SEC. 1105. AUTHORITY FOR WAIVER OF RECOVERY OF CERTAIN PAYMENTS PREVIOUSLY MADE UNDER CIVILIAN EMPLOYEES VOLUNTARY SEPARATION INCENTIVE PROGRAM.

(a) AUTHORITY FOR WAIVER.—Subject to subsection (c), the Secretary of Defense may waive the requirement under subsection (f)(6)(B) of section 9902 of title 5, United States Code, for repayment to the Department of Defense of a voluntary separation incentive payment made under subsection (f)(1) of that section in the case of an employee or former employee of the Department of Defense described in subsection (b).

(b) PERSONS COVERED.—Subsection (a) applies to any employee or former employee of the Department of Defense—

(1) who during the period beginning on April 1, 2004, and ending on March 1, 2008, received a voluntary separation incentive payment under subsection (f)(1) of section 9902 of title 5, United States Code;

(2) who was reappointed to a position in the Department of Defense to support a declared national emergency related to terrorism or a natural disaster during the period beginning on June 1, 2004, and ending on March 1, 2008; and

(3) with respect to whom the Secretary determines (A) that the employee or former employee, before accepting the reappointment referred to in paragraph (2), received a representation from an officer or employee of the Department of Defense that recovery of the amount of the payment referred to in paragraph (1) would not be required or would be waived, and (B) that the employee or former employee reasonably relied on that representation when accepting reappointment.

(c) REQUIRED DETERMINATION.—The Secretary of Defense may grant a waiver under subsection (a) in the case of any individual only if the Secretary determines that recovery of the amount of the payment otherwise required would be against equity and good conscience because of the circumstances of that individual's reemployment after receiving a voluntary separation incentive payment.

(d) TREATMENT OF PRIOR REPAYMENTS. —The Secretary of Defense may, pursuant to a determination under subsection (c) specific to an individual, provide for reimbursement to that individual for any amount the individual has previously repaid to the United State for a voluntary separation incentive payment covered by this section. The reimbursement shall be paid either from the appropriations into which the repayment was deposited, if such appropriations remain available, or from appropriations currently available for the purposes of the appropriation into which the repayment was deposited.

(e) EXPIRATION OF AUTHORITY.—The authority to grant a waiver under this section shall expire on December 31, 2012.

Section-by-Section Analysis

This proposal authorizes the Secretary of Defense to retroactively waive on a case-by-case basis repayment of Voluntary Separation Incentive Pay (VSIP) for certain individuals reemployed in temporary positions by the Department between June 1, 2004 and March 1, 2008 to support the national emergencies related to terrorism and natural disasters.

Section 9902(f) of title 5, United States Code, authorizes the Secretary of Defense to establish a program within the Department under which employees may be offered VSIP to voluntarily separate. VSIP is used to reduce the number of personnel employed by the Department or to restructure the workforce to meet mission objectives without reducing the overall number of personnel. Employees who receive VSIP under this authority and subsequently accept Federal employment or commence work on a personal services contract within 5 years after the date of separation on which the VSIP was based are required to repay the entire amount back to the Department of Defense. The Secretary of Defense may only waive the repayment if the individual involved is the only qualified applicant available for the position.

This initiative provides the Secretary short-term, limited authority to retroactively waive on a case-by-case basis repayment of the separation pay when the employee accepted employment with the understanding their repayment obligation was waived due to his or her return on an emergency basis under the Office of Personnel Management's (OPM) delegated 9-11 repayment waiver authority or in response to a natural disaster. This authority sets forth the framework under which the Secretary of Defense may for reasons of equity and good conscience waive the indebtedness for approximately 40 individuals.

This limited, case-by-case waiver authority, meets the objectives of the Civilian Human Resources Strategic Plan to: "provide effective policies and programs related to stability of employment that support management's ability to restructure organizations while retaining needed skills of affected employees and accommodating their needs in an efficient and humane manner."

This provision provides the Secretary of Defense discretion to retroactively waive the requirement to repay VSIP received under 5 U.S.C. 9902 when certain conditions are met. Approximately 40 VSIP recipients were temporarily rehired by the Department following the OPM's 9-11 flexibilities emergency hiring guidance, which also granted limited authority to waive repayment of separation pay. This guidance was applicable to all VSIP authorities under OPM's jurisdiction, which included 5 U.S.C. 5597 that was used within the Department of Defense. This authority expired on September 30, 2003, and was replaced on November 24, 2003, by 5. U.S.C. 9902. This new authority granted the Secretary of Defense independent authority to establish a separate and distinct VSIP program from OPM's. Unfortunately, some hiring entities did not realize the distinction between the two authorities and the fact that the 9-11 flexibilities guidance no longer applied to VSIP authorized under 9902 resulting in a misinterpretation of the VSIP waiver provisions. As a result, out of the 40 VSIP recipients subject to this proposal, , 37 were apparently assured they would not be required to repay their separation pay based on 9-11 waiver guidance issued by OPM. The other 3 were temporarily reemployed on an emergency basis following Hurricane Rita. As a result, this provision provides the Secretary of Defense with the discretionary authority to waive the repayment requirement based on a case-by-case review of the circumstances associated with the reemployment of these individuals.

To avoid similar problems, the Department has issued clarifying guidance to the Components, updated its VSIP and 9-11 Web sites with appropriate disclaimers, and has worked directly with the Components to resolve questions. To ensure the population covered by this proposal is finite, the Components reviewed their reemployed VSIP recipients since January 2004 to determine whether they were rehired under the circumstances described above.

Budget Implications: Thirty-nine individuals received the maximum separation pay of $25,000 and one individual received $7,789. To date only five individuals have made repayments for their VSIP, totaling $30,275 dollars. The proposal will not increase the overall budget requirements for the Department of Defense.

RESOURCE REQUIREMENTS ($THOUSAND)				
	FY 2012	**Appropriation**	**Budget Activity**	**Dash-1**

		From		Line Item
ARNG	$28,750.00	O&M, ARNG	BA4	431
Air Force	$1525.00	O&M, AF	BA4	042A
Total	$30,275.00	-	-	-

NUMBER OF PERSONNEL AFFECTED				
	FY 2012	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
ARNG	2	O&M, ARNG	BA4	431
Air Force	3	O&M, AF	BA4	042A
Total	5	-	-	-

Changes to Existing Law: This proposal would make no change to the text of existing law.