



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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(House Rules)

STATEMENT OF ADMINISTRATION POLICY

H.R. 4310 – National Defense Authorization Act for FY 2013

(Rep. McKeon, R-CA, and 1 cosponsor)

The Administration appreciates the House Armed Services Committee's continued support of our national defense and supports a number of the provisions in H.R. 4310, the National Defense Authorization Act for Fiscal Year 2013. In particular, the Administration appreciates the support of the Committee for authorities that assist the ability of the warfighter to operate in unconventional and irregular warfare, counter unconventional threats, or support contingency or stability operations. The Administration is disappointed, however, with the many provisions in this bill that impede the ability of the Secretary of Defense to carry out the 2012 defense strategic guidance.

While there are a number of areas of agreement with the Committee, the Administration has serious concerns with provisions that: (1) depart from the President's fiscal year (FY) 2013 Budget request – in particular, increases to the topline request for the base budget; (2) constrain the ability of the Armed Forces to carry out their missions consistent with the new defense strategy; or (3) impede the ability of the Secretary of Defense and the Secretary of Energy to make and implement management decisions that eliminate unnecessary overhead or programs to ensure scarce resources are directed to the highest priorities for the national security. The overall funding level supported by H.R. 4310 would violate the Budget Control Act of 2011, the bipartisan agreement reached between the Congress and the President to put the Nation on a sustainable fiscal course. If the cumulative effects of the bill impede the ability of the Administration to execute the new defense strategy and to properly direct scarce resources, the President's senior advisors would recommend to the President that he veto the bill.

The Administration looks forward to working with the Congress to address these and other concerns, a number of which are outlined in more detail below. As well, the Administration looks forward to reviewing a classified annex and working with the Congress to address any concerns on classified programs.

Limitations on Nuclear Force Reductions and Nuclear Employment Strategy: The Administration strongly objects to sections 1053-1059, which would impinge on the President's ability to implement the New START Treaty and to set U.S. nuclear weapons policy. In particular, sections 1053 and 1055 would set onerous conditions on the Administration's ability to implement the Treaty, and section 1058 would set onerous conditions on the President's ability to retire, dismantle, or eliminate non-deployed nuclear weapons. Further, section 1054 raises constitutional concerns as it appears to encroach on the President's authority as Commander in Chief to set nuclear employment policy – a right exercised by every president in the nuclear age from both parties. If the final bill presented to the President includes these provisions, the President's senior advisors would recommend that he veto the bill.

Detainee Matters: The Administration strongly objects to sections 1035-1043, which would

continue and in some cases expand unwise restrictions that would constrain the flexibility that our Nation's armed forces and counterterrorism professionals need to deal with evolving threats. Section 1035, which would prohibit any detainee who has been repatriated to Micronesia, the Marshall Islands, or the Republic of Palau from traveling to the U.S., is unnecessary and could undermine our relations with a friendly government whose citizens may serve in the U.S. military. Sections 1036, 1037, 1038, and 1043 unnecessarily renew, supplement, or enhance the restrictions on the transfer of Guantanamo detainees into the United States or a foreign country. The Administration continues to strongly oppose these provisions, which intrude upon the Executive branch's ability to carry out its military, national security, and foreign relations activities and to determine when and where to prosecute Guantanamo detainees. Likewise, the Administration opposes the notice and reporting requirements in sections 1040, 1041, and 1042, which would unnecessarily complicate and potentially compromise military operations and detention practices – including aboard naval vessels at sea. These sections, like section 1039, would also greatly add to the military's administrative burden. Section 1041 is an unprecedented, unwarranted, and misguided intrusion into the military's detention operations in a foreign combat theater during an active armed conflict. The reporting requirements seek to micromanage the decisions of experienced military commanders and diplomats, threaten to compromise the Executive's ability to act swiftly and flexibly during a critical time for transition in Afghanistan, and could deter or jeopardize the success of effective foreign prosecutions. Sections 1036, 1037, and 1041, moreover, would, under certain circumstances, violate constitutional separation of powers principles. If the final bill presented to the President includes provisions that challenge critical executive branch authority, the President's senior advisors would recommend that he veto the bill.

TRICARE Fees and Co-Payments: The Administration agrees that retirees deserve a quality health care benefit. For this very reason, the Administration strongly supports its requested TRICARE fee initiatives that seek to control the spiraling health care costs of the Department of Defense (DOD) while keeping retired beneficiaries' share of these costs well below the levels experienced when the TRICARE program was implemented in the mid-1990s. The projected FY 2013 TRICARE savings of \$1.8 billion and \$12.9 billion through FY 2017 are essential for DOD to successfully address rising personnel costs. DOD needs these savings to balance and maintain investments for key defense priorities. The Administration is very disappointed that the Committee did not support the proposed TRICARE fee increases and included section 718, which, while supporting some fee increases, caps them at levels below those allowed under current law and below the requested authorization. If section 718 remains in the bill, it would only provide five year savings of \$2.6 billion.

Limitations on Retirement of Weapon Systems: The Administration strongly objects to provisions that would restrict retirements of C-27J, C-23, C-130, and other aircraft and the RQ-4 Global Hawk Block 30. These provisions would force DOD to operate, sustain, and maintain aircraft that are in excess of national requirements and are not affordable in an austere budget environment. Retaining large numbers of under-resourced aircraft in the fleet in today's fiscally constrained environment would significantly increase the risk of a hollow force. The Administration also objects to provisions that would restrict retirements of nuclear-powered ballistic missile submarines and certain Ticonderoga Class Cruisers (CGs) and Dock Landing Ships (LSDs). The requirement to maintain a minimum of 12 ballistic missile submarines in the fleet would limit the Secretary of the Navy's ability to manage Naval strategic forces to balance risk across the total Naval battle force, and to ensure scarce resources are directed to the highest priorities of the Combatant Commanders. The requirement to retain CGs and LSDs without associated funding for manning, repair, maintenance, and modernization over the remainder of their service lives places the Navy at greater

risk of hollowing out the fleet. Finally, the Administration objects to section 1076, which would prevent the retirement of the C-23 aircraft in FY 2013. As of January 27, 2012, when the Army transferred the mission to conduct time sensitive/mission critical cargo and personnel to the Air Force, the Army no longer has a mission for a fixed wing cargo aircraft. Delaying the divestment of the C-23 aircraft into FY 2016 and beyond would cost \$343.5 million for modernization and service life extension on the aircraft. In the current constrained budget environment, a congressional requirement to maintain systems that are outside the scope of the Nation's security requirements is irresponsible.

Limitations on End-Strength Reductions for the Army and Marine Corps: The Administration strongly objects to section 403, which would limit active duty end-strength reductions for the Army and Marine Corps in FYs 2014-2017 to 15,000 and 5,000 per year, respectively, and would require DOD to fund all Army and Marine Corps active duty end strength in the base budget and not through emergency, supplemental, or overseas contingency operations (OCO) funds. The timing and pace of the planned reductions to the Army and Marine Corps are tied to anticipated changes in operational demand based on the Nation's current commitments as well as the new defense strategy, which emphasizes a smaller and leaner force. Limiting the Army's budgeted end-strength reductions to 15,000 per year is estimated to increase military personnel and health care costs by over \$500 million in FY 2014 and \$1.9 billion through FY 2017. Where non-enduring end strength above 490,000 for the Army and 182,100 for the Marine Corps is maintained between FY 2014 and FY 2017, it is because of current contingency operations and, therefore, appropriately funded in the OCO portion of the DOD budget request. The Administration also strongly opposes provisions mandating an end strength for the Army at 552,000 in FY 2013 and excluding Service members in the Integrated Disability Evaluation Systems from FY 2013 active duty end-strength authorized levels. To comply with this legislation, the Army would need to significantly increase accessions and retention far beyond what is currently planned to meet the minimum end strength.

Base Realignment and Closure (BRAC): The Administration strongly objects to section 2713, which would prohibit DOD from spending any funds to propose or plan for additional rounds of BRAC, and sections 2712, 2867, and 2868, which seek to freeze certain Air Force command structures, capabilities, and functions as they existed in 2011. Together, these sections appear to impinge on Executive branch prerogatives to plan for contingencies or make other needed adjustments that would improve military effectiveness and efficiency. The Administration is concerned that the House has not authorized additional BRAC rounds so that DOD may properly align the military's infrastructure with the needs of our evolving force structure, which is critical to ensuring that limited resources are available for the highest priorities of the warfighter and the national security.

Protection of Certain Religious and Moral Beliefs: The Administration strongly objects to sections 536 and 537 because those provisions adopt unnecessary and ill-advised policies that would inhibit the ability of same-sex couples to marry or enter a recognized relationship under State law. Section 536 would prohibit all personnel-related actions based on certain religious and moral beliefs, which, in its overbroad terms, is potentially harmful to good order and discipline. Section 537 would obligate DOD to deny Service members, retirees, and their family members access to facilities for religious ceremonies on the basis of sexual orientation, a troublesome and potentially unconstitutional limitation on religious liberty.

Missile Defense: The Administration appreciates the support for DOD's air and missile defense programs, as well as the support for the Government of Israel to purchase additional Iron Dome

missile systems. However, the Administration strongly objects to sections 223, 230, 1236, 2204(b), and 2403(b), as well as the Committee's \$75 million reduction to the authorization of appropriation in section 4601 for the Aegis Ashore Missile Defense System Complex, respectively. These provisions would jeopardize the implementation of the European Phased Adaptive Approach (EPAA) to missile defense and limit the ability to protect the United States, deployed U.S. Forces, allies, and partners. Section 223, which would require a missile defense site on the East Coast of the United States, is premature because the Administration has not identified a requirement for a third U.S.-based missile defense site, nor assessed the feasibility or cost in a cost-constrained environment. This section also would mandate the inclusion of a plan to deploy an appropriate missile defense interceptor for such a site in the budget request for FY 2014, an unwarranted intrusion on Executive branch decision making. Sections 230, 2204(b), and 2403(b) would limit funding for missile defense equipment and construction supporting the EPAA – the U.S. voluntary national contribution to NATO missile defense – thereby hindering its implementation and limiting protection of U.S. Forces, allies, and partners in NATO Europe. Finally, section 1236 would unnecessarily impede the President's exclusive authority to conduct discussions with the Russian Federation on cooperative missile defense matters both bilaterally and in the NATO context, would limit the reciprocal exchange of data that could benefit U.S. and allied security, and would be impractical to implement.

Medium Extended Air Defense System (MEADS): The Administration strongly objects to section 229, which would prohibit the use of funds for the MEADS program. If the Congress does not appropriate FY 2013 funding, there is a high likelihood that this action would be perceived by our partners Italy and Germany as breaking our commitment under the Memorandum of Understanding, and could harm our relationship with our Allies on a much broader basis, including future multinational cooperative projects. It also could prevent the completion of the agreed Proof of Concept activities, which would provide data archiving, analysis of testing, and software development necessary to harvest technology from U.S. and partner investments in MEADS.

Extended Deterrent in Europe: The Administration strongly objects, including on constitutional grounds, to the elements of section 1060 that would limit the President's ability to determine U.S. military requirements in Europe, negotiate treaties and otherwise conduct diplomacy, and maintain the confidentiality of sensitive diplomatic communications. This section would inhibit our ability to function within NATO. The Administration also objects to this section's limitation on Administration efforts to address tactical (non-strategic) nuclear weapons, a step called for in the Senate's Resolution of Ratification of the New START Treaty and a priority of U.S. arms control policy.

Military Operations: The Administration strongly objects to sections 1221 and 1222, which would require DOD to prepare and submit a plan to augment the presence of the U.S. Fifth Fleet in the Middle East and to conduct military activities in that region. Taken together, these provisions would infringe upon the President's prerogative to plan for military activities, including the deployment of U.S. Forces. Section 1221 also purports to declare U.S. policy toward Iran, challenging the President's well-established constitutional prerogatives with respect to U.S. foreign policy. The Administration also objects to section 1222, which would micromanage the President's decisions as Commander-in-Chief regarding the deployment of U.S. Forces.

Military Activities in Cyberspace: The Administration agrees that appropriate military operations in cyberspace are a vital component of national security, but objects to section 941, which seeks to clarify military authority to conduct clandestine cyber operations. The Administration has concerns

about this provision and wants to work with the Congress to ensure that any such legislation adds clarity and value to our efforts in cyberspace.

Prohibition on Use of Funds to Implement International Agreement on Space Activities that Have Not Been Ratified by the Senate or Authorized by Statute: The Administration strongly objects to section 913, which prohibits the expenditure of funds by the Secretary of Defense or the Director of National Intelligence to implement or comply with an international agreement concerning outer space activities unless such agreement is ratified by the Senate or authorized by statute. The Administration is participating in the development of a non-legally binding International Code of Conduct for Outer Space Activities (Code), which is not an international agreement concerning outer space activities. The Code would not impose any legal obligations on the United States, nor would it restrict the exercise of the U.S.'s rights of individual and collective self-defense. Instead, it would enhance U.S. national security by encouraging responsible space behavior and singling out those who act otherwise, reducing the risk of misunderstanding and misconduct in space. The Administration is concerned that this provision would create confusion about the legal status of the Code and lead our international partners to conclude that the U.S. will treat the Code as an international agreement, greatly complicating negotiations. Furthermore, section 913 encroaches on the Executive's exclusive authority to conduct foreign relations and could severely hamper U.S. ability to conduct bilateral space cooperation activities with key allies.

Department of Energy (DOE) and Contractor Management Relationships: The Administration strongly objects to elements of sections 1061 and 1062 and certain provisions of Title 31 that change the responsibilities, authorities, and reporting requirements between and among DOE, the National Nuclear Security Administration (NNSA), contractors managing and operating the national laboratories, the President, and the Congress. Some of these changes fundamentally alter the relationship between DOE and NNSA by restricting the authority of the Secretary of Energy and transferring responsibilities from DOE to NNSA. The bill also: (1) legislates the establishment of a council of the national laboratory contractors with the authority to make unrestricted recommendations to NNSA, which then mandate a response by NNSA; (2) takes authority for final approval of the NNSA budget submission away from the President; (3) requires NNSA to submit a cost-benefit analysis to the Congress before competing a management and operating contract, which would undermine a long-standing and bipartisan effort to increase competition in government contracting; and (4) authorizes unrestricted access for the contractors to report to the Congress on Administration activities.

Health and Safety at DOE and NNSA: The Administration strongly opposes sections 3202, 3115, 3113, and 3151. These provisions severely hamper external, independent oversight by the Defense Nuclear Facilities Safety Board; move regulatory authority from independent offices and agencies to the NNSA Administrator; require a weaker standard of contractor governance, management, and oversight; and eliminate DOE's flexibility to determine the appropriate means of assessing the unique risks that it confronts in its facilities. By lowering safety standards for the nuclear weapons complex and reducing requested funding for health, safety, and security, these provisions would weaken protections for workers and the general public.

NNSA Staffing: Section 3111 would direct the Administration to make large reductions within the NNSA in its number of Federal employees. The NNSA is undertaking major, complex efforts to move to a more efficient and effective management of the nuclear security complex while maintaining the safety, security, and effectiveness of our nuclear arsenal. The Administration believes that the NNSA is best positioned to prescribe the proper level of staffing to fulfill those

missions effectively within the budget appropriated by the Congress.

Unwarranted Disclosure of Internal Executive Branch Information: The Administration objects to section 953, which would require DOD to provide to the Congress the Administration's internal planning and guidance information, and section 1077, which could be construed to interfere with DOD's ability to control the release of information related to internal deliberations on matters such as budget and program decisions and treaty negotiations.

Incremental Funding: The bill would provide incremental funding for major programs rather than the full funding and advance appropriations that the Administration requested. Although the Administration supports the underlying programs, the Administration strongly opposes the use of incremental funding for the VIRGINIA class attack submarine and the Space-Based Infrared System satellites because incremental funding undermines program stability and cost discipline.

Unified Medical Command: The Administration strongly objects to section 711, which would require the President to create a new unified combatant command for medical operations of the military health system. DOD completed a study on how to best deliver high-quality medical care to Service members and their families in an effective and cost-efficient manner. The study, submitted to the Congress, was reviewed in detail by the most senior civilian and military leaders of the Department, who determined that a Unified Medical Command was not the proper course of action for DOD. Section 711 would preclude DOD from properly structuring itself to accomplish the most efficient and effective improvement to the current Military Health System. The Administration also objects to section 719, which would require DOD to implement as-yet-unknown recommendations from a report by the U.S. Comptroller General prior to making changes to the structure of the Military Health System.

Requirements to Develop or Maintain Unnecessary Capabilities: The Administration objects to section 352, which would require the Secretary of the Air Force to maintain operational capabilities at 18 aerospace control alert sites. After an extensive analysis, DOD determined that it was possible to reduce the routine aerospace control alert posture at two sites without exposing the United States to undue risk based on the current threat. The Administration also objects to section 211, which would require the Long Range Strike Bomber to be certified to use strategic nuclear weapons as a precondition for declaring initial operational capability (IOC). This requirement would unnecessarily delay conventional weapons IOC.

Limitation on Reimbursement of the Government of Pakistan: The Administration strongly objects to the restriction in reimbursement for Pakistan from Coalition Support Funds and the associated certification requirements in section 1211. Taken together, the reimbursement restriction and the certification restrictions - some of which require the Secretary of Defense to certify Pakistani cooperation on issues outside of his purview - are proposed at a particularly sensitive time and would severely constrict DOD's ability to respond to emergent war-time coalition support requirements, putting at risk the success of our campaign in Afghanistan, and increasing the risk that al-Qaida and its associates would be able to again enjoy a safe haven in Pakistan.

Use of Private Security Contractors: The Administration understands the aims of the provision, but strongly objects to section 1214, which would limit the Secretary of Defense's options to provide security for members of the Armed Forces and military installations and facilities in Afghanistan and would undermine the coalition's efforts to encourage Afghan assumption of sovereign duties. If enacted, this section will require either additional troops to perform security functions or a reduction

in combat missions that current force levels perform. It could also undermine civilian-military coordination and increase risk for certain development projects that are critical to ensuring a stable Afghanistan through the transition period to 2014.

Extension and Expansion of Authority to Acquire Products and Services Produced in Countries

Along a Major Route of Supply to Afghanistan: The Administration objects to language included in section 821, which would limit the use of expanded procurement authority to only those Northern Distribution Network (NDN) countries that agree to permit the transport of coalition personnel, equipment, and supplies. This restriction would hamper DOD's attempts at local procurement along the NDN and would impact transit agreements that the United States already has negotiated with several countries along the NDN.

Alternative Fuels: The Administration objects to sections 313 and 314, which would affect DOD's ability to procure alternative fuels and would further increase American reliance on fossil fuels, thereby contributing to geopolitical instability and endangering our interests abroad.

Abrams/Bradley Upgrades: The Administration objects to \$321 million of unrequested authorization in section 4101, lines 005 and 012 for unneeded upgrades to the M-1 Abrams tank and M-2 Bradley Fighting Vehicles in a fiscally-constrained environment.

Purple Hearts for Fort Hood and Little Rock Victims: The Administration objects to section 552, which would grant Purple Hearts to the victims of the shooting incidents in Fort Hood, Texas, and Little Rock, Arkansas. The criminal acts that occurred in Little Rock were tried by the State of Arkansas as violations of the State criminal code rather than as acts of terrorism; as a result, this provision could create appellate issues.

Veterans Memorial Object Transfer: The Administration objects to section 355, which would prohibit the return of veterans' memorial objects without specific authorization in law. This provision would restrict the President's ability to take actions to demonstrate goodwill toward foreign allies and partners by lending or giving historical artifacts in instances where doing so would serve the national security interests of the United States.

Retroactive Liability for Closed Non-BRAC DOD Installations: The Administration objects to section 2813, which would mandate DOD to indemnify anyone who acquired ownership or control of DOD property at any military installation closed outside the BRAC process after October 24, 1988 against costs or claims arising from environmental conditions. The provision would retroactively expose DOD to new and costly claims and undermine the equity to the United States of the terms and conditions negotiated in good faith with purchasers when the property was originally conveyed. Property transferees are already protected by the deed covenants DOD is required to provide under the Comprehensive Environmental Response, Compensation, and Liability Act.

National Guard Center of Excellence: The Administration opposes section 334, which would create a Center of Excellence (COE) for the National Guard State Partnership Program to provide training to units and members of the active and reserve components to implement the State Partnership Program. This provision would create a duplicative training program, as it would authorize training within the core competencies of the National Guard, which already occurs within existing DOD organizations. In addition, the provision would require additional resources to fund the full-time personnel to command and administer the COE, provide the training, and fund the partnerships with

universities and other institutions where some of the training would take place.

Small Business Contracting: The Administration strongly supports efforts to increase Federal contracting with small businesses, but opposes section 1631, which would establish a laudable but overly ambitious government-wide small business procurement goal and unrealistic individual agency goals that could undermine the goals process and take away the Government's ability to focus its efforts where opportunities for small business contractors are greatest. In addition, the Administration objects to the level of complexity that section 1671 would add to the process for evaluating contract bundling, which will encourage a needless increase in litigation and place unnecessary constraints on agencies in making determinations that bundling is necessary and justified.

Other Provisions Authorizing Activities with Partner Nations: The Administration objects to section 1532, which would limit activities of the Task Force on Business and Stability Operations (TFBSO) to only mining and natural resources industry development and reduces funding to \$50 million. The TFBSO has developed a unique capability to foster and expand business opportunities within Afghanistan. The limited authority in Section 1532 and the reduction in funds would not allow TFBSO to continue its mission, particularly in mining and natural resources. The Administration supports continuing the authorities provided to the TFSBO in the National Defense Authorization Act for Fiscal Year 2012.

Constitutional Concerns: A number of the bill's provisions raise additional constitutional concerns, including encroachment on the President's exclusive authorities related to international negotiations. The Administration looks forward to working with the Congress to address these and other concerns.

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