligence and counterintelligence operations and activities, criminal investigations, and adjudications (other than those relating to arbitration or other methods of alternative dispute resolution) according to Reference (g).

(8) Control of treasury accounts and the administration of public trusts and grants according to Reference (g).

(9) Direction and ultimate control over the acquisition, use, or disposal of property (real or personal, tangible or intangible), to include the collection, control, and disbursement of appropriated and non-appropriated funds according to References (e), (f), and (g).

b. Civilian Expertise and Experience. Manpower shall be designated civilian and coded “E” if Defense officials require the incumbent’s judgment and insight to make informed decisions and preclude sole reliance on contract advisory assistance. The incumbents of these positions enable Defense officials to maintain ultimate control and accountability of government operations, federally funded projects, contracts, or government property or funds. Their role is closely associated with, and inherent to, the decision maker’s. They perform an active and informed role in policy development, program execution, contract administration, and judiciary or fiduciary matters. They also perform a discretionary role in establishing objectives, setting priorities, judging risks, or deciding on a course of action by narrowing the number of alternatives and recommending the DoD-preferred position based on their corporate knowledge; technical expertise; and advice, opinions, and recommendations provided by sources inside and outside the Department of Defense. Examples include manpower that has been delegated authority to:

(1) Establish terms for IAs, treaties, foreign military sales, and security assistance programs. However, contractors may assist in these activities by gathering information or providing advice, opinions, or recommendations.

(2) Draft or develop proposed changes to governing legislation and comments to draft legislation and draft Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the Government Accountability Office, or other Federal audit entity according to Reference (g). However, contractors may provide background information to assist governmental personnel with these activities.

(3) Interpret, develop, or evaluate legal opinions and implementing policy for laws, E.o.s, treaties, and IAs. However, contractors may assist government personnel by providing non-legal advice according to Reference (g).

(4) Draft, develop, or evaluate strategic plans, justifications for strategic plans, planning options, priorities, and strategies required under section 306 of Reference (d); and draft or develop performance goals, performance indicators, performance plans, program evaluations, and program performance reports required under sections 1115 and 1116 of Reference (e).

(5) Develop or evaluate program and budget requests. However, contractors may assist government personnel with these activities through workload modeling, efficiency studies, fact finding, feasibility studies, “should-cost” analyses, and other analyses per Reference (g).

(6) Maintain control and accountability of government operations, federally funded programs and projects, contracts, and Federal property and funds. However, contractors may assist government personnel with these activities through workload modeling, fact finding, feasibility/efficiency studies, and other analyses of a non-discretionary nature to support program

management, acquisition planning, and evaluations as provided by Reference (g). Manpower shall be designated DoD civilian and coded "E" if they are responsible for:

(a) Administering and managing government operations to include discretionary decisions on the reorganization and improvement of activities. However, contractors may assist government personnel by providing advice, opinions, ideas, or recommendations; gathering information; and performing other non-discretionary services that involve or relate to reorganizing or improving activities consistent with Reference (g).

(b) Systems acquisition management. However, according to section 2383 of Reference (h), contractors may support government personnel in acquisition planning by gathering information; providing advice, opinions, recommendations, or ideas; and assisting in program monitoring, milestone and schedule tracking, and other non-discretionary tasks.

(c) Allocating resources (dollars and manpower) and obligating Federal funds. However, employee utilization of government credit cards for the purchase of office supplies or temporary duty travel does not meet the funds obligation criteria specified here.

(d) With respect to prime contracts, determining what supplies or services are to be acquired by the government. However, according to Reference (g), an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the Department of Defense, subject to government oversight and acceptance.

(e) Awarding, terminating, and administering contracts for goods and services to include ordering changes to contract performance or contract quantities, taking action based on evaluation of contract performance, and accepting or rejecting contract products or services as prescribed in Reference (g). However, subject to applicable conflict-of-interest laws and regulations, contractors may assist in the development of statements of work and provide technical evaluations of contract proposals, so long as the contractor's involvement is properly administered. In such cases, the government must not allow the contractor to perform in conflicting roles that might bias its judgment, or to gain an unfair competition advantage by virtue of access to confidential business information or other sensitive information.

(f) Approving any contractual document (including documents defining requirements, incentive plans, and evaluation criteria) or participating as a voting member on any source selection boards or performance evaluation boards according to Reference (g). However, contractors may participate as technical advisors to a Source Selection Evaluation Board according to section 2383 of Reference (h).

(g) Determining whether contract costs are reasonable, allocable, and allowable according to Reference (g).

(h) Determining what government property (real or personal, tangible and intangible) is to be disposed of and on what terms. However, contractors may be given authority under government oversight to dispose of property identified by the government at prices within clearly

specified ranges as determined by the government and subject to other reasonable conditions deemed appropriate by the Department of Defense consistent with Reference (g).

(i) Consistent with Reference (g), collecting, controlling, and disbursing fees, royalties, duties, fines, taxes, and other public funds unless the function involves:

1. Activities authorized by statute, such as sections 3711 and 3718 of Reference (e) relating to private collection contractors and private collection services.

2. Collection of fees, fines, penalties, or other charges from visitors to or patrons of mess halls, post or base exchange concessions, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard cash management techniques.

3. Routine voucher and invoice examination.

(7) Maintain direction and control of the Defense workforce and contract services to include responsibility for:

(a) Actions to commission, appoint, direct, or control military and civilian personnel of the United States, consistent with Reference (e), to include the selection or non-selection of individuals for Federal government employment (including the interviewing of individuals for employment) and the approval of position descriptions and performance standards for Federal employees according to Reference (g). However, when activities are identified for competition or private sector performance, concomitant supervisory duties may also be designated for competition or private sector performance if they are not otherwise IG.

(b) Volunteers including those covered by section 1588 of Reference (h), and direct- and indirect-hire foreign national employees.

(c) Personal service contracts and general service contracts. However, contractors may be used for contract quality control and performance evaluation or inspection services under government oversight, provided guidelines for products or services can be specified and contractor involvement properly administered. In such cases, contractors must be precluded from influencing official evaluations of other contractors, and from gaining access to confidential business information or other sensitive information according to Reference (g).

(d) Supervision of contractor performance of acquisition functions required by section 2383(a)(2)(A) of Reference (h).

(8) Represent DoD interests at official functions, negotiations, and hearings, or conduct activities involving criminal justice, labor relation, law enforcement, or entitlement matters. Examples include:

(a) Control and performance of adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution according to Reference (g).

However, contractors may assist government personnel with these activities by gathering information or providing advice, opinions, recommendations, or ideas.

(b) Negotiation (e.g., endangered species negotiations and re-negotiations for Federal personnel rules for bargaining units). However, contractors may assist government personnel with these activities by gathering information or providing advice, opinions, and recommendations.

(c) Certain law enforcement operations. This includes the authority to execute and serve warrants, make arrests without a warrant, and other duties assigned to special agents of the Defense Criminal Investigative Service according to section 1585a of Reference (h). It also includes the preservations of crime scenes. However, properly trained and cleared contractors may perform special non-law-enforcement security activities that do not directly involve criminal investigations according to Reference (g).

(d) Direct conduct of criminal investigations according to Reference (g).

(e) Conduct of employee labor relations. However, contractors may serve as arbitrators or provide alternative methods of dispute resolution according to Reference (g).

(f) Conduct of administrative hearings to determine eligibility for security clearances or eligibility to participate in government programs; addressing actions that affect matters of personal reputation according to Reference (g); or resolving matters related to government employment except as provided in Chapter 11 of Reference (d).

(g) Approval of Federal license applications (except for vehicles or support equipment) and inspections according to Reference (g).

(9) Develop and clarify policy, to include DoD decisions regarding responses to requests for information in accordance with section 552 of Reference (d) (also known and hereafter referred to as “the Freedom of Information Act (FOIA)”) and administrative appeals of denials of FOIA requests. However, according to Reference (g), contractors may assist government officials with routine responses that, because of statute, regulation, or agency policy, do not require the exercise of any judgment in determining whether documents are to be released or withheld.

(10) Conduct test and evaluations (T&E) to determine the potential utility and operational suitability and effectiveness of systems and technologies; or the suitability of critical human design and human factors engineering features for systems that will be operated or maintained by DoD civilians. However, contractors may be used to provide direct support to organic T&E activities under government oversight and according to applicable laws.

(11) Direct or control intelligence and counterintelligence operations consistent with Reference (g), and perform intelligence activities that require the exercise of substantial discretion in applying government authority and/or in making decisions for the government consistent with Reference (e), (f), and (g). This includes clandestine intelligence operations. It

also includes direction, control, approval, supervision, and oversight of intelligence interrogations and detainee debriefings and, consistent with References (e), (f), and (g), performance of those aspects of intelligence interrogations and detainee debriefings that require the exercise of substantial discretion in applying government authority and/or in making decisions for the government. (See subparagraph 2.a.(2) of this enclosure for additional exemptions.)

c. Support to Agencies Outside the Department of Defense. Manpower shall be designated civilian and coded “E” if they provide advisory assistance on defense-related matters on behalf of the Department of Defense while on permanent duty outside the Department of Defense (e.g., to Congress, the White House, and other Federal or State agencies). This manpower is established by formal request and approved following procedures in DoD Directive 1000.17 (Reference (ad)) or some other formal approval process.

d. Support Provided to International Organizations and Foreign Nations. Manpower that provides advisory assistance and support to international organizations and foreign nations on defense-related matters shall be designated civilian and coded “E” if the work requires proficiencies that are not authorized to be obtained from the private sector or other government agencies. For example, exchanges of civilian personnel between the Department of Defense and defense ministries of foreign governments intended to encourage a democratic orientation of defense establishments of other countries as prescribed in section 168 of Reference (h) are coded “E.”

5. CRITERION F - MILITARY-UNIQUE KNOWLEDGE AND SKILLS

a. Military Advice and Counsel. Manpower shall be designated military and coded “F” if the incumbents are specifically required by Reference (h) to provide military advice and counsel to the President, Congress, National Security Council, Secretary of Defense, senior DoD officials, or Secretaries, Under Secretaries, and Assistant Secretaries of the Army, Navy, and Air Force. Examples include the Chairman and Vice Chairman of the Joint Chiefs of Staff; Chiefs, Vice Chiefs, Deputy Chiefs, and Assistant Chiefs of Staff of the Army, Air Force, and Marine Corps; Chief, Vice Chief, Deputy Chiefs, and Assistant Chiefs of Naval Operations; and Commandant and Assistant Commandant of the Marine Corps. These are IG responsibilities, established by post or appointment under Reference (h), that require extensive military judgment based on military experience and cannot be transferred to DoD civilians or to the private sector.

b. Accomplishment of Military Missions. CCDRs are responsible to the President and Secretary of Defense for the execution of military missions. These are IG responsibilities established under Reference (h) that require military judgment based on extensive military experience and cannot be transferred to DoD civilians or to the private sector. This manpower shall be designated military and coded “F.”

c. Policy and Procedure. Manpower in infrastructure activities shall be designated military and coded “F” if the incumbents have the authority to commit the Department of Defense to take action by direction, order, policy, regulation, contract, authorization, or otherwise; or have

responsibility for activities listed in paragraph 4.a. of this enclosure and the work requires military-unique knowledge and skills. This includes program directors, managers, directors of line operations, or principal staff elements, and other military personnel that are delegated these authorities and whose recent military training and current military experience are required for the successful performance of the prescribed duties.

d. Military Justice. Manpower in infrastructure activities responsible for military justice on behalf of the United States shall be designated military and coded “F.” These are IG responsibilities established by Reference (h) that require military representation and cannot be transferred to DoD civilians or to the private sector. For instance, responsibility for the administration of justice under the UCMJ in general and special courts-martial, summary courts-martial, courts of inquiry, and other legal proceedings is assigned to the Judge Advocates General, military judges, and judge advocates (staff judge advocates, prosecutors, defense counsel, and appellate counsel), as defined in section 801 of Reference (h). The exercise of judicial and non-judicial punishment under the UCMJ is a responsibility assigned to commanding officers, as defined in section 801 of Reference (h), pursuant to sections 822-824 and section 815 of Reference (h).

e. Law Enforcement Under the UCMJ. Manpower that issue warrants, make arrests, preserve crime scenes, or (consistent with Reference (g)) conduct criminal investigations shall be designated military and coded “F” if the duties are carried out under the UCMJ as prescribed in Chapter 47 of Reference (h).

f. Administration of Military Confinement/Correctional Facilities. Manpower responsible for the direction and control of military confinement/correctional facilities shall be designated military and coded “F” if the facility is established for the confinement of offenders of the UCMJ as prescribed in section 951 of Reference (h), and the prisoners are under military command.

g. Military-Unique Knowledge and Experience. Manpower shall be designated military and coded “F” if Defense officials require the incumbent’s military-unique judgment and insight to make informed decisions and preclude sole reliance on contract advisory assistance. The incumbents of these positions enable Defense officials to maintain ultimate control and accountability of government operations, federally funded projects, Federal contracts, government property, and funds. Their role is closely associated with, and inherent to, the decision maker’s. They perform an active and informed role in policy development, program execution, contract administration, and judiciary or fiduciary matters. The incumbents ensure that DoD officials are properly connected to the warfighting establishment and are aware of the warfighter’s perspective on programs and actions intended to support military operations. They perform a discretionary role in establishing objectives, setting priorities, assessing alternatives, judging risks, and deciding the course of action on military-related matters by narrowing the number of alternatives and recommending the preferred position. They decide the DoD preferred position based on their military-unique knowledge and experience; technical expertise; and advice, opinions, recommendations, and ideas provided by sources inside and outside the Department of Defense. (The required knowledge and experience must be more substantial than what DoD civilians with prior military experience could provide.) This includes activities

identified and examples listed in paragraph 4.b. and subparagraphs 5.g.(1) through (5) of this enclosure.

(1) Manpower that determines operational requirements and gaps in military capabilities shall be designated military and coded “F” if the work entails judgment based on military-unique knowledge and experience acquired through recent assignments in the operating forces.

(2) Manpower that provides military training shall be designated military and coded “F” if it meets the following criteria.

(a) Training shall be designated military and coded “F” if the instructor commands military trainees (as with basic training) or provides training that is specifically designed to acculturate military personnel on military standards or conventions. In addition, training of military doctrine or tactics is IG if the course material is evolving and not yet covered by government practice, policy, or procedures, or the training requires military expertise that can only be acquired through recent operational experience. Training is also IG if military presence is needed to demonstrate military leadership; to ingrain responsibility for the proper use of deadly force and proper conduct during armed conflicts; or, through example, to reinforce the integrity of the military command structure. Training functions that require substantial discretion are IG. For example, oversight of the instruction and approval of the curriculum are IG functions.

(b) Training that is coded “F” may be imparted formally in a classroom or in a unit. Examples include drill instructors; commandants of cadets at military academies; instructors in fleet training centers and schools that provide tactical aviation or field training based on current operational experience; and Active Component advisors to the United States National Guard and United States Army Reserves.

(c) Contractors may assist government instructors or provide training on the mechanics, supply, maintenance, functionality, or operation of military equipment or weapons, provided the course material is approved by government personnel and proper oversight of the instruction is maintained.

(3) Manpower that performs research, development, test, and evaluation shall be designated military and coded “F” if the work requires judgment concerning the potential utility of emerging technologies; strategies for integrating new systems with fielded systems on the battlefield or in the fleet; critical human design and human factors engineering features; or appropriate tests for operational suitability and effectiveness.

(a) This includes activities at program development agencies, testing facilities, aircraft plants, shipyards, or other armament production centers where recent “hands-on” experience and military judgment are needed to provide an independent and objective evaluation of operational effectiveness and suitability of acquisition systems that will be operated and supported by military personnel. (Defense policy requires that during operational test and evaluation, “typical” military users operate and maintain the test systems under conditions that

realistically simulate combat stress and peacetime environments if military personnel will be operating and maintaining the systems once they are fielded and/or deployed.)

(b) This does not include positions covered by section 1722 of Reference (h) that are competed for fill by both DoD civilian and military personnel unless the work requires military-unique judgment.

(4) How enemy EPWs, CIs, RPs, other detainees, terrorists, and other criminals are treated when captured, transferred, detained, and interrogated during or in the aftermath of hostilities (as addressed in Reference (y)) falls under the discretionary exercise of government authority. Responsibility for their handling as well as decisions concerning how they are to be treated cannot be transferred to the private sector to contractors who are beyond the reach of government controls. This does not include support functions performed by linguists, interpreters, report writers, command, control, communication, computer, and information technology technicians, etc., provided sufficient safeguards are implemented to ensure the work is non-discretionary and properly performed. (See Enclosure 5 of this Instruction.)

(5) Manpower that performs certain law enforcement functions, to include issuing warrants, making arrests, and preserving crime scenes, shall be designated military and coded "F." Consistent with Reference (g), manpower for the conduct of criminal investigations for EPWs, CIs, RPs, other detainees, terrorists, or other criminals shall be designated military and coded "F" if the individuals are detained under the law of war as part of ongoing operations for their own protection or to remove potential threats from the battle space. However, properly trained and cleared DoD civilians and contractors may perform special non-law-enforcement security activities that do not directly involve criminal investigations according to Reference (g).

(6) Manpower that directs and controls detention facilities for EPWs, CIs, RPs, other detainees, terrorists, and other criminals outside the areas of operation shall be designated military and coded "F" (consistent with Chapter 47 of Reference (h) and Reference (y)) if the individuals are detained under the law of war as part of ongoing operations for their own protection or to remove potential threats from the battle space.

(7) Manpower that directs and controls intelligence and counterintelligence operations consistent with Reference (g), and performs intelligence or counterintelligence activities/operations that require the exercise of substantial discretion in applying government authority and/or making decisions for the government consistent with References (e), (f), and (g) shall be designated military and coded "F" if the required knowledge and skills are military-unique. (See Enclosure 5 of this Instruction.) This includes clandestine intelligence operations and direction, control, approval, supervision, and oversight of intelligence interrogations and detainee debriefings and, consistent with References (e), (f), and (g), performance of those aspects of interrogations and detainee debriefings that require the exercise of substantial discretion in applying government authority and/or making decisions for the government. (See subparagraph 2.a.(2) of this enclosure for additional exemptions.)

h. Support to Agencies Outside the Department of Defense. Manpower that provides advisory assistance to agencies outside the Department of Defense on defense-related matters on

behalf of the Department shall be designated military and coded "F" if the work requires military-unique knowledge and skills.

(1) This includes personnel in permanent duty stations outside the Department of Defense established by formal request and approved following procedures in Reference (ad) or some other formal approval process. Examples include attachés to U.S. embassies and couriers for the State Department, as prescribed in sections 711-720 of Reference (h).

(2) This does not include military support provided to eligible organizations and activities outside the Department of Defense that is incidental to military training, accomplished through innovative readiness training covered by DoD Directive 1100.20 (Reference (ae)) or interagency support to a DoD activity by a DoD activity according to DoD Instruction 4000.19 (Reference (af)).

i. Support Provided to International Organizations and Foreign Nations. Manpower that provides advisory assistance and support to international organizations and foreign nations on defense-related matters on behalf of the Department of Defense shall be designated military and coded "F" if the work requires military-unique knowledge and skills acquired through recent assignments in the operating forces. Examples include:

(1) Military details to republics in the Western Hemisphere to assist in military matters according to section 712 of Reference (h).

(2) Support to North Atlantic Treaty Organization military commands and agencies if the manpower is not part of DoD internal management or command structure.

(3) Exchanges of military personnel between the Department of Defense and defense ministries of foreign governments and between units of the Military Services and units of foreign armed forces to encourage a democratic orientation of defense establishments and military forces of other countries as prescribed in Reference (h).

6. CRITERION G - EXEMPTION FOR ESPRIT DE CORPS. Consistent with Reference (a), manpower authorities shall exempt a limited number of CAs in the infrastructure from private sector performance for esprit de corps, to foster public support for the Department of Defense and assist in meeting recruitment and retention objectives. This manpower shall be designated DoD civilian or military and coded "G" as explained in this section. These exemptions are intended to demonstrate DoD commitment to the men and women who serve in defense of the Nation and engender group spirit, camaraderie, and a sense of pride.

a. Military Esprit de Corps

(1) Examples of military esprit de corps include:

(a) Military bands that wear military uniforms and perform during peacetime and war to promote group spirit and pride.

(b) Honor guards such as the 3rd Infantry Old Guard and Honor Guards, who perform at funerals and other ceremonies during peacetime and war to promote group spirit, a sense of pride, and honor.

(c) Navy Blue Angels who demonstrate military expertise to the public.

(d) Superintendents at the U.S. Military Academy, the U.S. Naval Academy, and the U.S. Air Force Academy, covered by Reference (h), and Reserve Officers' Training Corps instructors, who all serve as military role models.

(e) The Army Director of Religious Education who provides religious education and counseling to soldiers and their family members. (Chaplain assistants in garrison assignments are not included.)

(f) A set number of military recruiters who wear military uniforms to instill a sense of pride in military service and serve as military role models for potential recruits.

(2) These exemptions are for functions that can be performed by DoD civilians or, in some cases, the private sector, but without the same effect. Military performance of these activities carries special meaning for military personnel, their families, and the public.

(3) In the manpower mix order of precedence, "Exemptions for Military and Civilian Wartime Designations (dual status)," code "D," takes precedence over esprit de corps. Therefore, manpower that promote esprit de corps during peacetime but are dual-tasked for wartime assignments (such as Thunderbirds, Golden Knights, Army Marksmanship Units, and Parachute Units that demonstrate military expertise to the public) are coded "D." Only manpower that promote military esprit de corps during peacetime and war are coded "G."

b. Civilian Esprit de Corps

(1) Examples of civilian esprit de corps include faculty at the U.S. Military Academy, U.S. Naval Academy, and U.S. Air Force Academy, as authorized by Reference (h), and principals and faculty at DoD Dependents' Schools to demonstrate family support, promote quality of life, and foster camaraderie for recruitment and retention purposes.

(2) These exemptions are for functions that can be performed by the contractors but without the same effect. Direct involvement by DoD civilians demonstrates DoD dedication to family matters and carries special meaning for military members and their families.

7. CRITERION H - EXEMPTION FOR CONTINUITY OF INFRASTRUCTURE

OPERATIONS. Consistent with Reference (a), manpower authorities shall provide sufficient manpower for the efficient and effective operation of the Department of Defense. This includes manpower needed for continuity of operations during peacetime, crisis, or war.

a. Continuity of Operations During National Emergency or War. During a national emergency or war, when military and DoD civilian personnel dual-tasked for wartime assignments (code “D”) are reassigned to operating units, their vacant positions might not be backfilled immediately, or at all, depending on the wartime mission and workload. However, because high numbers of vacant positions can impair the ability of an activity to function effectively, activities with critical wartime missions that employ code “D” manpower must retain sufficient manpower to continue operations until critical vacated positions are filled.

(1) Manpower in the infrastructure shall be designated civilian and coded “H” if the positions cannot be vacated or eliminated during a national emergency or war without seriously impairing the ability of the activity to function effectively. This manpower serves as a corps capability during a national emergency or war. For example, the Department requires a corps capability for training critical skills. Manpower authorities also shall designate these positions as key positions following the procedures in Reference (u) to indicate that they are not to be filled by Ready Reservists that can be called to active duty.

(2) Decisions to code manpower “H” shall be made in conjunction with decisions to code manpower “D” as addressed in section 3 of this enclosure.

b. Continuity of Peacetime Operations

(1) CAs with manpower that are designated for rotation (code “J”) or career development (code “K”) must have sufficient manpower to continue operations as personnel transfer in and out of the activity. (See sections 9 and 10 of this enclosure.) Manpower shall be designated civilian and coded “H” if it is needed for continuity of operations in CAs where there is high personnel turnover due to rotation or career development. This manpower serves as a corps capability during peacetime. Decisions to code manpower “H” shall be made in conjunction with decisions to code manpower “J” and “K.” Also, decisions on the numbers of civilians needed for the continuity of direct patient care shall be determined in conjunction with decisions for shared health care as provided by DoD Instruction 6025.5 (Reference (ag)).

(2) Some activities require personal services for their efficient and effective operation. Consistent with Subpart 37.104 of Reference (g), personal services may not be contracted unless specifically authorized by statute. Determination as to what qualifies as personal services is often tied to how the work is performed or administered. A key indicator of personal services is when the government must exercise relatively continuous supervision and control over the personnel performing the work. This includes situations where (due to the nature of the service or the manner in which it is provided) government direction or supervision is needed to adequately protect the government’s interests, retain control of the function involved, or retain full personal responsibility for the function supported in a government official or employee. (See subparagraph 1.b.(2) of Enclosure 5 of this Instruction for examples.) When assessing these positions, particular attention should be paid to services that are closely associated with IG functions since they often require the type of continuous supervision or control that is prohibited under section 37.104 of Reference (g). This includes, but is not limited to, functions listed in section 7.503(d) of Reference (g). Also, not all personal services are prohibited from being contracted. This includes personal services for experts and consultants authorized under section

129b of Reference (h) and health care authorized under section 1091 of Reference (h). Manpower shall be designated civilian and coded “H” if the incumbents provide personal services that are required for the efficient and effective operation of an activity but are prohibited from being contracted.

(3) CAs that are closely associated with IG functions may be designated for DoD civilian performance rather than contracted when the manpower is needed to respond quickly and efficiently to constantly changing priorities or peak workloads within IG activities, or to properly administer or retain control of operations. This includes, but is not limited to, functions listed in section 7.503(d) of Reference (g). For example, this includes civilian personnel that would be needed to perform acquisition functions closely associated with IG functions as required by section 2383(a)(1) of Reference (h). To be coded “H,” the manpower must be needed as a ready and controlled source of technical or professional expertise (a core capability) to quickly respond to recurring or sporadic surges in IG workload or to enable managers to more effectively manage or control work that is associated with IG functions so that IG responsibilities are not put at risk and continuity of operations is maintained. (See subparagraph 1.b.(3) of Enclosure 5 of this Instruction for examples.)

c. Emergency Operations Critical to the Department of Defense. Manpower in CAs in the infrastructure shall be designated civilian and coded “H” if they are needed to provide a ready and controlled source of technical competence for emergency operations involving skills and equipment critical to the Department of Defense. Examples include firefighting and rescue operations at areas with chemical, biological, nuclear, or other agents that require special firefighting equipment or training.

d. Core Logistic Capabilities with Unique Skills. Manpower in logistics functions shall be designated civilian and coded “H” if they are needed to provide a ready and controlled source of technical competence necessary for an effective and timely response to a mobilization or other national emergency involving skills unique to the Department of Defense. Manpower for the maintenance and repair of Navy nuclear propulsion systems at Navy shipyards is an example.

8. CRITERION I - MILITARY AUGMENTATION OF THE INFRASTRUCTURE DURING WAR. During a crisis, military personnel in IG activities in the infrastructure (code “F”) that are dual-tasked for wartime assignments may be reassigned to operating units and their vacated positions might not be backfilled immediately, or at all, depending on the wartime mission and workload of the activity. Manpower needed to backfill critical positions vacated by active-duty military shall be designated military and coded “I” if the duties require military-unique knowledge and skills. Also, manpower that is needed to augment infrastructure activities during a mobilization or other national emergency due to increased workload shall be designated military and coded “I” if the work requires military-unique knowledge and skills.

a. Determining Manpower Requirements. Manpower authorities shall use a formally approved process for determining mobilization or crisis demands as required by Reference (a) and centrally manage the coding for this manpower within the DoD Component.

b. Continuity of Operations During Crises. This work is IG and designated military because it is needed for continuity of operations during a mobilization or other national emergency and the work requires military-unique knowledge and skills.

9. CRITERION J - EXEMPTION FOR CIVILIAN/MILITARY ROTATION. Consistent with Reference (b), DoD Component shall provide a rotation base for overseas and sea-to-shore rotation. This coding shall be centrally managed within the DoD Component by manpower officials. Decisions to code manpower “J” shall be made in conjunction with decisions to code manpower “H” and “K.” (See sections 7 and 10 of this enclosure.)

a. Civilian Rotation. Manpower authorities shall designate manpower in CAs in the infrastructure that perform work that could be considered for private sector performance as civilian code “J” if it is needed to provide a rotation base for civilian positions outside the United States. This shall be done when the number of civilian manpower coded “A” through “I” is not sufficient to satisfy peacetime rotation needs. This manpower is designated civilian and exempted from private sector performance because it is needed to maintain civilian overseas tour lengths and civilian personnel turnover at appropriate levels as required by section 1586 of Reference (h). This manpower shall be determined by civilian series and based on assignment, rotation, and other relevant policies. Manpower authorities shall consult the DoD Component HR authorities to verify the validity of these requirements and ensure the numbers are determined using a formally approved process.

b. Military Rotation. Manpower authorities shall designate manpower in CAs in the infrastructure that would not otherwise require military incumbents as military code “J” if it is needed to provide a rotation base for overseas or sea-to-shore assignments. This shall be done when the number of manpower coded “A” through “I” is not sufficient to satisfy peacetime rotation needs. This manpower is designated military and exempted from private sector performance because it is needed to maintain military tour lengths and personnel turnover at appropriate levels and, by so doing, keep recruitment, retention, and training costs to a minimum. This manpower shall be determined by occupational specialty and based on assignment, rotation, and career development policies and personnel tempo goals governed by DoD Directive 1315.07 (Reference (ah)). Manpower authorities shall consult military personnel officials to verify the validity of these requirements and ensure the numbers are determined using a formally approved process.

10. CRITERION K - EXEMPTION FOR CIVILIAN/MILITARY CAREER DEVELOPMENT. Consistent with Reference (a), DoD Components shall provide reasonable opportunities for the development of both military and civilian personnel. This coding shall be centrally managed within the DoD Component. Decisions to code manpower “K” shall be made in conjunction with decisions to code manpower “H” and “J.” (See sections 7 and 9 of this enclosure.)

a. Civilian Career Development. Manpower authorities shall designate manpower in CAs in the infrastructure that perform work that could be considered for private sector performance as civilian code “K” if it is needed to provide career-broadening opportunities for civilian

personnel. This shall be done when the number of manpower coded “A” through “J” does not provide adequate developmental assignments and day-to-day work experiences necessary to produce competent leaders, administrators, and personnel with skills critical to the Department of Defense. To be coded “K,” the manpower must provide career-broadening assignments for developing critical technical or leadership skills (competencies) that cannot be taught or directly acquired, or acquired in sufficient numbers from the private sector. Manpower authorities shall consult DoD Component HR authorities to verify the validity of these requirements and ensure the numbers are determined using a formally approved process.

b. Military Career Development. Manpower authorities shall designate manpower in CAs in the infrastructure that do not otherwise require military incumbents as military code “K” if it is needed to provide career paths for development of military-unique competencies. This shall be done when the number of manpower coded “A” through “J” does not provide adequate career development opportunities for the military coded “A,” “B,” “D,” “F,” and “I.” This manpower is designated military and exempted from private sector performance because it is needed to provide developmental assignments and day-to-day work experiences necessary to produce military leaders and develop military-unique knowledge and skills. Manpower authorities shall consult military personnel authorities to verify the validity of these requirements and to ensure they are determined by military occupational specialty using a formally approved process that considers options for combining occupational specialties and restructuring grade requirements.

11. CRITERION L - EXEMPTED BY LAW, E.O., TREATY, OR IA

a. Law and E.o. Military and civilian manpower shall be coded “L” if the activity is not IG or exempt from private sector performance for reasons covered by criteria A through K but is restricted from private sector performance due to a law or E.o., including:

(1) Manpower that performs firefighting and security guard functions at DoD military installations/facilities covered by section 2465 of Reference (h), that are not coded “A” through “K.”

(2) Manpower that performs depot-level maintenance and repairs functions necessary to provide a “Core Logistics Capability” or comply with the “50 percent rule” as specified in sections 2464 and 2466 of Reference (h), that are not coded “A” through “K.”

(3) Manpower in activities that are not coded “A” through “K” with access to trade secrets that cannot be properly protected from contractors as required by section 1905 of title 18, U.S.C. (Reference (ai)).

(4) Manpower in activities that are not coded “A” through “K” that performs CAs because HN laws prevent the use of contract support or performance by U.S. or foreign national (FN) civilians.

(5) Dual-status military technicians that are not coded “A” through “K,” but are required to meet Congressional end-strength floors in section 115 of Reference (h).

b. Treaties and IAs

(1) Manpower shall be designated FN civilian and coded “L” if the terms of a treaty or IA specifically require the United States to use direct- or indirect-hire FNs, or make it impractical to convert from FN support. For example, under the Army’s cost-sharing agreements with the governments of Korea and Japan, 70 percent and 100 percent of the costs of the FN workforces are borne by the Korean and Japanese governments, respectively.

(2) Manpower shall be designated U.S. civilian and coded “L” if, due to a SOFA, using other than U.S. civilians would require increasing FN authorizations beyond what is required. (The U.S. and FN civilian workforce mix is agreed upon in each SOFA and varies by country.)

(3) Manpower shall be designated military or DoD civilian and coded “L” if, due to a treaty, SOFA, or other IA, private sector contract support may not be used and military or DoD civilian performance is required.

12. CRITERION M - EXEMPTED BY DoD MANAGEMENT DECISION. Manpower authorities shall code military and civilian manpower “M” if a DoD official who exercises management authority over a functional area has exempted the manpower from private sector performance for reasons not covered by criteria A through L. This authority is vested in the Heads of the DoD Components as listed in section 2 above the signature of this Instruction. Under Secretaries of Defense with subordinate Assistant Secretaries of Defense can delegate this authority to those Assistant Secretaries of Defense or equivalent levels; however, this authority shall not be delegated below the Assistant Secretaries of Defense or equivalent level.

a. Pending a Final DoD Decision. Manpower that has been exempted from private sector performance based on a formally approved DoD Component exemption that is not covered by criteria A through L and has not yet been formally reviewed by OSD shall be coded “M.” This restriction is temporary, pending a formal DoD review. Supporting documentation for the decision must be maintained by the DoD Component.

(1) CAs that could be performed by civilian personnel may be designated for military performance and coded “M” on an exception basis if the DoD Component manpower authority has determined that the required work must be performed by military personnel for reasons not covered by criteria A through L. In such cases, there must be sufficient justification and appropriate documentation to support the decision. These designations shall be reviewed at least every 2 years to ensure the validity of the exemption.

(2) IG work that is normally performed by civilian personnel may be designated for military performance and coded “M” on an exception basis if the manpower authority has documentation to show that the required work must be performed by military personnel for reasons not covered by criteria A through L. For example, IG work that is performed in a remote location where a sufficient number of civilians with the appropriate knowledge, skills, and abilities are not available and cannot be recruited and trained may be designated for military

performance. These designations shall be reviewed at least every 2 years to ensure the validity of the exemption.

b. Pending Resolution of the Workforce Mix During a Crisis. Manpower in activities that are established on an emergency basis shall be coded “M” pending final resolution of the appropriate workforce mix. For instance, manpower may be designated M on an emergency basis to respond to increased threat levels; to address a time-sensitive, high-priority national defense need; or as a safeguard against premature loss or interruption of an essential support function during a mobilization or other national emergency.

c. Pending Change of Authorized Military End Strength. If the Department of Defense is unable to obtain immediate relief from floors set on military personnel strengths in section 115 of Reference (h) or the annual National Defense Authorization Act, manpower authorities shall code the manpower “M.”

13. SUBJECT TO REVIEW FOR PRIVATE SECTOR PERFORMANCE OR DIVESTITURE. DoD Components shall designate all other manpower in CAs by using codes “P,” “R,” “W,” or “X” as provided in this enclosure. DoD Components shall periodically review the work to determine if it can be more efficiently or cost-effectively performed by another source or eliminated.

14. CRITERION P - PENDING RESTRUCTURING OF CAs. DoD Components shall use code “P” for all DoD military or civilian manpower in CAs that are pending the results of an approved major restructuring initiative that has been approved in writing. This code is limited to major restructuring initiatives, such as base closures; functional realignments; functional assessments; or consolidation actions. Coding for this manpower is temporary, normally not to exceed 3 years, pending the schedule of the formally approved restructuring initiative.

15. CRITERION R - SUBJECT TO REVIEW FOR PUBLIC-PRIVATE COMPETITION. DoD Components shall use code “R” for military or civilian manpower performing CAs if:

a. The DoD civilian and/or military manpower is performing the activity as a result of a public-private competition that was performed in accordance with Reference (f).

b. The DoD civilian and/or military manpower is performing work in an activity that has a performance decision pending in a public-private competition.

c. The DoD Component has determined, based on a comparison of the costs (as provided by Reference (j)), that a new, expanded, or contracted requirement for a CA can be performed at less cost by DoD civilian employees than by the private sector.

d. If the DoD Competitive Sourcing Official has determined, based on a review of documentation provided by the contracting officer, that there is not satisfactory commercial source following the procedures in Reference (f).

e. The DoD Component has determined that the civilian and/or military manpower may be considered for a future public-private competition pending the outcome of a management determination.

16. CRITERION W - NON-PACKAGEABLE CA. DoD Components shall designate manpower performing CAs with code “W” when a competition is not possible because the work has been certified as not packageable for competition with the private sector by the DoD Component’s Competitive Sourcing Official. This criterion differs from criterion H, which applies to CAs that are closely associated with IG functions (see subparagraph 7.b.(3) of this enclosure).

17. CRITERION X – ALTERNATIVE TO PUBLIC-PRIVATE COMPETITION. DoD Components shall designate manpower with code “X” if the CA can be contracted without performing a public-private competition. This includes certain aspects of research and development as provided by section 114 (note) of Reference (h); architecture and engineering as provided by section 4540 of Reference (h) and section 609 of title 40, U.S.C. (Reference (aj)); and natural resources management planning as provided by section 670(a) of title 16, U.S.C. (Reference (ak)). This also includes manpower performing CAs that have undergone, or are identified to undergo, a public-private partnership, divestiture, privatization initiative, or intra-governmental support agreement with a non-DoD agency. CAs are also coded “X” if they have been designated in writing as a high-performing organization by the DoD CSO, or if the military manpower in a CA has been identified for future conversion from military to civilian performance. This criterion differs from criterion L, which applies if a law, E.o., treaty, or IA prohibits any means of contracting.

ENCLOSURE 5

GUIDANCE FOR RISK ASSESSMENTS

1. RISKS TO OVERSIGHT/CONTROL OF IG AND CAs. The degree of government involvement and expertise necessary to keep sufficient oversight and control of government operations will vary by function and situation, depending on such factors as delegation of approval authority, complexity of operation, geographic dispersion of the activity, regulatory authority, and consequence of default. The following factors should be considered when conducting risk assessments to preclude ceding governmental control and authority of IG functions to the private sector where there is insufficient public accountability and transparency. This list is not all-inclusive and should be expanded to address the specific activity under review. These factors should be considered when determining the source of support for functions in both the operating forces and support establishment.

a. Contract Advisory Assistance

(1) Need for Informed, Independent Judgment. Discretionary decisions made by government officials must be based on informed, independent judgments, and must not be unduly influenced or controlled by private contractors who are beyond management controls applicable to public employees and who might not have objectives in concert with the public's best interests. Although a DoD official may consider a contractor's advice when making a decision, the official may not rely solely or so extensively on a contractor's recommendations that, by so doing, the decision no longer reflects an independent judgment. For example, although a contractor may develop options for a government decision maker, or develop options for expanding decisions already made by government officials, the contractor may not be given the authority to decide on a course of action for the government. DoD Components shall:

(a) Ensure contract advisory assistance is not used to support a government decision without thorough knowledge and understanding of the work submitted by the contractor and recognition of the need to apply independent judgment in the use of the work products.

(b) Take steps to ensure that a contractor's involvement on a project is not so extensive or so far advanced that the government does not have the ability (sufficient time, information, or resources) to develop and consider options other than those provided by the contractor (such as during staff coordination of products developed by contractors).

(c) Ensure that contractors do not have undue influence in the final decision to include determining which, and how, options or recommendations are provided to Defense officials for a final decision; or why an option is recommended to the deciding official as the government's preferred alternative.

(2) Government Oversight. To safeguard the government's authority, when plans and recommendations are developed by a PSC or by joint public-private teams, government personnel alone shall be responsible for a final review, revision, or comment on the product.

Defense officials shall conduct risk assessments to determine whether there are a sufficient number of knowledgeable and experienced government employees available to maintain sufficient oversight of the project; to determine whether the contractor has met the terms of the contract and provided a complete and objective product; and review and revise the contractor's recommendations to the extent necessary to ensure the decision expresses the views of the Department of Defense, conforms to Defense policy, complies with the law, and supports public interests; and to provide an alternative point of view or recommendation to the deciding official.

b. Contract Support Services

(1) Discretionary Decisions. As provided at paragraph 1.b. of Enclosure 3 of this Instruction, IG functions include, among other things, activities that require either the exercise of substantial discretion when applying Federal Government authority, or value judgments when making decisions for the Federal Government. Although some support services involve discretionary decisions, not all discretionary decisions are IG. For a decision to be IG, it must commit the government to a course of action when two or more alternative courses of action exist and have sufficient consequence to the Department of Defense to warrant government control. Consistent with Reference (f), decisions are not IG if they can be limited or guided by existing policies, procedures, directions, orders, or other guidance that identify specific ranges of acceptable decisions or conduct and where the decisions can be subjected to final approval or regular oversight by agency officials. DoD officials shall review projects in enough detail to determine the risks and consequences to contracting the service. As a part of this review, they must determine if the consequences of the discretionary decision (to include possible unintended consequences) are of sufficient significance to the Department of Defense to warrant government control. This shall include determining whether the way the function is performed would result in inappropriate contract relationship (e.g., personal services), inappropriately affect assignment of liability, or inappropriately circumvent the Federal Government's standards of conduct.

(2) Personal Services. Some support services require a level of government supervision and control that is inappropriate in a contractual arrangement. Subpart 37.104 of Reference (g) states that contracts for personal services shall not be awarded unless specifically authorized by statute, i.e., authorized by sections 129b and 1091 of Reference (h). A personal services contract is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. This kind of relationship occurs when, due to the terms of the contract or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a government officer or employee. Particular attention should be paid to services that are closely associated with IG functions since they often require the type of continuous supervision or control that is prohibited under section 37.104 of Reference (g). The following should be used as a guide in assessing whether or not the work is personal in nature:

(a) Due to the inherent nature of the service or the manner in which it is provided, government direction or supervision of the employees is required (directly or indirectly) in order to adequately protect the government's interest; retain control of the function involved; or retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

(b) Services are applied directly to the integral effort of the DoD Component in furtherance of assigned function or mission.

(c) Comparable services, meeting comparable needs, are performed in the same or similar situations using military or DoD civilian personnel.

(d) The service is performed on-site; the government furnishes principal tools and equipment; and the need for the service can reasonably be expected to last beyond 1 year.

(3) Contract Support Services Involving Discretionary Decisions. Contractors may provide a support service if the required level of performance or quality of service is specified in the contract in quantifiable and measurable terms and is not left to the discretion of the contractor, and a DoD official has final approval of the product or service through a government review or test. Support services shall not be contracted if discretionary decision making is involved which cannot be adequately covered by the terms of the contract or cannot be separated from the services provided (i.e., it is an inherent part of the service provided). Particular attention should be paid to services that are closely associated with IG functions since they often involve discretionary decisions that cannot be adequately covered by the terms of the contract. DoD Components shall conduct risk assessments to verify if the DoD official, in the administration of the contract, would have to:

(a) Regularly address policy issues not covered, or not adequately covered, by DoD issuances, doctrine, or other formally approved document.

(b) Regularly or routinely provide guidance on procedural matters of a discretionary nature because the Department of Defense does not have established practices or procedures or a clear vision for how to accomplish the work.

(c) Regularly change how the service is performed to match evolving law, policy, doctrine, or tactics because the situation is so fluid that revisions are needed on a recurring basis (such as security services performed in uncontrolled, unpredictable, unstable high-risk environments).

(d) Supervise and control the daily activities of the contractor as opposed to reviewing or testing the final product because how the services are performed and with what consistency is critical to an acceptable outcome.

(e) Retain the right to add or remove employees from the project for other than security or misconduct reasons, as opposed to specifying performance standards, because the activity is too complicated to specify how or what should be accomplished or ranges of acceptable actions (such as time-sensitive projects where a short suspense drives decisions about the scope of work and what can reasonably be accomplished in the allotted timeframe).

(f) Intervene in operations involving FN individuals or other Federal agencies not governed by the same laws, treaties, E.o.s, rules, regulations, or policies as DoD personnel (e.g.,

Central Intelligence Agency agents) in order to mediate policy or procedural differences, or prevent other parties from usurping DoD authority.

(4) Maintaining a Core Capability for Critical Operations. Even if a support function does not entail discretionary decisions or personal services, DoD Components shall review the function to verify whether the work should be performed by government personnel to provide a core capability for readiness or risk mitigation purposes, or for continuity of operations as addressed at sections 2, 3, 7, and 8 of Enclosure 4 of this Instruction.

2. RISKS TO COMMAND AND OPERATIONAL CONTROL. The following should be used to assess the risks of using military, DoD civilian, and private sector contractor personnel to accomplish Defense missions.

a. Readiness Reporting. If commanders do not have visibility of the readiness of critical support elements, they may not be able to judge the readiness of the military forces to conduct and/or sustain military operations. The less information the commander has to assess the readiness of DoD civilians and Defense contractors who are responsible for providing critical support functions, the greater the risk. The following should be considered when assessing whether to use DoD civilians and Defense contractors to provide critical support in operational environments:

(1) Whether readiness reporting is addressed to the commander's satisfaction by the contractor under the terms of the contract.

(2) Whether there are historical records/studies indicating whether Defense contractors or DoD civilian E-E employees perform satisfactorily under environmental conditions, threat levels, and for the length of time required.

b. Replacing Lost Support. The fewer options the Defense officials have for replacing lost support, the greater the risk. When conducting risk assessments, the following should be considered:

(1) Whether an alternative source of support can be obtained from an alternative private sector provider in sufficient time. The higher the number of contractors that can provide the support service, the lower the risk of using contract support.

(2) Whether an alternative source of in-house support can be obtained in sufficient time. The higher the number of in-house sources, the lower the risk of using contract support.

c. Continuity of Operations During Hostilities

(1) Sustainability. Contractors that cannot replace contractor employees who are killed, injured, or otherwise lost; rotate personnel during a protracted conflict; or replace equipment, supplies, and tools, represent an inappropriate risk to combat operations. The higher the number of contract personnel or resources needed to sustain a conflict, the higher the risk.

(2) Surge Capability. Contractors might be able to perform a support function during peacetime but lack the resources or technology to increase or surge operations during a crisis. Contractors that have a limited capacity (e.g., adequate facilities) or capability (e.g., adequate equipment, tools, or trained personnel) to increase or surge operations to the required operating tempo (OPTEMPO), represent a risk to military operations. The higher the increase in OPTEMPO required for a mobilization or other national emergency, the higher the risk.

(3) Information Assurance. Military commanders should verify whether contractors can safeguard information and information systems consistent with policy in DoD Directive 8500.1E (Reference (al)). If they cannot, there is a risk that disrupted communications could delay or prevent timely delivery of critical services or supplies and adversely impact military operations.

d. Operational Control in Hostile Environments

(1) Risk of Non-Performance. Section 802(a)(10) of Reference (h) states that in time of declared war or a qualifying contingency operation, persons serving with or accompanying an armed force in the field are subject to the UCMJ. However, because desertion (covered under Article 85 of the UCMJ) and absence without leave (covered under Article 86 of the UCMJ) both apply to “a member of the armed force,” neither UCMJ offense is likely to apply to a civilian who is serving with or accompanying the armed forces in the field during a declared war or qualifying contingency operation, but who is not actually a member of the armed force. As a result, DoD civilian and DoD contractor employees arguably may quit their jobs or not perform their duties without risk of criminal prosecution under the UCMJ. If the risk of non-performance is high enough to adversely impact the readiness status of the unit, commanders should switch to an alternate source of support.

(2) Misbehavior Before the Enemy. Section 899 of Reference (h) punishes “misbehavior before the enemy,” to include, among other things, running away and cowardly conduct in the presence of the enemy and not affording all practicable relief and assistance to other troops when engaged in battle. Section 899 of Reference (h) only applies to members of the armed forces. Therefore, this offense is not likely to apply to a civilian who is serving with or accompanying the armed forces in the field during a declared war or a qualifying contingency operation, but who is not actually a member of the armed forces. Depending on the scenario, heavy dependence on DoD civilian or contractor personnel could represent an inappropriate risk.

(3) Reconstitution of Support Functions and Cross-Utilization of Personnel. If support units are attacked or sustain damage, the military commander may require direct control and unconstrained use of all available personnel to reconstitute essential support functions. The ability of field commanders to reconstitute support functions and/or sustain operations is maximized if personnel can be cross-utilized to perform more than one function.

(a) Flexibility. Commanders often cannot compel DoD civilians or contractor employees to perform work or assume risks that were not agreed upon under the terms of their employment or covered in the terms of the contract. In emergency situations, a military commander may direct DoD civilians to take lawful actions. However, a military commander

may only direct contractor employees to take lawful actions so long as those actions do not require them to assume IG responsibilities and the actions are covered by the terms of the contract. Because contract personnel may not perform IG duties, use of contractors may limit the commander's flexibility in crisis situations and represent an inappropriate risk.

(b) Responsiveness. Generally, contractor employees (unlike U.S. and foreign national civilian and military personnel) are not under the direct supervision of the military commander. The contracting officer, or designee, serves as the liaison between the commander and the defense contractor for directing or controlling the contractor's performance. Separate command and contractual lines of authority could hamper or overly complicate the commander's control and constitute an inappropriate risk.

(4) Disciplinary Authority. Defense contractors are responsible for ensuring that their employees perform under the terms of the contract and comply with applicable laws, directives, regulations, and orders. During a declared war or a qualifying contingency operation, UCMJ jurisdiction over DoD contractor personnel serving with or accompanying the armed forces overseas is governed by Reference (h), Executive Order 12473 (Reference (am)), and the Secretary of Defense Memorandum (Reference (an)). Limits in Reference (an) could overly complicate operations in high-risk situations.

(5) Restrictions Due to Laws and IAs. Laws and IAs often restrict how DoD civilians and DoD contractors can be utilized.

(a) Law of War. During international armed conflicts, if civilians who are authorized to accompany armed forces are captured, they are entitled to POW status under Reference (y). It is not a violation of the law of war for DoD civilians and Defense contractor employees who are authorized to accompany the armed forces in the field during hostilities to be issued a weapon on the authority of the Combatant Commander for individual self-defense as addressed in References (n), (o), and (t). However, while supporting military operations, DoD civilians and contractor employees may be at risk of injury or death incidental to enemy actions while supporting military operations. Also, under the law of war, civilians accompanying the armed forces may be directly targeted for such time as they take a direct part in hostilities but, if captured, do not lose their entitlement to POW status.

(b) Local National (LN) and HN Laws and IAs. Absent a SOFA or other IA or international law to the contrary, contractor employees might be subject to the domestic criminal laws of the HN. For example, use of force by contractor employees may be strictly limited by LN and HN law and not protected by IAs and SOFA provisions. Contractor personnel who exceed the limits imposed by applicable laws and agreements may be subject to prosecution and civil liability. In addition, in certain situations, IAs and HN support agreements might restrict services that can be contracted by limiting contracted services to HN contractors or by prohibiting contractor use altogether.

(c) U.S. Law and U.S. Government Regulations. U.S. law and U.S. Government regulations also impose restrictions on the use of Defense contractors. For example, IG functions may not be contracted and the Department of Defense may not award a personal

service contract except when authorized by statute. (See subparagraph 1.b.(2) of this enclosure concerning personal services.) Also, U.S. laws restrict the types of weapons that can be exported or procured for use by the private sector.

(6) Rules Governing Security Services. Consistent with subpart 52.225-19 of Reference (g) and subpart 252.225-7040 of Reference (l), contractor personnel performing security functions are authorized to use deadly force in self-defense and when use of such force is consistent with the terms and conditions contained in the contract or with their job description and terms of employment.

(a) Consistent with Reference (n), geographic CCDRs issue rules on the use of force that govern the use of weapons by civilians. Rules on the use of force that govern PSCs are different from the rules of engagement applicable to military forces. Rules of engagement may authorize military forces to respond offensively. Although rules on the use of force may authorize PSCs to use deadly force in defense of hostile acts or demonstrated hostile intentions, they may not authorize PSCs to use offensive tactics as a means of achieving their mission/contract objective. Security that requires the type of tactics that are authorized only to military forces (as discussed in paragraph 1.d. of Enclosure 4 of this Instruction) should not be contracted because the security entails IG responsibilities that are uniquely military.

(b) Threat levels are neither static nor uniform across all regions of a conflict. Even though it may be appropriate for PSCs to provide security services at certain times and in certain regions of a conflict, contract security services may have to be curtailed or suspended if the level of hostilities increases significantly. They also may have to be curtailed if the terms or conditions contained in the contract no longer apply or it appears that the contractor can no longer fulfill the terms of the contract without assuming IG responsibilities. Commanders must use judgment when making these decisions and err on the side of caution to avoid the inadvertent transfer of IG responsibilities to the private sector. According to Reference (f), in order to avoid transferring IG authority to a contractor, government officials must consider the provider's authority to take action that will significantly and directly affect life, liberty, or property of individual members of the public. Requiring officials must consider the likelihood of the provider's need to resort to force in support of a police or judicial activity; whether the provider is more likely to use force, especially deadly force; and the degree to which the provider may have to exercise force in public or relatively uncontrolled areas.

e. Risk of Active Duty Service Determinations for Civilian or Contractual Groups. Commanders shall not hire or plan to use DoD civilians or contractor employees in a manner that could qualify as active military service. Consistent with DoD Directive 1000.20 (Reference (ao)), active duty service is considered to be equal to active military service for purposes of qualifying for Department of Veterans Affairs benefits, based on the extent to which the group was under the control of the U.S. armed forces in support of a military operation or mission during an armed conflict. A determination of active duty service that is considered to be equivalent to active military service is made based on the extent to which the group was under control of the U.S. Armed Forces in support of a military operation or mission during an armed conflict. The extent of control must be similar to that exerted over military personnel and is determined based on the uniqueness of service; organizational authority over the group;

integration into military organization; subjection to military discipline; subjection to military justice; prohibition against members of the group joining the armed forces; and receipt of military training and/or achievement of military capability. This issue is particularly relevant to PSCs operating in hostile environments that are at risk of performing IG responsibilities.

f. Operational/Logistic Footprint. Manpower analysts shall verify whether use of civilians or contractors would increase the size of the operational “footprint” (e.g., personnel numbers or physical security needs) or the logistic “footprint” (e.g., medical support, mess, transportation, or supplies) beyond that required by military personnel. A large operational/logistic footprint could limit the commander’s flexibility in certain situations and represent an inappropriate risk.

g. Use of Indigenous Personnel. Military commanders shall verify whether contractors plan to employ indigenous personnel to fulfill contract needs and the concomitant threat to the security of U.S. personnel. The use of local workers during a fluid counterinsurgency mission or the use of members of one ethnic group to the exclusion of others could create unrest and raise the risk of sabotage. For example, use of indigenous personnel as linguists for support when interrogating prisoners may invite problems when personnel from one ethnic or religious group are asked to translate conversations involving prisoners from another ethnic or religious group.

h. Operational Security. Defense officials do not have visibility into the contractor’s hiring practices and background checks and should assess the risk of using contractors for operations that entail operational security.

3. RISKS TO FISCAL RESPONSIBILITIES. When assessing the merits of contracting functions, manpower authorities shall also assess whether it would require more manpower to develop the statement of work; award and execute the contract; and assess the quality of the final product or service, than it would take to perform the service with government personnel. These costs should be considered when conducting cost comparisons required by Reference (j).

GLOSSARY

PART I. ACRONYMS AND ABBREVIATIONS

CA	commercial activity
CCDR	Commanders of the Combatant Commands
CI	civilian internee
CS	combat support
CSS	combat service support
E-E	emergency essential
E.o.	Executive order
EPW	enemy prisoner of war
FN	foreign national
FOIA	Freedom of Information Act
HN	host nation
HR	human resources
IA	international agreement
IG	inherently governmental
IGCA	Inherently Governmental Commercial Activities
LN	local national
OMB	Office of Management and Budget
POW	prisoner of war
PSC	private security contractor
RP	retained person
SELRES	Selected Reserve
SOFA	status of forces agreement
T&E	test and evaluation
UCMJ	Uniform Code of Military Justice
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology and Logistics
USD(P&R)	Under Secretary of Defense for Personnel and Readiness
USD(I)	Under Secretary of Defense for Intelligence

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this Instruction.

combat. When determining what is IG, an authorized, deliberate, destructive, and/or disruptive action against the armed forces or other military objectives of another sovereign government or other armed actors on behalf of the United States (i.e., planning, preparing, and executing operations to actively seek out, close with, and disrupt and/or destroy an enemy, hostile force, or other military objective). Includes employing firepower and/or other destructive/disruptive capabilities to the foregoing ends. This definition is not intended and should not be construed to limit in any way the inherent right of an individual to act in self-defense.

combat power. Defined in Joint Publication 1-02 (Reference (ap)).

commander's intent. A clear, concise statement of what the force must do to succeed with respect to the enemy and the terrain and the desired end state. It provides the link between the mission and concept of operations by stating the key tasks that, along with the mission, are the basis for subordinates to exercise initiative when unanticipated opportunities arise or when the original concept of operations no longer applies.

concept of operations. Defined in Reference (ap).

hostile act. Defined in Reference (ap).

hostile environment. Defined in Reference (ap).

hostile force. Defined in Reference (ap).

hostile intent. Defined in Reference (ap).

operating forces. Defined in Reference (ap).

operation. Defined in Reference (ap).

preemptive attack. Defined in Reference (ap).

qualifying contingency operation. Military contingency operation conducted for the purpose of engaging an enemy or a hostile force in combat. Disciplinary authority over civilians under Article 2(a)(10) of the UCMJ is governed by References (h), (al), and (am).

rules of engagement. Defined in Reference (ap).