

(9) The disposition of United States forces in the area of operations of United States Central Command, including the force posture and associated capabilities to conduct operations in Afghanistan.

(10) The activities of regional actors as they relate to promoting stability and countering threats from terrorist groups in Afghanistan, including—

(A) military operations conducted by foreign countries in the region as such operations relate to Afghanistan;

(B) the capabilities of the militaries of foreign countries to execute operations in Afghanistan; and

(C) the relationships between the militaries of foreign countries and the Taliban or foreign terrorist organizations inside Afghanistan.

(11) Any other matter the Under Secretary considers appropriate.

SEC. 1093. TRANSITION OF FUNDING FOR NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.

(a) PLAN REQUIRED.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a plan to transition the funding of non-conventional assisted recovery capabilities from the authority provided under section 943 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4578) to the authority provided under section 127f of title 10, United States Code.

Deadline.

(2) ELEMENTS.—The plan required by paragraph (1) shall include the following:

(A) An identification of the non-conventional assisted recovery capabilities to be transitioned to the authority provided by such section 127f.

(B) An identification of any legislative changes to such section 127f necessary to accommodate the transition of capabilities currently funded under such section 943.

(C) A description of the manner in which the Secretary plans to ensure appropriate transparency of activities for non-conventional assisted recovery capabilities, and related funding, in the annual report required under subsection (e) of such section 127f.

(D) Any other matter the Secretary considers relevant.

(b) MODIFICATION OF AUTHORITY FOR EXPENDITURE OF FUNDS FOR CLANDESTINE ACTIVITIES THAT SUPPORT OPERATIONAL PREPARATION OF THE ENVIRONMENT.—Section 127f of title 10, United States Code, is amended by adding at the end the following new subsection:

“(f) NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.—Funding used to establish, develop, and maintain non-conventional assisted recovery capabilities under this section may only be obligated and expended with the concurrence of the relevant Chief of Mission or Chiefs of Mission.”.

SEC. 1094. AFGHANISTAN WAR COMMISSION ACT OF 2021.

(a) SHORT TITLE.—This section may be cited as the “Afghanistan War Commission Act of 2021”.

(b) DEFINITIONS.—In this section:

Afghanistan War
Commission Act
of 2021.

Time period.

(1) The term “applicable period” means the period beginning June 1, 2001, and ending August 30, 2021.

(2) The term “appropriate congressional committees” means—

(A) the Committee on Armed Services of the Senate;
 (B) the Committee on Foreign Relations of the Senate;
 (C) the Select Committee on Intelligence of the Senate;
 (D) the Committee on Appropriations of the Senate;
 (E) the Committee on Armed Services of the House of Representatives;

(F) the Committee on Foreign Affairs of the House of Representatives;

(G) the Permanent Select Committee on Intelligence of the House of Representatives; and

(H) the Committee on Appropriations of the House of Representatives.

(3) The term “intelligence community” has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

(c) ESTABLISHMENT OF COMMISSION.—

(1) ESTABLISHMENT.—There is established in the legislative branch an independent commission to be known as the Afghanistan War Commission (in this section referred to as the “Commission”).

(2) MEMBERSHIP.—

Appointments.

(A) COMPOSITION.—The Commission shall be composed of 16 members of whom—

(i) 1 shall be appointed by the Chairman of the Committee on Armed Services of the Senate;

(ii) 1 shall be appointed by the ranking member of the Committee on Armed Services of the Senate;

(iii) 1 shall be appointed by the Chairman of the Committee on Armed Services of the House of Representatives;

(iv) 1 shall be appointed by the ranking member of the Committee on Armed Services of the House of Representatives;

(v) 1 shall be appointed by the Chairman of the Committee on Foreign Relations of the Senate;

(vi) 1 shall be appointed by the ranking member of the Committee on Foreign Relations of the Senate;

(vii) 1 shall be appointed by the Chairman of the Committee on Foreign Affairs of the House of Representatives;

(viii) 1 shall be appointed by the ranking member of the Committee on Foreign Affairs of the House of Representatives;

(ix) 1 shall be appointed by the Chairman of the Select Committee on Intelligence of the Senate;

(x) 1 shall be appointed by the Vice Chairman of the Select Committee on Intelligence of the Senate.

(xi) 1 shall be appointed by the Chairman of the Permanent Select Committee on Intelligence of the House of Representatives;

(xii) 1 shall be appointed by the ranking member of the Permanent Select Committee on Intelligence of the House of Representatives;

(xiii) 1 shall be appointed by the Majority leader of the Senate;

(xiv) 1 shall be appointed by the Minority leader of the Senate;

(xv) 1 shall be appointed by the Speaker of the House of Representatives; and

(xvi) 1 shall be appointed by the Minority Leader of the House of Representatives.

(B) QUALIFICATIONS.—It is the sense of Congress that each member of the Commission appointed under subparagraph (A) should—

(i) have significant professional experience in national security, such as a position in—

(I) the Department of Defense;

(II) the Department of State;

(III) the intelligence community;

(IV) the United States Agency for International Development; or

(V) an academic or scholarly institution; and

(ii) be eligible to receive the appropriate security clearance to effectively execute their duties.

(C) PROHIBITIONS.—A member of the Commission appointed under subparagraph (A) may not—

(i) be a current member of Congress;

(ii) be a former member of Congress who served in Congress after January 3, 2001;

(iii) be a current or former registrant under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.);

(iv) have previously investigated Afghanistan policy or the war in Afghanistan through employment in the office of a relevant inspector general;

(v) have been the sole owner or had a majority stake in a company that held any United States or coalition defense contract providing goods or services to activities by the United States Government or coalition in Afghanistan during the applicable period; or

(vi) have served, with direct involvement in actions by the United States Government in Afghanistan during the time the relevant official served, as—

(I) a cabinet secretary or national security adviser to the President; or

(II) a four-star flag officer, Under Secretary, or more senior official in the Department of Defense or the Department of State.

(D) DATE.—

(i) IN GENERAL.—The appointments of the members of the Commission shall be made not later than 60 days after the date of enactment of this Act.

Deadline.

(ii) FAILURE TO MAKE APPOINTMENT.—If an appointment under subparagraph (A) is not made by the appointment date specified in clause (i)—

(I) the authority to make such appointment shall expire; and

Expiration date.

(II) the number of members of the Commission shall be reduced by the number equal to the number of appointments not made.

(3) PERIOD OF APPOINTMENT; VACANCIES.—

(A) IN GENERAL.—A member of the Commission shall be appointed for the life of the Commission.

(B) VACANCIES.—A vacancy in the Commission—

(i) shall not affect the powers of the Commission; and

(ii) shall be filled in the same manner as the original appointment.

(4) MEETINGS.—

Deadline.

(A) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold the first meeting of the Commission.

(B) FREQUENCY.—The Commission shall meet at the call of the Co-Chairpersons.

(C) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(5) CO-CHAIRPERSONS.—Co-Chairpersons of the Commission shall be selected by the Leadership of the Senate and the House of Representatives as follows:

(A) 1 Co-Chairperson selected by the Majority Leader of the Senate and the Speaker of the House of Representatives from the members of the Commission appointed by chairpersons of the appropriate congressional committees, the Majority Leader of the Senate, and the Speaker of the House of Representatives; and

(B) 1 Co-Chairperson selected by the Minority Leader of the Senate and the Minority Leader of the House of Representatives from the members of the Commission appointed by the ranking members of the appropriate congressional committees, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives.

(d) PURPOSE OF COMMISSION.— The purpose of the Commission is—

(1) to examine the key strategic, diplomatic, and operational decisions that pertain to the war in Afghanistan during the relevant period, including decisions, assessments, and events that preceded the war in Afghanistan; and

(2) to develop a series of lessons learned and recommendations for the way forward that will inform future decisions by Congress and policymakers throughout the United States Government.

(e) DUTIES OF COMMISSION.—

(1) STUDY.—

(A) IN GENERAL.—The Commission shall conduct a thorough study of all matters relating to combat operations, reconstruction and security force assistance activities, intelligence activities, and diplomatic activities of the United States pertaining to the Afghanistan during the period beginning June 1, 2001, and ending August 30, 2021.

(B) MATTERS STUDIED.—The matters studied by the Commission shall include—

(i) for the time period specified under subparagraph (A)—

- (I) the policy objectives of the United States Government, including—
 - (aa) military objectives;
 - (bb) diplomatic objectives; and
 - (cc) development objectives;
- (II) significant decisions made by the United States, including the development of options presented to policymakers;
- (III) the efficacy of efforts by the United States Government in meeting the objectives described in clause (i), including an analysis of—
 - (aa) military efforts;
 - (bb) diplomatic efforts;
 - (cc) development efforts; and
 - (dd) intelligence efforts; and
- (IV) the efficacy of counterterrorism efforts against al Qaeda, the Islamic State Khorasan Province, and other foreign terrorist organizations in degrading the will and capabilities of such organizations—
 - (aa) to mount external attacks against the United States or its allies and partners; or
 - (bb) to threaten stability in Afghanistan, neighboring countries, and the region;
- (i) the efficacy of metrics, measures of effectiveness, and milestones used to assess progress of diplomatic, military, and intelligence efforts;
- (ii) the efficacy of interagency planning and execution process by the United States Government;
- (iii) factors that led to the collapse of the Afghan National Defense Security Forces in 2021, including—
 - (I) training and mentoring from the institutional to the tactical levels within the Afghan National Defense Security Forces;
 - (II) assessment methodologies, including any transition from different methodologies and the consistency of implementation and reporting;
 - (III) the determination of how to establish and develop the Afghan National Defense Security Forces, including the Afghan Air Force, and what determined the security cooperation model used to build such force;
 - (IV) reliance on technology and logistics support;
 - (V) corruption; and
 - (VI) reliance on warfighting enablers provided by the United States;
- (iv) the challenges of corruption across the entire spectrum of the Afghan Government and efficacy of counter-corruption efforts to include linkages to diplomatic lines of effort, linkages to foreign and security assistance, and assessment methodologies;
- (v) the efficacy of counter-narcotic efforts to include alternative livelihoods, eradication, interdiction, and education efforts;

(vii) the role of countries neighboring Afghanistan in contributing to the stability or instability of Afghanistan;

(viii) varying diplomatic approaches between Presidential administrations;

(ix) the extent to which the intelligence community did or did not fail to provide sufficient warning about the probable outcomes of a withdrawal of coalition military personnel from Afghanistan, including as it relates to—

(I) the capability and sustainability of the Afghanistan National Defense Security Forces;

(II) the sustainability of the Afghan central government, absent coalition support;

(III) the extent of Taliban control over Afghanistan over time with respect to geographic territory, population centers, governance, and influence; and

(IV) the likelihood of the Taliban regaining control of Afghanistan at various levels of United States and coalition support, including the withdrawal of most or all United States or coalition support;

(x) the extent to which intelligence products related to the state of the conflict in Afghanistan and the effectiveness of the Afghanistan National Defense Security Forces complied with intelligence community-wide analytic tradecraft standards and fully reflected the divergence of analytic views across the intelligence community;

(xi) an evaluation of whether any element of the United States Government inappropriately restricted access to data from elements of the intelligence community, Congress, or the Special Inspector General for Afghanistan Reconstruction (SIGAR) or any other oversight body such as other inspectors general or the Government Accountability Office, including through the use of overclassification; and

(xii) the extent to which public representations of the situation in Afghanistan before Congress by United States Government officials differed from the most recent formal assessment of the intelligence community at the time those representations were made.

(2) REPORT REQUIRED.—

(A) IN GENERAL.—

(i) ANNUAL REPORT.—

(I) IN GENERAL.—Not later than 1 year after the date of the initial meeting of the Commission, and annually thereafter, the Commission shall submit to the appropriate congressional committees a report describing the progress of the activities of the Commission as of the date of such report, including any findings, recommendations, or lessons learned endorsed by the Commission.

(II) ADDENDA.—Any member of the Commission may submit an addendum to a report required

Recommendations.

under subclause (I) setting forth the separate views of such member with respect to any matter considered by the Commission.

(III) BRIEFING.—On the date of the submission of each report, the Commission shall brief Congress.

(ii) FINAL REPORT.—

(I) SUBMISSION.—Not later than 3 years after the date of the initial meeting of the Commission, the Commission shall submit to Congress a report that contains a detailed statement of the findings, recommendations, and lessons learned endorsed by the Commission.

(II) ADDENDA.—Any member of the Commission may submit an addendum to the report required under subclause (I) setting forth the separate views of such member with respect to any matter considered by the Commission.

(III) EXTENSION.—The Commission may submit the report required under subclause (I) at a date that is not more than 1 year later than the date specified in such clause if agreed to by the chairperson and ranking member of each of the appropriate congressional committees.

(B) FORM.—The report required by paragraph (1)(B) shall be submitted and publicly released on a Government website in unclassified form but may contain a classified annex.

Public
information.
Web posting.

(C) SUBSEQUENT REPORTS ON DECLASSIFICATION.—

(i) IN GENERAL.—Not later than 4 years after the date that the report required by subparagraph (A)(ii) is submitted, each relevant agency of jurisdiction shall submit to the committee of jurisdiction a report on the efforts of such agency to declassify such annex.

(ii) CONTENTS.—Each report required by clause (i) shall include—

(I) a list of the items in the classified annex that the agency is working to declassify at the time of the report and an estimate of the timeline for declassification of such items;

(II) a broad description of items in the annex that the agency is declining to declassify at the time of the report; and

(III) any justification for withholding declassification of certain items in the annex and an estimate of the timeline for declassification of such items.

List.

(f) POWERS OF COMMISSION.—

(1) HEARINGS.—The Commission may hold such hearings, take such testimony, and receive such evidence as the Commission considers necessary to carry out its purpose and functions under this section.

(2) ASSISTANCE FROM FEDERAL AGENCIES.—

(A) INFORMATION.—

(i) IN GENERAL.—The Commission may secure directly from a Federal department or agency such

information as the Commission considers necessary to carry out this section.

(ii) FURNISHING INFORMATION.—Upon receipt of a written request by the Co-Chairpersons of the Commission, the head of the department or agency shall expeditiously furnish the information to the Commission.

(B) SPACE FOR COMMISSION.—

(i) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Architect of the Capitol, in consultation with the Commission, shall identify suitable space to house the operations of the Commission, which shall include—

(I) a dedicated sensitive compartmented information facility or access to a sensitive compartmented information facility; and

(II) the ability to store classified documents.

(ii) AUTHORITY TO LEASE.—If the Architect of the Capitol is not able to identify space in accordance with clause (i) within the 30-day period specified in clause (i), the Commission may lease space to the extent that funds are available for such purpose.

(C) COMPLIANCE BY INTELLIGENCE COMMUNITY.—Elements of the intelligence community shall respond to requests submitted pursuant to paragraph (2) in a manner consistent with the protection of intelligence sources and methods.

(3) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(4) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services, goods, and property from non-Federal entities for the purposes of aiding and facilitating the work of the Commission. The authority in this subsection does not extend to gifts of money. Gifts accepted under this authority shall be documented, and conflicts of interest or the appearance of conflicts of interest shall be avoided. Subject to the authority in this section, commissioners shall otherwise comply with rules set forth by the Select Committee on Ethics of the Senate.

(5) ETHICS.—

(A) IN GENERAL.—The members and employees of the Commission shall be subject to the ethical rules and guidelines of the Senate.

(B) REPORTING.—For purposes of title I of the Ethics in Government Act of 1978 (5 U.S.C. App.), each member and employee of the Commission—

(i) shall be deemed to be an officer or employee of the Congress (as defined in section 109(13) of such title); and

(ii) shall file any report required to be filed by such member or such employee (including by virtue of the application of subsection (g)(1)) under title I of the Ethics in Government Act of 1978 (5 U.S.C. App.) with the Secretary of the Senate.

(g) COMMISSION PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—A member of the Commission who is not an officer or employee of the Federal

Deadline.
Consultation.

Compliance.

Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(3) STAFF.—

(A) STATUS AS FEDERAL EMPLOYEES.—Notwithstanding the requirements of section 2105 of title 5, United States Code, including the required supervision under subsection (a)(3) of such section, the members of the commission shall be deemed to be Federal employees.

(B) EXECUTIVE DIRECTOR.—The Co-Chairpersons of the Commission shall appoint and fix the rate of basic pay for an Executive Director in accordance with section 3161(d) of title 5, United States Code.

(C) PAY.—The Executive Director, with the approval of the Co-Chairpersons of the Commission, may appoint and fix the rate of basic pay for additional personnel as staff of the Commission in accordance with section 3161(d) of title 5, United States Code.

(D) SECURITY CLEARANCES.—All staff must have or be eligible to receive the appropriate security clearance to conduct their duties.

(4) DETAIL OF GOVERNMENT EMPLOYEES.—A Federal Government employee, with the appropriate security clearance to conduct their duties, may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(5) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Co-Chairpersons of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(6) PAY.—The pay of each employee of the Commission and any member of the Commission who receives pay in accordance with paragraph (1) shall be disbursed by the Secretary of the Senate.

(h) TERMINATION OF COMMISSION.—The Commission shall terminate 90 days after the date on which the Commission submits the report required under subsection (e)(2)(A)(ii).

SEC. 1095. COMMISSION ON THE NATIONAL DEFENSE STRATEGY.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is hereby established, as of the date specified in paragraph (2), an independent commission in the legislative branch to be known as the Commission on the National Defense Strategy for the United States (in this subtitle referred to as the “Commission”).