SEC. 546. REPEAL OF MANDATORY HIGH-DEPLOYMENT ALLOWANCE.

(a) REPEAL OF AUTHORITY FOR PAYMENT OF HIGH-DEPLOYMENT ALLOWANCE.—

(1) IN GENERAL.—Section 436 of title 37, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 of such title is amended by striking the item relating to section 436.

(b) REPEAL OF REQUIREMENTS RELATING TO MANAGEMENT OF DEPLOYMENT OF MEMBERS.—

(1) IN GENERAL.—Section 991 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 50 of such title is amended by striking the item relating to section 991.

Section-by-Section Analysis

This proposal repeals a currently-suspended requirement to pay High Deployment Allowance (HDA) (37 U.S.C. 436). Section 436 of title 37, United States Code, authorizes a servicemember to receive a monthly HDA if the member at any time during the month: (1) has been deployed for over a threshold of 191 consecutive days; (2) has been deployed for over an established threshold during the previous 730 days; or (3) in the case of a Reserve component member, is on active duty under specified conditions and periods of time. The monthly rate of this allowance cannot exceed $1,000 and is in addition to all other pays and allowances a service member may be entitled to.

10 U.S.C 991 and 37 U.S.C 436 put forth a pre-war construct (enacted before September 11, 2001) to manage individual operational tempo, and do not allow the flexibility the Department of Defense (DoD) or the Services need to compensate, establish deployment and dwell expectations, and influence retention behavior for servicemembers who are deployed in support of the Global War on Terrorism. These provisions of law were enacted within the context of the conditions at the time - primarily a peacetime and contingency operations environment. Additionally, the definition of “deployment” in the statute is much broader in scope than would be expected in today’s wartime environment. For example, the definition currently includes routine training exercises and staff organizational meetings at other military installations where the individual’s quality of life remains relatively high. The intent of this law was to limit individual member operational tempo and to levy monetary punishment on the member’s organization should the leadership choose to violate those limits of operational tempo. As such, the law mandated that the HDA would be paid from Operation and Maintenance (O&M) funds for the military department in which the member serves. The view at the time was

that control of individual operational tempo would improve quality of life and therefore benefit the Nation's military with stronger individual member retention.

While the requirement to pay HDA is presently suspended, the requirement to track HDA days is not. HDA will take effect upon termination of the National Security Waiver Authority. Any implementation of HDA during the current wartime environment would be a tremendous drain on unit funds leaving the military with critical budgetary shortfalls during a period when operations and regenerating equipment remain and would be critical expenses for years to come.

The Department believes that 10 U.S.C 991 and 37 U.S.C 436 are no longer needed. Since the introduction of HDA in the FY 2000 National Defense Authorization Act (NDAA) on October 5, 1999, the Services and OSD have developed or improved a number of programs to compensate the member for periods of high deployment. Foremost, the Secretary of Defense set expectations and a balance of dwell expected for active component and reserve component members. These deployment-to-dwell ratios (1:2 for active component and 1:5 for reserve component) have been institutionalized in the Department and shape compensation and personnel policies. Personnel programs developed to ameliorate the individual operational tempo include Post Deployment/Mobilization Respite Absence which grants additional respite time off following deployments to qualifying service members, more accompanied tours, less cumbersome hardship separation programs, more non-chargeable leave categories for members, improved flexible and targeted retention bonus authorities, more family support and advocacy programs, the New GI Bill, robust child care and youth development programs, and strong Morale Welfare and Recreation programs at home and deployed locations. In the area of compensation, the Department worked an increase in Family Separation Allowance from $100 to $250 per month; an increase in Hostile Fire Pay/Imminent Danger Pay from $150 to $225 per month; an increase in Basic Pay of approximately 35 percent, the establishment of the Thrift Savings Program (which allows for additional contributions while in a Combat Zone), and attained a huge improvement in Regular Military Compensation to slightly above the 70 percentile for enlisted and officer personnel. These are only a few examples of the many personnel, family and compensation programs that address operational tempo, retention and quality of life that did not exist in their current forms when 10 U.S.C 991 and 37 U.S.C 436 were enacted.

The Department believes the issues associated with enactment of HDA have been addressed over the long years of lessons learned from the war. Most important is that HDA was established at a time when deployment expectations and security concerns were different than they are today. Any implementation of HDA would be unnecessary and detrimental to organizational readiness.

Budget Implications: If the current HDA suspension under 10 U.S.C. 991(d) were to be lifted and payments resumed without restarting personnel tempo counters, it would create a significant bill, for the Department at a time when O&M funds are desperately needed to repair equipment and weaponry stressed by on-going contingency operations in Iraq and Afghanistan.

Changes to Existing Law: This proposal would repeal section 446 of title 37 and section 991 of title 10, United States Code, as follows:

~~§ 436. High-deployment allowance: lengthy or numerous deployments; frequent mobilizations~~

~~(a) Monthly Allowance. - The Secretary of the military department concerned shall pay a high-deployment allowance to a member of the armed forces under the Secretary's jurisdiction for each month during which the member -~~

~~(1) is deployed; and~~

~~(2) at any time during that month -~~

~~(A) has been deployed for 191 or more consecutive days (or a lower number of consecutive days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness);~~

~~(B) has been deployed, out of the preceding 730 days, for a total of 401 or more days (or a lower number of days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness); or~~

~~(C) in the case of a member of a reserve component, is on active duty -~~

~~(i) under a call or order to active duty for a period of more than 30 days that is the second (or later) such call or order to active duty (whether voluntary or involuntary) for that member in support of the same contingency operation; or~~

~~(ii) for a period of more than 30 days under a provision of law referred to in section 101(a)(13)(B) of title 10, if such period begins within one year after the date on which the member was released from previous service on active duty for a period of more than 30 days under a call or order issued under such a provision of law.~~

~~(b) Definition of Deployed. - In this section, the term "deployed", with respect to a member, means that the member is deployed or in a deployment within the meaning of section 991(b) of title 10 (including any definition of "deployment" prescribed under paragraph (4) of that section).~~

~~(c) Rate. - The monthly rate of the allowance payable to a member under this section shall be determined by the Secretary concerned, not to exceed $1,000 per month.~~

~~(d) Payment of Claims. - A claim of a member for payment of the high-deployment allowance that is not fully substantiated by the recordkeeping system applicable to the member under section 991(c) of title 10 shall be paid if the member furnishes the Secretary concerned with other evidence determined by the Secretary as being sufficient to substantiate the claim.~~

~~(e) Relationship to Other Allowances. - A high-deployment allowance payable to a member under this section is in addition to any other pay or allowance payable to the member under any other provision of law.~~

~~(f) National Security Waiver. - No allowance may be paid under this section to a member for any month during which the applicability of section 991 of title 10 to the member is suspended under subsection (d) of that section.~~

~~(g) Authority to Exclude Certain Duty Assignments. - The Secretary concerned may exclude members serving in specified duty assignments from eligibility for the high-deployment allowance while serving in those assignments. Any such specification of duty assignments may only be made with the approval of the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness. Specification of a particular duty assignment for purposes of this subsection may not be implemented so as to apply to the member serving in that position at the time of such specification.~~

~~(h) Payment From Operation and Maintenance Funds. - The monthly allowance payable to a member under this section shall be paid from appropriations available for operation and maintenance for the armed force in which the member serves.~~

~~§ 991. Management of deployments of members~~

~~(a) Management Responsibilities. - (1) The deployment (or potential deployment) of a member of the armed forces shall be managed to ensure that the member is not deployed, or continued in a deployment, on any day on which the total number of days on which the member has been deployed -~~

~~(A) out of the preceding 365 days would exceed the one-year high-deployment threshold; or~~

~~(B) out of the preceding 730 days would exceed the two-year high-deployment threshold.~~

~~(2) In this subsection:~~

~~(A) The term "one-year high-deployment threshold" means -~~

~~(i) 220 days; or~~

~~(ii) a lower number of days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness.~~

~~(B) The term "two-year high-deployment threshold" means -~~

~~(i) 400 days; or~~

~~(ii) a lower number of days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness.~~

~~(3) A member may be deployed, or continued in a deployment, without regard to paragraph (1) if the deployment, or continued deployment, is approved by the Secretary of Defense. The authority of the Secretary under the preceding sentence may only be delegated to -~~

~~(A) a civilian officer of the Department of Defense appointed by the President, by and with the advise and consent of the Senate, or a member of the Senior Executive Service; or~~

~~(B) a general or flag officer in that member's chain of command (including an officer in the grade of colonel, or in the case of the Navy, captain, serving in a general or flag officer position who has been selected for promotion to the grade of brigadier general or rear admiral (lower half) in a report of a selection board convened under section 611(a) or 14101(a) of this title that has been approved by the President).~~

~~(b) Deployment Defined. -~~

~~(1) For the purposes of this section, a member of the armed forces shall be considered to be deployed or in a deployment on any day on which, pursuant to orders, the member is performing service in a training exercise or operation at a location or under circumstances that make it impossible or infeasible for the member to spend off-duty time in the housing in which the member resides when on garrison duty at the member's permanent duty station or homeport, as the case may be.~~

~~(2) In the case of a member of a reserve component who is performing active service pursuant to orders that do not establish a permanent change of station, the housing referred to in paragraph (1) is any housing (which may include the member's residence) that the member usually occupies for use during off-duty time when on garrison duty at the member's permanent duty station or homeport, as the case may be.~~

~~(3) For the purposes of this section, a member is not deployed or in a deployment when the member is -~~

~~(A) performing service as a student or trainee at a school (including any Government school);~~

~~(B) performing administrative, guard, or detail duties in garrison at the member's permanent duty station; or~~

~~(C) unavailable solely because of -~~

~~(i) a hospitalization of the member at the member's permanent duty station or homeport or in the immediate vicinity of the member's permanent residence; or~~

~~(ii) a disciplinary action taken against the member.~~

~~(4) The Secretary of Defense may prescribe a definition of deployment for the purposes of this section other than the definition specified in paragraphs (1) and (2). Any such definition may not take effect until 90 days after the date on which the Secretary notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the revised standard definition of deployment.~~

~~(c) Recordkeeping. - The Secretary of each military department shall establish a system for tracking and recording the number of days that each member of the armed forces under the jurisdiction of the Secretary is deployed.~~

~~(d) National Security Waiver Authority. - The Secretary of the military department concerned may suspend the applicability of this section to a member or any group of members under the Secretary's jurisdiction when the Secretary determines that such a waiver is necessary in the national security interests of the United States.~~

~~(e) Inapplicability to Coast Guard. - This section does not apply to a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.~~