

**CARL LEVIN AND HOWARD P. ‘BUCK’ MCKEON NATIONAL DEFENSE  
AUTHORIZATION ACT FOR FISCAL YEAR 2015**

**DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS**

**TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND  
RELATED MATTERS**

**SUBTITLE B—AMENDMENTS TO GENERAL CONTRACTING AUTHORITIES,  
PROCEDURES, AND LIMITATIONS**

*Extension of limitation on aggregate annual amount available for contract services (sec. 813)*

*The House bill contained a provision (sec. 804) that would extend for 1 year the cap on the aggregate annual amount spent on contracts for services through fiscal year 2015.*

*The Senate committee-reported bill contained no similar provision.*

*The agreement includes the House provision with a technical amendment.*

*We note that the Government Accountability Office (GAO) has stated that the military departments and defense agencies generally have not developed plans to use the inventory of contracted services, mandated since 2008 in section 2330a of title 10, United States Code, to facilitate the Department of Defense’s (DOD) strategic workforce planning, workforce mix, budget decision-making processes, and contract execution and oversight.*

*Further, GAO found that components may not have fully identified, as required by section 2330a of title 10, United States Code, all instances in which contractors are providing services that are inherently governmental, closely associated with inherently governmental functions, staff augmentation, or personal services, the latter of which we note are prohibited by law.*

*According to GAO, a key factor inhibiting the components’ inventory review is a lack of accurate and reliable data, which we note the inventory could provide if the components were to implement DOD-wide a common data system based on the Army’s existing system as directed by existing DOD guidance.*

*In the absence of a plan of action with milestones and timeframes to establish a common data system to collect contractor manpower data, we are leaving the caps on contractor spending in place for fiscal year 2015.*

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**SEC. 813. EXTENSION OF LIMITATION ON AGGREGATE ANNUAL AMOUNT  
AVAILABLE FOR CONTRACT SERVICES.**

Section 808 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1489), as amended by section 802 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 127 Stat. 804) is further amended—

- (1) in subsections (a) and (b), by striking “or 2014” and inserting “2014, or 2015”;
- (2) in subsection (c)(3), by striking “and 2014” and inserting “2014, and 2015”;
- (3) in subsection (d)(4), by striking “or 2014” and inserting “2014, or 2015”;
- (4) in subsection (e), by striking “2014” and inserting “2015”; and
- (5) by adding at the end the following new subsection:

“(f) USE OF OTHER DATA.—For purposes of compliance with subparagraphs (A) and (B) of subsection (c)(2), the Secretaries of the military departments and the heads of the Defense Agencies may use other available sources of data, such as advisory and assistance services information collected for purposes of the annual budget submission of the Department of Defense, to corroborate data from the annual inventory of contractor services required in section 2330a of title 10, United States Code. Any discrepancy identified between the inventory data and the data from other available sources shall be resolved and reported to the congressional defense committees.”.

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**PUBLIC LAW 112-81, FISCAL YEAR 2012 NDAA**  
**SEC. 808. TEMPORARY LIMITATION ON AGGREGATE ANNUAL AMOUNT**  
**AVAILABLE FOR CONTRACT SERVICES.**  
**AS MODIFIED BY SECTION 802 OF THE FY14 NDAA**  
**AS MODIFIED BY SEC 813 OF THE FY 15 NDAA**

- (a) LIMITATION.—Except as provided in subsection (b), the total amount obligated by the Department of Defense for contract services in fiscal year 2012, 2013, ~~or 2014~~ 2014, or 2015 may not exceed the total amount requested for the Department for contract services in the budget of the President for fiscal year 2010 (as submitted to Congress pursuant to section 1105(b) of title 31, United States Code) adjusted for net transfers from funding for overseas contingency operations.
- (b) EXCEPTION.—Notwithstanding the limitation in subsection (a), the total amount obligated by the Department for contract services in fiscal year 2012, 2013, ~~or 2014~~ 2014, or 2015 may exceed the amount otherwise provided pursuant to subsection (a) by an amount elected by the Secretary of Defense that is not greater than the cost of any increase in such fiscal year in the number of civilian billets at the Department that has been approved by the Secretary over the number of such billets at the Department in fiscal year 2010.
- (c) GUIDANCE.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall issue guidance to the military departments and the Defense Agencies on implementation of this section. The guidance shall, at a minimum—
  - (1) require the Secretaries of the military departments and the heads of the Defense Agencies to eliminate any contractor positions identified by the military department or Defense Agency concerned as being responsible for the performance of inherently governmental functions;

- (2) require the Secretaries of the military departments and the heads of the Defense Agencies to reduce by 10 percent per fiscal year in each of fiscal years 2012 and 2013 the funding of the military department or Defense Agency concerned for—
  - (A) staff augmentation contracts; and
  - (B) contracts for the performance of functions closely associated with inherently governmental functions; and
- (3) assign responsibility to the management officials designated pursuant to section 2330 of title 10, United States Code, and section 812(b) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3378; 10 23 U.S.C. 2330 note) to provide oversight and ensure the implementation of the requirements of this section during fiscal years 2012, 2013, ~~or 2014~~2014, or 2015.

(d) DEFINITIONS.—In this section:

- (1) The term “contract services” has the meaning given that term in section 235 of title 10, United States Code, except that the term does not include services that are funded out of amounts available for overseas contingency operations.
- (2) The term “function closely associated with inherently governmental functions” has the meaning given that term in section 2383(b)(3) of title 10, United States Code.
- (3) The term “staff augmentation contracts” means 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 services contracts (as that term is defined in section 2330a(g)(5) of title 10, United States Code).
- (4) The term “transfers from funding for overseas contingency operations” means amounts funded out of amounts available for overseas contingency operations in fiscal year 2010 that are funded out of amounts other than amounts so available in fiscal year 2012, 2013, ~~or 2014~~2014, or 2015.

(e) CARRYOVER OF REDUCTIONS REQUIRED.—If the reductions required by subsection (c)(2) for fiscal years 2012 and 2013 are not implemented, the amounts remaining for those reductions in fiscal years 2012 and 2013 shall be implemented in fiscal year ~~2014~~2015.

(f) USE OF OTHER DATA.—For purposes of compliance with subparagraphs (A) and (B) of subsection (c)(2), the Secretaries of the military departments and the heads of the Defense Agencies may use other available sources of data, such as advisory and assistance services information collected for purposes of the annual budget submission of the Department of Defense, to corroborate data from the annual inventory of contractor services required in section 2330a of title 10, United States Code. Any discrepancy identified between the inventory data and the data from other available sources shall be resolved and reported to the congressional defense committees.