



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1600

MAY 19 2008

The Honorable Richard B. Cheney
President of the Senate
Washington, DC 20515

Dear Mr. President:

The Department of Defense requests that the Congress enact the enclosed legislative proposals as part of the National Defense Authorization Bill for Fiscal Year 2009.

The purpose of each proposal is stated in the accompanying section-by-section analysis.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presenting of these legislative proposals for your consideration and the consideration of the Congress.

Sincerely,

A handwritten signature in cursive script that reads "Daniel J. Dell'Orto".

Daniel J. Dell'Orto
Acting

Enclosure:
As stated





GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1600

MAY 19 2008

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515

Dear Madam Speaker:

The Department of Defense requests that the Congress enact the enclosed legislative proposals as part of the National Defense Authorization Bill for Fiscal Year 2009.

The purpose of each proposal is stated in the accompanying section-by-section analysis.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presenting of these legislative proposals for your consideration and the consideration of the Congress.

Sincerely,

A handwritten signature in cursive script that reads "Daniel J. Dell'Orto".

Daniel J. Dell'Orto
Acting

Enclosure:
As stated



SEC. ____ . DEPOSIT FUND FOR MINOR BENEFICIARIES.

1 (a) IN GENERAL.—Chapter 75 of title 10, United States Code, is amended by inserting
2 after section 1477 the following new section:

3 **"§ 1477a. Deposit fund for minor beneficiaries**

4 "(a) ESTABLISHMENT.—There is authorized to be established a deposit fund in the
5 Treasury to be called the Minor Beneficiary Protection Fund.

6 "(b) DEPOSITS.—Under regulations prescribed by the Secretary of Defense or the
7 Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a
8 service in the Navy, deposits into the fund created under subsection (a) may be made when the
9 beneficiary is a minor and the death gratuity cannot be paid because no valid claim has been
10 submitted by a court-appointed guardian of the beneficiary's estate.

11 "(c) INVESTMENT.—The Secretary concerned may request the Secretary of the Treasury
12 to invest such portion of the fund as is not, in the judgment of the Secretary concerned, required
13 to meet the current needs of the fund. Such investments shall be made by the Secretary of the
14 Treasury in public debt securities with maturities suitable to the needs of the fund, as determined
15 by the Secretary concerned, and bearing interest at a rate determined by the Secretary of the
16 Treasury, taking into consideration current market yields on outstanding marketable obligations
17 of the United States of comparable maturity.

18 "(d) PAYMENTS.—Deposits under subsection (b), including any accumulated interest,
19 attributed to the death of a specific member may be paid upon receipt of a valid claim from—

20 "(1) the court-appointed guardian of the beneficiary's estate; or

21 "(2) the beneficiary submitted after the beneficiary's 18th birthday.

1 "(e) UNCLAIMED DEPOSITS.—Deposits under subsection (b) and all accumulated interest
2 on those deposits, which remain unclaimed more than six years after the date of the beneficiary's
3 18th birthday shall be deposited as miscellaneous receipts of the Treasury."

4 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is
5 amended by inserting after the item relating to section 1477 the following new item:
6 "1477a. Deposit fund for minor beneficiaries."

Section-by-Section Analysis

This section would allow the Secretary of Defense or the Secretary of Homeland Security (for the Coast Guard) to establish an interest-bearing account at the Treasury for minor beneficiaries of death gratuity payments when payments cannot be made due to the lack of a court-appointed guardian.

Currently, death gratuity payments cannot be made directly to anyone under the age of 18 because they are incompetent under the law. Thus, the funds presently remain unpaid until the minor beneficiaries reach the age of majority. In order for the Government to ensure good acquittance for a death gratuity payment when the beneficiary is a minor, the payment must be made to an appropriate guardian of the minor's estate. Most children will have a court-appointed guardian to manage their financial interests when significant dollar amounts, such as the death gratuity, are involved. However, in several cases minor beneficiaries have had no one who could or was willing to qualify to accept payment of the child's benefit sufficient for the Government to ensure good acquittance of the payment. This often arises when the custodial adult is unable to post a bond or to pay other legal expenses necessary to establish guardianship and/or a trust account.

A death gratuity is intended to provide financial assistance to close family members of a deceased active duty member. This section would help ensure that those funds would be available for a child at some point in their future and enable the funds to earn interest until payment can be tendered.

Cost Implications: This section would have no additional cost, since interest would remain within government accounts until payment in the future. Also, the government would not be obligated to immediately make the initial \$100,000 payments, reducing that year's outlays to the public. Staff resources are currently available and assigned to perform the administration and payment of death gratuity proceeds.

**SEC. ____ . REQUIREMENT FOR USE OF EXPRESS OPTION FOR DECIDING
PROTESTS OF CONTRACTS AND TASK AND DELIVERY ORDERS IN
SUPPORT OF EMERGENCY OPERATIONS.**

1 Section 3554(a)(2) of title 31, United States Code, is amended—

2 (1) by inserting "(A)" after "(2)"; and

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

4 "(B)(i) With respect to a protest in connection with the issuance or
5 proposed issuance of a contract that is in anticipation or in support of emergency
6 operations or a protest under section 303J(e) of the Federal Property and
7 Administrative Services Act of 1949 (41 U.S.C. 253j(e)) and section 2304c(e) of
8 title 10 in connection with the issuance or proposed issuance of a task order or a
9 delivery order that is in anticipation or in support of emergency operations, the
10 Comptroller General shall use the express option established pursuant to
11 subparagraph (A) to decide protests, unless the Comptroller General determines
12 that the protest is not suitable for resolution within 65 days after the date the
13 protest is submitted.

14 "(ii) In this section, the term 'emergency operations' means—

15 "(I) Contingency operations as defined in section 101(a)(13) of
16 title 10, United States Code;

17 "(II) Operations in defense against or recovery from nuclear,
18 biological, chemical, or radiological attack against the United States; or

1 "(III) Operations in response to an incident of national
2 significance, emergency declaration, national emergency, or major disaster
3 declared by the President."

Section-by-Section Analysis

This proposal would require the Comptroller General to expeditiously adjudicate protests on contracts as well as task and delivery orders made in support of emergency operations.

Section 843 of Public Law 110-181 (the National Defense Authorization Act for Fiscal Year 2008) adds restrictions on the award of certain single source task or delivery order contracts, enhances the fair opportunity competition requirements, and for a period through September 30, 2010, provides protest rights for certain task or delivery orders. With increased reliance on multiple award contracts and competition, associated procurement lead times may increase. To preclude such a phenomenon on our ability to provide timely responses in anticipation, or in support, of emergency operations, the record should reflect congressional support for use of the express option by the Comptroller General to adjudicate any protests registered in the case of such contract actions.

This proposal is also advocated by the Key Elements for Future Success as recently reported by the Commission on Army Acquisition and Program Management in Expeditionary Operations that was chaired by the Honorable Jacques Gansler, and it consistent with the objectives of section 849(b) of Public Law 110-181 (the National Defense Authorization Act for Fiscal Year 2008).

Cost Implications: The costs to the government should not increase because of the Comptroller General's required use of the express option for deciding protests regarding the issuance or proposed issuance of a referenced contract, task order, or delivery order that is in anticipation, or in support, of emergency operations.

**SEC. ____ . EXCEPTIONS FOR NATIONAL SECURITY AND EMERGENCY
OPERATIONS.**

1 (a) EXCEPTION FOR NATIONAL SECURITY.—Section 2533a of title 10, United States Code,
2 is amended—

3 (1) by redesignating subsections (i), (j), and (k) as subsections (j), (k), and (l),
4 respectively; and

5 (2) by inserting after subsection (h) the following new subsection (i):

6 "(i) EXCEPTION FOR NATIONAL SECURITY.—Subsection (a) does not apply to
7 procurements for which the Secretary of Defense or the Secretary of the military department
8 concerned determines in writing that an exception is in the national security interest of the
9 United States."

10 (b) EXCEPTION FOR CERTAIN PROCUREMENTS.—(1) Subsection (d)(1) of such section is
11 amended to read as follows:

12 "(1) Procurements in direct support of emergency operations."

13 (2) Subsection (k) of such section, as redesignated by subsection (a)(1), is amended—

14 (A) in the heading, by striking "GEOGRAPHIC COVERAGE" and inserting
15 "DEFINITIONS";

16 (B) by inserting "(1)" before "In"; and

17 (C) by adding at the end the following new paragraph:

18 "(2) In this section, the term 'emergency operations' means—

19 "(A) contingency operations as defined in section 101(a)(13) of this title;

20 "(B) operations in defense against or recovery from nuclear, biological, chemical,
21 or radiological attack against the United States; or

1 "(C) operations in response to an incident of national significance, emergency
2 declaration, national emergency, or major disaster declared by the President."

3 (c) CONFORMING AMENDMENT.—Subsection (a) of such section is amended by striking
4 "(h)" and inserting "(i)".

Section-by-Section Analysis

This proposal would create a national security exception to the requirement that DoD procure food, clothing, tents, fabrics, and hand or measuring tools from producers in United States. The proposal would retain the fundamental domestic preference requirements of the law; yet, it would provide the flexibility needed for the Department of Defense (DoD) and its suppliers to better respond to fulfill the needs that arise in cases of national security and in cases that are in direct support of emergency operations,

The definition for “emergency operations” used in this proposal fully conforms to the definition prescribed in Part 18, “Emergency Acquisitions,” of the Federal Acquisition Regulation, and it is consistent with the special emergency procurement authority prescribed by section 1443 of Public Law 108-136 (the National Defense Authorization Act for Fiscal Year 2004), as amended.

This proposal is also advocated by the Key Elements for Future Success as recently reported by the Commission on Army Acquisition and Program Management in Expeditionary Operations that was chaired by the Honorable Jacques Gansler, and it is consistent with the objectives of section 849(b) of Public Law 110-181 (the National Defense Authorization Act for Fiscal Year 2008).

Cost Implications: Increasing contracting flexibilities by the addition of a exception for cases in support of national security and by the amendment of the “Exception for Certain Procurements” to provide for support in cases of emergency operations, not just in support of combat operations and contingency operations, would not increase costs to the government.

SEC. ____ . AUTHORIZED STRENGTH AND DISTRIBUTION IN GRADE.

1 (a) STRENGTH AND GRADE AUTHORIZATIONS —Section 12011(a) of title 10, United States
 2 Code, is amended by striking those parts of the table pertaining to the Army National Guard, the
 3 Marine Corps Reserve, and the Air National Guard and inserting the following:

"Army National Guard:

	Major	Lieutenant Colonel	Colonel
20,000	1,500	850	325
22,000	1,650	930	350
24,000	1,790	1,010	378
26,000	1,930	1,085	395
28,000	2,070	1,168	420
30,000	2,200	1,245	445
32,000	2,330	1,315	460
34,000	2,450	1,385	470
36,000	2,570	1,455	480
38,000	2,670	1,527	490
40,000	2,770	1,590	500
42,000	2,837	1,655	505"

"Marine Corps Reserve:

	Major	Lieutenant Colonel	Colonel
1,000.....	99	63	20
1,200.....	103	67	21
1,300	107	70	22
1,400	111	73	23
1,500	114	76	24
1,600	117	79	25
1,700	120	82	26
1,800	123	85	27
1,900	126	88	28
2,000	129	91	29
2,100	132	94	30
2,200	134	97	31
2,300	136	100	32
2,400	138	103	33
2,500	140	106	34
2,600	142	109	35"

"Air National Guard:

	Major	Lieutenant Colonel	Colonel
5,000	333	335	251

6,000	403	394	260
7,000	472	453	269
8,000	539	512	278
9,000	606	571	287
10,000	673	665	313
11,000	740	759	339
12,000	807	827	353
13,000	873	886	363
14,000	939	945	374
15,000	1,005	1001	384
16,000	1,067	1,057	394
17,000.....	1,126	1,113	404
18,000.....	1,185	1,169	414
19,000.....	1,235	1,224	424
20,000.....	1,283	1,280	428"

- 1 (b) STRENGTH AND GRADE AUTHORIZATIONS.—Section 12012(a) of such title is amended
- 2 by striking those parts of the table pertaining to the Army National Guard and inserting the
- 3 following:

"Army National Guard:

	E-8	E-9
20,000	1,650	550
22,000	1,775	615
24,000	1,950	645
26,000	2,100	675
28,000	2,250	715
30,000	2,400	735
32,000	2,500	760
34,000	2,600	780
36,000	2,700	800
38,000	2,800	820
40,000	2,900	830
42,000	3,000	840"

Section-by-Section Analysis

This proposal would increase the Active Guard/Reserve controlled grades within the Army National Guard, the Marine Corps Reserve, and the Air National Guard to ensure that full-time leaders are available at the correct grades, with the correct training assisting readiness of the force as it transitions from a Strategic Reserve to an Operational Reserve environment.

Although most Reserve Component (RC) personnel are part-time, a sizeable number are working in full-time support (FTS) positions. These members perform the day-to-day management, administration, and maintenance tasks that are critical to ensuring Reserve component unit readiness. Included within these FTS positions are a limited and specific number of "controlled grade" positions. These positions comprise certain experienced Reserve component officers and senior enlisted members who possess the essential leadership skills to maintain Reserve component readiness. The number of controlled grade positions was capped by the National Defense Authorization Act for Fiscal Year (FY) 2002 and based on the total number of FTS authorizations authorized for a given component.

There have been significant changes since the tables were created in FY 2001 for the FY 2002 NDAA -- the world has changed and commensurate with these changes the demand on the RC to provide a wider range of missions and day to day operational support has increased. The recently announced changes by the Secretary of Defense -- including removal of the cumulative 24-month "clock" on Reserve component mobilizations, Mandatory Removal Date (MRD) from active service for officers, and the increase in the number of forces to Iraq -- have only exacerbated this shortfall of highly-skilled, highly-experienced individuals in FTS. The Reserve components continue to expand their contributions in roles traditionally reserved for the active component. Consequently, the requirements for senior grade full-time support to organize, administer, recruit, instruct, and train the Reserve component and Regular forces have also increased. Specifically, senior full-time support grades are required at multiple headquarters to include all Joint Commands, the Office of the Secretary of Defense, the Joint Staff and Defense agencies. The nature and duties of these billets require FTS personnel with seniority and experience. Additionally, current grade strength limitations do not facilitate FTS officer assignment or attendance at professional training (resident Professional Military Education).

The environment for the Army National Guard, the Marine Corps Reserve, and the Air National Guard includes such new and additional missions as Homeland defense, increased presence on the Combatant Command (COCOM) staffs along with inclusion on the staffs of two new COCOMs (Northern Command (NORTHCOM) and Africa Command (AFRICOM)). The emphasis on Joint operations to include interagency and coalition forces has led to the stand up of State Joint Force Headquarters, for the National Guard, and key billets designated for the RC within the Joint Task Force elements of each COCOM.

This proposal would amend sections 12011 and 12012 of title 10, United States Code, to address these issues and reset the force to ensure readiness for current and future challenges. Increasing the controlled grade ceilings will ensure mission readiness as we transform the force structure to meet the changing needs of the nation.

For Army National Guard (ARNG): The new missions given to the ARNG since the FY 2002 ceilings were put into place are considerable. While additional authorizations were provided by Congress for these missions, additional grades to adequately fill these new structures the way they have been built were not. Examples of their new missions include:

Civil Support Teams: These teams serve as emergency first responders. Senior personnel are necessary for effective command and control and to influence retention and career enhancement for this highly specialized mission.

Ground Missile Defense: This mission is Congressionally mandated. These controlled grade increases are necessary to ensure proper levels of experience and to encourage retention of the missile defense Soldier.

Homeland Defense: Senior positions allow the ARNG to effectively prepare joint and combined operations currently being conducted, as well as plan future operations.

Additionally, like the USAR, the ARNG nearly doubled its recruiting and retention force. This increase requires additional senior leaders to ensure effective team management. Increased mission requirements, coupled with a more challenging recruiting environment, have significantly increased the daily duties of senior personnel.

This proposal would ensure that soldiers have the proper senior leadership at all levels. There are sufficient combat veterans available and experienced soldiers to promote, but controlled grades are necessary for those promotions to occur. The need for these experienced soldiers is essential to maintain Reserve component readiness.

For U.S Marine Corps Reserve (USMCR): The Marine Corps Reserve provides integrated operational support to the Total Force Marine Corps. The nature and duties of the increase of senior full-time support grades at multiple headquarters, to include Joint Commands and the Office of the Secretary of Defense, requires senior and experienced personnel.

This proposal would enable the Marine Corps, at its discretion, to increase its full-time support lieutenant colonel population to meet current requirements using internal redistribution of manpower without an increase in end strength. The Marine Corps would have the discretion to promote to less than the maximum grade distribution authorized.

This would enable the Marine Corps to man the force appropriate to requirements. It would provide for enhanced support of emerging global requirements. Finally, it would provide Service flexibility in career progression planning and assignments.

For Air National Guard (ANG): In response to the challenges outlined in the National Military Strategy, the Air National Guard is transforming to meet requirements brought on by the wider range of missions assigned to the RC, as well as operational support. As they continue to realign the force, the need for more seasoned airmen becomes increasingly critical to support ANG service specific and joint mission requirements.

Control grade restrictions established in support of pre-9/11 interests are no longer sufficient to meet the needs of our nation. Our critical involvement in the Global War on Terror, Homeland Defense missions, support to civil agencies, as well as our fundamental shift from strategic reserve to an active and integrated component of the Total Force have brought to the forefront and significantly increased the need for highly-skilled/experienced individuals in full-time positions. Examples of this shift are:

Civil Support Teams: These teams serve as emergency first responders. Senior personnel are necessary for effective command and control and to influence retention and career

enhancement for this highly specialized mission.

1st AF and ASA: 1AF Mission changes after the September 11, 2001, attacks have resulted in the need for a more officer-centric operational manpower baseline to provide the needed capabilities to support North American Aerospace Defense Command (NORAD)-NORTHCOM for both Air Sovereignty Homeland Defense and Defense Support to Civilian Authorities Events. These mission changes and the corresponding need for additional officers affected every aspect of the 1AF Organizational Spectrum to include: the 601 Air and Space Operations Center (AOC) (ANG), the Air Defense Sectors, the 101 IWF that supports the 601 AOC and the Joint Air Defense Operations Center, which is the all-AGR new mission start located in the National Capital Region.

The 601 AOC has transitioned from supporting NORAD's mission to a Full Spectrum Tailored Falconer AOC functioning within the 1AF (AFNORTH) Component Numbered Air Force. To accomplish these new mission taskings, more officer billets were required and validated by the Major Command Force Provider as part of the unit's Unit Type Code (UTC). Similar mission actions and UTC validations have occurred for each of the aforementioned units.

JFHQ: The ANG has an expanded role in homeland defense in support NORTHCOM. The JFHQ mission is above and beyond service component requirements.

Headquarters Staff Integration: The ANG is increasing its integrated operational support of the Air Force Total Force. As the Air Force draws down its force, it seeks reserve support (to include the ANG) in supporting the Air Force Total Force efforts. Staff integration by the ANG at the multiple headquarters, to include Joint Commands (especially the newly-established NORTHCOM and AFRICOM), Headquarters Air Force, and the Office of the Secretary of Defense, requires senior and experienced personnel.

Homeland Defense and Support: The ANG role in Homeland Defense and Support continues to increase as additional operational requirements are established following the events of September 11th 2001. These additional requirements include such events as OPERATION JUMPSTART to support the southwest border of the United States and the response to and recovery from Hurricane Katrina, as well as various other National Security Special Events and emergencies that require leadership and personnel of a senior level.

National Guard Bureau (NGB) Joint Staff: Since the FY 2002 ceilings were put into place the Chief, NGB implemented an expanded and comprehensive NGB J-Staff to support the increased role of the National Guard in joint operations. The ANG support of the Chief, National Guard Bureau's joint staff requires senior and experienced personnel.

ARNG Cost Implications: The additional costs associated with this proposal for FY 2009 are \$6.5 million, which can be managed within budgeted resources due to hiring lag, promotions, and intense management. The total cost for FY 2009 through FY 2013 is \$39.6 million.

For officers, the cost for the controlled grade increases requested (colonel and lieutenant colonel), minus the cost of the next lower grade, equals the additional funding cost. For enlisted members, the cost for the requested (E9 and E8), minus the cost of the next lower grade, equals

the additional funding cost. This takes the additional costs into account and does not add to the total number of authorized AGR personnel. The estimate also includes the programming assumption for pay increases of 3.4 percent annually and provides for full year costing. These costs are all manageable within the current resources of the ARNG.

USMCR Cost Implications: The approximate FY 2009 cost of the proposal would be \$14,862. The total cost for FY 2009 through FY 2013 is \$83,391.

The cost methodology is that the number of lieutenant colonels would increase by 7, but the overall controlled grade ceiling would not increase. However, as lieutenant colonels would increase, majors are projected to decrease. This marginal difference in compensation between a major and a lieutenant colonel was used in this estimate. Therefore, the cost would be less than projected. Additionally, the proposal provides for full year costing.

ANG Cost Implications: Additional costs associated with this proposal for FY 2009 are \$3.1 million, which can be managed within budgeted resources due to hiring lag, promotions, and intense management. The total cost for FY 2009 through FY 2013 is \$15.7 million.

For officers, the cost for the controlled grade increases requested (colonel and lieutenant colonel), minus the cost of the next lower grade, equals the additional funding cost. This takes the additional costs into account and does not add to the total number of authorized AGR personnel. The estimate also includes the programming assumption for pay increases of 3.4 percent annually and provides for full year costing. These costs are all manageable within the current resources of the ANG.

ARNG

NUMBER OF PERSONNEL AFFECTED

	FY 2009	FY2010	FY2011	FY2012	FY2013
OFFICER	47	53	57	58	58
ENLISTED	445	493	536	544	544
ARNG Total	492	546	593	602	602

RESOURCE REQUIREMENTS (\$MILLIONS)

	FY 2009	FY2010	FY2011	FY2012	FY2013
OFFICER	\$1.2	\$1.4	\$1.5	\$1.6	\$1.6
ENLISTED	\$5.3	\$6.1	\$6.8	\$7.0	\$7.2
ARNG Total	\$6.5	\$7.4	\$8.3	\$8.6	\$8.8

USMCR

NUMBER OF PERSONNEL AFFECTED

	FY 2009	FY2010	FY2011	FY2012	FY2013
OFFICER	0	0	0	0	0
ENLISTED	0	0	0	0	0
USMCR Total	0	0	0	0	0

RESOURCE REQUIREMENTS (MILLIONS)

	FY 2009	FY2010	FY2011	FY2012	FY2013
OFFICER	\$0.01	\$0.02	\$0.02	\$0.02	\$0.02
ENLISTED	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
USMCR Total	\$0.01	\$0.02	\$0.02	\$0.02	\$0.02

ANG

NUMBER OF PERSONNEL AFFECTED

	FY 2009	FY2010	FY2011	FY2012	FY2013
OFFICER	141	135	136	136	135
ENLISTED	0	0	0	0	0
ANG Total	141	135	136	136	135

RESOURCE REQUIREMENTS (MILLIONS)

	FY 2009	FY2010	FY2011	FY2012	FY2013
OFFICER	\$3.0	\$3.0	\$3.1	\$3.2	\$3.2
ENLISTED	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
ANG Total	\$3.1	\$3.2	\$3.1	\$3.2	\$3.2

DoD Total

NUMBER OF PERSONNEL AFFECTED

	FY 2009	FY2010	FY2011	FY2012	FY2013
OFFICER	188	188	193	194	193
ENLISTED	445	493	536	554	554
DoD Total	633	681	729	738	737

RESOURCE REQUIREMENTS (MILLIONS)

	FY 2009	FY2010	FY2011	FY2012	FY2013
OFFICER	\$4.3	\$4.4	\$4.6	\$4.7	\$4.8
ENLISTED	\$5.3	\$6.1	\$6.8	\$7.0	\$7.2
DoD Total	\$9.6	\$10.5	\$11.4	\$11.8	\$12.0