



**EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503**

May 16, 2016  
(House Rules)

## **STATEMENT OF ADMINISTRATION POLICY**

### **H.R. 4909 – National Defense Authorization Act for Fiscal Year 2017**

(Rep. Thornberry, R-TX, and Rep. Smith, D-WA)

The Administration appreciates the House Armed Services Committee's continued support of our national defense and supports a number of provisions in H.R. 4909, the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017. However, the Administration strongly objects to many provisions in this bill that impede the Administration's ability to carry out the President's defense strategy.

H.R. 4909 fails to provide our troops with the resources they need to keep our Nation safe. Instead of fully funding wartime operations such as INHERENT RESOLVE to defeat ISIL, the bill would redirect \$18 billion of Overseas Contingency Operations (OCO) funds toward base budget programs that the Department of Defense (DOD) did not request, cutting off critical funding for wartime operations after April 30, 2017. Not only is this approach dangerous, but it is also wasteful. The bill would buy excess force structure without the money to sustain it, effectively creating hollow force structure that would undermine DOD's efforts to restore readiness. Furthermore, the bill's funding approach attempts to unravel the dollar-for-dollar balance of defense and non-defense funding increases provided by the Bipartisan Budget Act (BBA) of 2015, threatening future steps needed to reverse over \$100 billion of future sequestration cuts to DOD. By gambling with warfighting funds, the bill risks the safety of our men and women fighting to keep America safe, undercuts stable planning and efficient use of taxpayer dollars, dispirits troops and their families, baffles our allies, and emboldens our enemies.

In addition, H.R. 4909 would impose other unneeded costs, constraining DOD's ability to balance military capability, capacity, and readiness. The President's defense strategy depends on investing every dollar where it will have the greatest effect. The Administration's FY 2017 proposals will accomplish this by continuing and expanding critical reforms that divest unneeded force structure, balance growth in compensation, modernize military health care, and reduce wasteful overhead. The bill fails to adopt many of these reforms, including failing to authorize a new Base Realignment and Closure (BRAC) round.

The bill also continues unwarranted restrictions regarding detainees at Guantanamo Bay, would prevent the United States from fulfilling its obligations under a treaty, and includes non-germane policy riders, such as those undermining the Endangered Species Act as well as public land management statutes, and those that would make it easier to discriminate on the basis of sexual orientation, which have nothing to do with national defense.

If the President were presented with H.R. 4909, his senior advisors would recommend 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, and urges the Congress to work in a bipartisan fashion to make necessary changes to the bill. The Administration also looks forward to reviewing the bill's classified annex and working with the Committee to address any concerns on classified programs.

Reduction, Expiration, and Misuse of OCO Funds: The Administration strongly objects to the bill's proposal to substitute \$18 billion of the Department's OCO request with \$18 billion of unsustainable base budget programs that do not reflect the Department's highest joint priorities. This approach creates a hollow force structure and risks the loss of funding for critical overseas contingency operations. This gimmick is inconsistent with the BBA, which provided equal increases for defense and non-defense spending as well as the certainty needed to prosecute the counter-ISIL campaign, protect readiness recovery, modernize the force for future conflicts, and keep faith with service members and their families.

Provisions in the bill that would cause OCO funds in military personnel, operation and maintenance, defense health program, and working capital funds accounts to expire on April 30, 2017 are unacceptable. Shortchanging wartime operations by \$18 billion and cutting off funding in the middle of the year introduces a dangerous level of uncertainty for our men and women in uniform carrying out missions in Afghanistan, Iraq, Syria, and elsewhere. Our troops need and deserve guaranteed, predictable support as they execute their missions year round, particularly in light of the dangers they face in executing the country's ongoing overseas contingency operations.

Counter Islamic State in Iraq and the Levant (ISIL) Efforts: The Administration strongly objects to the bill's proposal to cut OCO funding for U.S. efforts to counter ISIL and to prevent the availability of critical counter-ISIL funds after April 2017. Reducing funding for train and equip activities in Iraq and Syria and cutting off funding mid-year would inhibit the U.S. military's ability to work with the Government of Iraq (GoI), the Syrian opposition, and other local forces to combat ISIL; interrupt ongoing U.S. support for forces on the ground in the middle of the year; and call into question the reliability of the U.S. commitment to support its partners.

The Administration also strongly objects to provisions in sections 1221 and 1222, which would further hamper the United States' ability to counter ISIL. A unified Iraq led by a multisectarian government is a U.S. national security interest, but the bill's approach for supporting the Kurdish forces contradicts stated U.S. policy of countering ISIL "by, with, and through" the GoI. Current policy has not inhibited U.S. support to Kurdish or Sunni forces, who with the Iraqi Army have reclaimed territory from ISIL control. In addition, the requirement that not more than 75 percent of the authorized funds under section 1222 may be obligated or expended until after the Secretaries of Defense and State submit a plan to the Congressional Committees to retake and hold Mosul limits the U.S. ability to respond to evolving needs of Iraqi forces as necessary to successfully support their campaign against ISIL. Finally, the expansion of a Secretary of Defense reprogramming certification requirement in section 1221 would add unnecessary bureaucracy, hamper the Department's ability to support the warfighter in a timely and flexible manner, and risk jeopardizing acceleration and effectiveness of the counter-ISIL campaign in Syria.

Guantanamo Detainee Provisions: The Administration strongly objects to several provisions of the bill that relate to the detention facility at Guantanamo Bay, Cuba. As the Administration has

said many times before, operating this facility weakens our national security by draining resources, damaging our relationships with key allies and partners, and emboldening violent extremists. In February, the Administration submitted a comprehensive plan to safely and responsibly close the detention facility at Guantanamo Bay, Cuba, and to bring this chapter of our history to a close. Rather than taking steps to close the facility, this bill aims to extend its operation. Sections 1032 and 1033 would continue to prohibit the use of funds to transfer Guantanamo detainees to the United States or even to construct or modify any facility in the United States to house detainees. These restrictions would limit the ability of the Executive Branch to take the steps necessary to develop alternative locations for a detention facility, and from fulfilling its commitment to close the facility at Guantanamo. The bill would also leave in place onerous restrictions on the transfer of detainees to foreign countries, and section 1034 would, in some cases, seek to prohibit certain transfers entirely. The President has objected to the inclusion of these and similar provisions in prior legislation. These restrictions are unwarranted and threaten to interfere with the Executive Branch's ability to determine the appropriate disposition of detainees and its flexibility to determine when and where to prosecute them, based on the facts and circumstances of each case and our national security interests, and when and where to transfer them consistent with our national security and our humane treatment policy. Sections 1032 and 1034 would, moreover, violate constitutional separation of powers principles, and section 1034 could in some circumstances interfere with the ability to transfer a detainee who has been granted a writ of habeas corpus.

Military End Strength: The Administration strongly objects to sections 401 and 411, which would establish end strength levels above the President's Budget request for Active and Reserve Forces as of September 30, 2017. These provisions would force the Department to take additional risk in training and readiness of the current force, as well as investment in and procurement of future capabilities. In addition, the Administration objects to section 402, which would establish a new minimum active-duty end strength for the Army, Marine Corps, and Air Force as of September 30, 2017. Adding unnecessary end strength in the manner proposed in the bill would invite a significant, unacceptable risk of creating a future hollow force, in which force structure exists, but the resources to make it ready do not follow. The Administration urges support of the Department's plan, which reflects sound strategy and responsible choices among capacity, capabilities, and current and future readiness.

TRICARE Reform: The Administration appreciates the Committee's support for the transition to two TRICARE programs, TRICARE Prime and Preferred. However, sections 701 and 704 would eliminate almost all of the savings (\$200 million in FY 2017 and \$7 billion through FY 2021) contained in the Administration's proposal and instead add almost \$1 billion in costs to the Defense Health Program. It also creates a complex system of separate benefits for members and retirees based on their dates of initial entry into military service. Further, the proposed pharmacy co-pay adjustments and reasonable enrollment fee for TRICARE for Life participants were rejected. The Administration believes strongly that the President's FY 2017 Military Health System (MHS) benefit reform package represents a reasonable and financially sound proposal for our beneficiaries. We look forward to working with the Congress on needed TRICARE reforms as part of a comprehensive package of MHS reforms.

Modifications to the Newly-Created Military Retirement System: The Administration appreciates the flexibility provided by section 622 and urges the Congress to support the use of continuation pay for service members with up to 16 years of service, given varying retention rates across career fields and the military departments. However, the Administration is

concerned about mandating a 2.5 monthly basic pay multiplier for continuation pay for all members. Allowing DOD greater flexibility to adjust the timing and amount of continuation pay would allow military services to shape the force more effectively and efficiently.

Military Pay Raise: The Administration objects to section 601. This section places restrictions on the President's authority to set an alternative pay adjustment for members of the uniformed services at 1.6 percent basic pay, which would save \$336 million in FY 2017 and \$2.2 billion through FY 2021. The President's FY 2017 pay proposal would allow the Department to achieve a proper balance between DOD's obligation to provide competitive pay to service members and its responsibility to provide troops the finest training and equipment possible.

Prohibition on Conducting Additional Base Realignment and Closure (BRAC) Round: The Administration strongly objects to section 2702 and strongly urges the Congress to provide BRAC authorization as requested so that DOD can make better use of scarce resources. In addition to addressing every previous Congressional objection to BRAC authorization, the Department recently conducted a DOD-wide parametric capacity analysis which demonstrates that the Department has 22 percent excess capacity. Additionally, the Administration's BRAC legislative proposal includes several changes that respond to Congressional concerns regarding cost. Specifically, the revised BRAC legislation requires the Secretary to certify that BRAC will have the primary objective of eliminating excess capacity and reducing costs; emphasizes recommendations that yield net savings within five years (subject to military value); and limits recommendations that take longer than 20 years to pay back.

Rocket Propulsion System Development Program: The Administration appreciates the amended language to section 1608 of the FY 2015 NDAA to authorize up to 18 RD-180 engines, ensuring a necessary and cost-effective bridge to American-made launch services. However, the Administration strongly objects to section 1601, which would place restrictions on the funds to eliminate the Nation's use of these engines for national security space launches. The Committee's approach overemphasizes one component of a launch vehicle and, in doing so, risks the successful and timely fielding of new domestic launch systems. The Administration is committed to developing new American-made propulsion systems as part of these new launch vehicles, but this should be done in accordance with well-accepted systems engineering principles and not arbitrary funding allocations.

The Administration also strongly objects to the direction in section 1601 requiring the acquisition of Government purpose rights and technical data for any new rocket propulsion system. Complying with this direction is not feasible as it would likely require re-negotiation of the current development contracts, thereby delaying the delivery of the new domestic capabilities beyond 2019. Pursuing such robust data rights would also undermine the very nature of the public-private partnerships, require significantly more Government funding, and risk further industry investment and participation. The Administration's public-private partnerships are successfully leveraging willing private investment to develop commercially viable launch vehicles, and this has already saved taxpayers nearly \$200 million, while maintaining access to the data that the Government needs. These partnerships could save taxpayers more than \$500 million through 2019 and deliver valuable capabilities for the Nation and benefits to our economy faster than the Committee's approach.

Availability of Funds for Retirement or Inactivation of Ticonderoga-Class Cruisers or Dock Landing Ships: The Administration strongly objects to section 1024, which would prohibit

obligating or expending FY 2017 funds to retire, prepare to retire, inactivate, or place in storage more than six cruisers and one dock landing ship. This provision would prevent the Navy from executing its phased modernization approach for maintaining an effective cruiser and dock landing ship force structure while balancing scarce operations and maintenance funding. It also would significantly reduce planned savings, accelerate the retirement of all Ticonderoga-Class cruisers, and create obsolescence of Air Defense Commander platforms resulting in a significant surface combatant shortfall in 2030. When compared to the cruiser phased modernization plan proposed in the FY 2017 President's Budget, the proposed language of this section would require an additional \$3.2 billion across the Future Years Defense Program (FYDP) to fund manpower, maintenance, modernization, and operations.

In addition, the prohibition on obligating more than 75 percent of funds made available for the Office of the Secretary of Defense (OSD) until the Secretary of the Navy enters into ship modernization contracts would require significant reductions in manpower over and above the 25 percent reduction planned in the FY 2017 President's Budget for OSD, as well as curtailed spending for joint force readiness programs such as the Commanders Exercise and Engagement Training Transformation and the Readiness and Environment Protection Integration Program.

Littoral Combat Ships (LCS): The Administration strongly objects to the bill's proposal to increase the purchase of LCS in FY 2017 from two to three as noted in the table supporting Section 4013, Shipbuilding and Conversion line number 11. The Administration reduced from 52 to 40 the total number of LCS and Frigates (FF) the Navy will purchase over the life of the program. A combined 40 LCS and FF will allow for the Department to invest in advanced capabilities across the fleet and will provide sufficient capacity to meet the Department's warfighting needs and to exceed recent presence levels with a more modern and capable ship than legacy mine sweepers, frigates, and coastal patrol craft they will replace. By funding two LCS in FY 2017, the President's Budget ensures that both shipyards are on equal footing and have robust production leading up to the competition to select the shipyard that will continue the program. Both LCS yards will remain active for five or more years. This competitive environment ensures the best price for the taxpayer on the remaining ships, while also achieving savings by down-selecting to one shipyard. The bill prevents the use of resources for higher priorities to improve the Department's warfighting capability, like undersea, other surface, and aviation investments.

Coalition Support Fund (CSF): The Administration objects to section 1212, which would make \$450 million of CSF to Pakistan ineligible for the Secretary of Defense's waiver authority unless the Secretary provides a certification to the Congressional defense committees. We share the Committee's concerns regarding the threat posed to our forces and interests in Afghanistan by the Haqqani Network, and we continue to engage with Pakistan at the highest levels regarding the need for concerted action specifically against the group. However, the restriction in section 1212 would unnecessarily complicate progress in our bilateral relationship on this issue and would limit the Secretary of Defense's ability to act in the U.S. national security interest. The Administration is also disappointed that the committee did not modify CSF authority to allow DOD to reimburse coalition nations that support U.S. efforts in Afghanistan and to counter the Islamic State in Iraq and the Levant, as requested. This limitation could hamper the United States' ability to counter terrorists and to support our allies in the region, including partners who have the capability to perform the Counter-ISIL mission, but who lack the funds to pay for a deployment and sustainment of operations in Iraq or Syria. Lastly, the Department asks the

Congress to retain the authority to make certain funds available to support stability activities in the Federally Administered Tribal Areas as provided in section 1212(f) of the FY 2016 NDAA.

Counterterrorism Partnerships Fund (CTPF): The Administration objects to the reduction of \$250 million of CTPF in section 1510 because it would limit a valuable partnership-focused approach to counterterrorism. Reducing CTPF precludes DOD from continuing important security assistance programs begun in FY 2016. The Administration strongly encourages the Congress to authorize the \$1 billion originally requested to continue support for CTPF activities in FY 2017.

Reduction in the Number of Navy Carrier Air Wings: The Administration objects to Carrier Air Wing Restoration in section 4303. The elimination of the tenth Carrier Air Wing proposed in the FY 2017 President's Budget optimizes Carrier Air Wing force structure to meet Global Force Management Allocation Plan demand, sustains the health and wholeness of Naval Aviation, and generates \$926 million in FYDP savings. Additionally, if forced to retain the tenth Carrier Air Wing, the Navy would require an additional \$48 million in FY 2017 for military personnel and an additional increase of 1,167 in end strength above the objectionable end strength increase already in the bill.

Joint Intelligence Analysis Complex (JIAC): The Administration strongly objects to the bill's omission from section 2301(b) of authorization for expending funds associated with the \$53.1 million needed for phase three (of three) of construction of the JIAC at Royal Air Force (RAF) Croughton, United Kingdom. This important project recapitalizes critically deficient facilities by consolidating and relocating RAF Molesworth operations and missions in support of United States European Command (USEUCOM), United States Africa Command (USAFRICOM), and the North Atlantic Treaty Organization (NATO). The Administration also strongly objects to section 1623, which would restrict the Department's hiring of critically-needed intelligence professionals specializing in Russia at a time when the Russian threat to the United States and our European allies is increasing and requires redoubled intelligence collaboration. In March 2016, pursuant to requirements in the FY 2016 NDAA, the FY 2016 Intelligence Authorization Act, and the FY 2016 Department of Defense Appropriations Act, the Department certified that RAF Croughton remains the optimal location for recapitalization of the JIAC, that Lajes Air Field in Portugal is not an optimal location for the JIAC, and there are no alternative uses for Lajes Air Field. Delays in the JIAC project jeopardize \$74 million in annual savings that will be achieved once RAF Molesworth and RAF Alconbury, which currently host and support the USEUCOM/USAFRICOM/NATO intelligence mission, are able to close as scheduled.

Alternative Fuels: The Administration strongly objects to section 311, which would dilute the public policy established by section 526 of the Energy Independence and Security Act of 2007 (contracting requirements for alternative or synthetic fuel) -- a law passed with strong bipartisan support that provides a sound framework for the development of future alternative fuels. A diverse approach to energy security, one that includes both conventional and new sources, will benefit the economy and enhance our military capability.

Limitation on Availability of Funds for Acceleration of Nuclear Weapons Dismantlement: The Administration strongly objects to section 3118 which puts unnecessary restrictions on the ability of the President to exercise his responsibilities to manage the nuclear arsenal. The Administration also strongly objects to the reduction in funding for accelerated dismantlement of retired nuclear warheads. The United States has a considerable backlog of retired warheads

awaiting dismantlement that are no longer needed for military purposes. Funding for accelerated dismantlement is important both to appropriately manage the U.S. nuclear arsenal in a safe and effective way and to demonstrate continued U.S. commitment to our nonproliferation and disarmament commitments.

Undermining Federal Oversight: The bill would hinder the effective oversight of critical nuclear security, safety, and environmental management programs, including: weapons modernization, nuclear nonproliferation, physical and cyber security, as well as cleanup and project management activities. Section 3116 and section 3117 would limit expenditures for salaries and program direction until the Secretary of Energy submits specific plans to Congress. These restrictions, coupled with authorized funding levels \$40 million below the President's request for National Nuclear Security Administration (NNSA) staffing, threaten the ability of the Department of Energy to recruit, maintain and train Federal staff to oversee the management of the nuclear security enterprise and the legacy of waste and contamination from nuclear weapons production. Relative to 2011, NNSA's workforce is 17 percent smaller despite an 18 percent increase in program funding. One measure of this imbalance of staffing-to-workload relates to the acquisition workforce. For NNSA, each Federal acquisition professional manages an average of \$116 million of program dollars compared to the Government average of \$10.7 million.

The Administration is concerned about section 3117, which would hold back 10 percent of program direction funds within the defense environmental cleanup program as a penalty until the submission of a report that presupposes the President's Budget request for future years. This provision infringes upon the Department's ability to manage its Federal workforce by arbitrarily limiting the expending of program direction funds that are used to pay salaries of workers who provide critically important Federal oversight at environmental cleanup sites across the country.

Prohibition on Availability of Funds for Provision of Certain Assistance to Russian Federation: The Administration strongly objects to section 3115, which would prohibit the use of funds for nuclear security activities in Russia unless the activities are "new and emergency" in nature, and unless the Department certifies that it has no backlog of deferred maintenance to physical security equipment and its own defense nuclear facilities. Effectively a blanket prohibition on nuclear security cooperation with Russia, this provision would prevent the United States from addressing nuclear security concerns by improving physical security at certain Russian nuclear sites, which is an essential element of U.S. global efforts to combat the threat of nuclear terrorism.

Nonproliferation Construction Mixed Oxide (MOX) Fuel Fabrication Facility: The Administration appreciates the provisional flexibility in section 3113 to terminate the MOX approach to plutonium disposition, once certain conditions are met. However, the Administration objects to a delay in funding the alternative plutonium disposition option and the effort to require continued construction in support of the MOX approach. Continuing construction, even temporarily, will result in additional millions of dollars being wasted rather than being directed to the alternative disposition method. The already-proven alternative method of disposition is expected to be significantly faster and less expensive than the MOX approach and has far lower risks. Another important consideration is that the alternative to MOX would likely enable the United States to remove plutonium from South Carolina decades sooner than MOX could.

Non-applicability of Certain Executive Orders to DOD and NNSA: The Administration strongly objects to section 1095, which would roll back important safeguards established by the President to ensure that taxpayer dollars do not reward corporations that break labor laws and thereby jeopardize the performance and cost of Federal contracting. These safeguards give Federal contracting officers the information they need to assess a contractor's record of integrity and assist contractors with significant labor violations in improving their labor law compliance. In doing so, these protections help ensure that law-abiding contractors do not have to compete with those who offer lower bids based on savings from skirting the law. The Administration is committed to working with contractors who invest in their workers' safety and maintain a fair and equitable workplace, and section 1095 would impede efforts that will bring efficiencies and cost savings to the Federal Government.

Missile Defense Programs: While appreciating the Committee's support of DOD's ballistic missile defense programs, the Administration strongly objects to section 1656, which would require the initiation of concept definition, design, research, development, and engineering evaluation and testing for a space-based intercept and defeat layer and space test bed. There currently is no requirement for a space-based intercept and there are concerns about the technical feasibility and long-term affordability of interceptors in space. In addition, the Administration objects to section 1663, which would direct the Director of the Missile Defense Agency (MDA) to issue a request for proposal to procure a medium-range discrimination radar or equivalent sensor for the defense of Hawaii. DOD is conducting a study to determine the appropriate balance of sensors and locations to best defend the homeland, including Hawaii; it will be completed in the fourth quarter of FY 2016. Section 1663 could limit the Administration's ability to defend the entire homeland and the flexibility to apply the best capabilities to address rapidly evolving threats.

Limitation on Availability of Funds for Patriot Lower Tier Air and Missile Defense Capability of the Army: The Administration objects to section 1658, which would infringe on the authority of the Secretary of the Army to set forth, approve, and execute requirements. It also would limit the Army's flexibility to trade cost and performance with schedule to ensure a system is fielded that meets requirements.

Prohibition on Availability of Funds for Countering Weapons of Mass Destruction System (CWMD) Constellation: The Administration objects to section 216, which would prohibit the obligation and expenditure of any funds in FY 2017 for research, development, and prototyping of the CWMD situational awareness information system known as "Constellation." DOD is developing and fielding a CWMD situational awareness system in response to requirements articulated by all combatant commands and validated by the Joint Requirements Oversight Council. This capability is critical to anticipating weapons of mass destruction threats from nation-state and non-state actors and sharing information between DOD and its U.S. interagency and international partners. The Constellation system will be deployed in July 2016 as a development prototype. Prohibiting use of FY 2017 funds effectively terminates this important initiative.

Defense Planning Guidance and Contingency Planning Guidance Information to Congress: The Administration strongly objects to provisions of section 904, which would direct the Secretary of Defense to submit to the Congressional defense Committees copies and detailed summaries of classified aspects of defense planning guidance, raising constitutional concerns. The defense planning guidance informs the Department's internal force planning, resourcing, and acquisition

processes, which collectively support the annual development and submission of the President's Budget. Release of this guidance risks impairing the confidentiality of the Secretary's direction to Departmental Components, which contain sensitive national security information protected by executive privilege, and which directly informs both the development of Components' Program Objective Memorandums and decisions affecting Departmental programs in the Program and Budget Review process. Regarding contingency planning, information about potential future military operations used in the preparation of contingency plans is limited even within the Department to those individuals having a mission-critical role in the production, review, or execution of those plans or operations. Release of this information would interfere with the prerogative of the President and the Secretary of Defense to communicate direction to subordinate military commanders containing sensitive national security information that is protected by executive privilege. In addition, the required inclusion in the guidance of "any additional or alternative views of the Chairman of the Joint Chiefs of Staff, including any military assessment of risks associated with the defense strategy," risks impairment of the Department's programs by compromising the candor and confidentiality of pre-decisional advice given to the Secretary of Defense and the President.

Role of Military Medical Treatment Facilities and Changes in Their Management: The Administration objects to provisions in sections 702 and 703. Section 702 realigns the management of Service military treatment facilities (MTFs) to the Director, Defense Health Agency (DHA). This section raises serious concerns regarding reporting chains to Service commands and DHA. While this proposal seeks to gain standardization by centralizing decision authority, the integration of the Services' MTF operating systems under the DHA would incur very high costs and would compromise the effectiveness of the MTFs as readiness platforms supporting the operational warfighter. Section 703 defines criteria for MTF types based on the availability of civilian health care in the surrounding geographical areas without regard to the readiness requirements of military medical providers. Both of these provisions raise serious concerns about the interplay between operational readiness requirements and health delivery. The Department looks forward to working with the Congress to achieve comprehensive reform of the Military Health System that carefully considers all of these matters.

Military Response Options to Russian Federation Violation of Intermediate-Range Nuclear Forces (INF) Treaty: The Administration strongly objects to section 1232 which makes some DOD funding in support of the Executive Office of the President (EOP) contingent upon submission of a report by the Secretary of Defense. DOD provides support to the EOP that is entirely unrelated to the INF Treaty, including the White House Military Office that provides direct support to the President for transportation, communications, and emergency medical services. Limiting these funds will also have a negative impact on the ability of the EOP to manage and oversee vital national security defense policy development and implementation.

Open Skies Treaty: The Administration strongly objects to section 1231, which would effectively prohibit the expenditure of funds pertaining to the Open Skies Treaty. This would preclude U.S. participation in certification of Russian infra-red (IR) and synthetic aperture radar (SAR) sensors, which in turn would prevent the United States from objecting to the certification of these aircraft and sensors. Meanwhile, other State Parties could certify a Russian aircraft equipped with IR and SAR sensors. Section 1231 would also prohibit the expenditure of funds to accept an initial Russian observation flight equipped with IR and SAR sensors, preventing the United States from fulfilling its obligations under the Treaty, which was ratified by the President and for which the Senate provided its advice and overwhelming consent. Also, the 14 day

reporting requirement imposed by the NDAA would be impossible to meet because treaty procedures allow 15 days for data processing to verify treaty compliance, and the Department would need additional time to transport and analyze the data.

New START (Strategic Arms Reduction Treaty): The Administration strongly objects to section 1645, which would make the obligation and expenditure of DOD funds to extend the New START Treaty dependent upon the submission of onerous and duplicative reporting on arms control and military balance issues. This provision would impede the United States from exercising an existing right under the Treaty, which was ratified by the President with the advice and consent of the Senate in 2010. With implementation of the Treaty well underway, a decision to extend the Treaty in order to constrain Russia's strategic nuclear forces for an additional five years rests with the President in his capacity as commander-in-chief. In addition, section 1645 would require the Chairman of the Joint Chiefs of Staff to report to Congress on the Treaty's national security value to the United States, a determination that should take into account the views of the entire Executive Branch, including the Intelligence Community (IC). Similarly, this provision assigns to the Director of National Intelligence the sole responsibility to report on Russia's compliance with its arms control obligations. Section 403 of the Arms Control and Disarmament Act, as amended (22 U.S.C. 2593a), already requires a report by the President on *Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments*. By Executive Order, the State Department produces and submits to Congress this report, in coordination with the Departments of Defense and Energy, as well as the IC.

Afghan Special Immigrant Visas (SIV): The Administration objects to the lack of authorization in section 1216 for additional visas for the Afghan SIV program, which would enable Afghan nationals who have aided U.S. efforts through their work, and who experience an ongoing serious threat as a result, to apply for these visas. Additional numbers will be necessary to issue visas to all qualified applicants under current law. Further, the Administration strongly objects to the proposed dramatic cut back in section 1216 of the scope of eligibility for Afghans who have worked for the U.S. Government other than supporting its military forces. By narrowing eligibility, the program would erode the expectations of hundreds of Afghan staff whose lives remain in danger because of their work for the U.S. mission and also make it more difficult to hire and retain qualified Afghan staff who are essential to achieving our diplomatic and assistance goals.

Innovation and Access to Non-Traditional Suppliers: The Administration objects to the authorization reduction and flexibility limitations in section 217 on programs that seek to broaden DOD's access to innovative companies and technologies. Specifically, the Administration is concerned with the complete elimination of the investment funding associated with the Defense Innovation Unit Experiment, as well as the reduction in funding for the Strategic Capabilities Office and In-Q-Tel's efforts to explore innovative technologies that enable the efficient incorporation into weapons systems and operations capabilities. While relatively modest compared to the Department's overall budget, these investments will enable the development of leading-edge, primarily asymmetric capabilities and help spur development of new ways of warfighting to counter advanced adversaries. In order to sustain technological superiority, the Department must take advantage of the rapid evolution of emerging commercial technologies that, when integrated with military systems and novel concept of operations, will be a source of battlefield advantage.

Providing Footwear to Recruits at Initial Entry Training: The Administration objects to section 808, which would require the Army, Navy, Air Force, and Marine Corps to provide athletic footwear directly to recruits upon their entry into the Armed Forces instead of providing a cash allowance for the purchase of such footwear, at the choice of the recruit. Because it is likely that only one company could benefit disproportionately from such DOD purchasing requirements, this provision essentially serves as preferential arrangement for a particular company. Mandating that a specific article of clothing be provided to new recruits is unprecedented and, in the case of athletic shoes, runs counter to research that indicates a strong correlation between the variety of athletic shoes available, fit, and comfort, and reduced injury rates. Forcing DOD into a "one size fits all" approach to athletic footwear may contribute to a higher incidence of injury to new recruits during one of the most critical times in a member's military training. DOD places the health of our service members above all other considerations.

Prohibition on Per Diem Allowance Reductions Based on the Duration of Temporary Duty Assignment or Civilian Travel: The Administration objects to section 603, which would prohibit a reduced flat per diem rate for uniformed service members and DOD civilian employees who travel to one location for more than 30 days. This prohibition, which applies only to the Department, is contrary to the growing Government-wide trend toward implementing flat rate per diem for long-term travel. Section 603 would nullify an evidence-based policy decision that compensates DOD travelers for the expenses incurred, demonstrates the Department's stewardship of taxpayer funds, and meets external mandates to simplify travel and reduce costs. The significant increased costs would negate annual programmed savings affecting force readiness and reduce the Department's ability to fully fund official travel by imposing an unfunded annual requirement on the military departments. The prohibition would add \$56 million or more annually to the Department's travel costs.

Clarification of Contracts Covered by Airlift Service Provision: The Administration objects to section 1085, which would expand the definition of a "contract for airlift service" to include any DOD contract in which "transportation services are used in the performance of the contract or any subcontract (at any tier)." Section 9516 of title 10, United States Code, requires DOD contracts for airlift services involving transportation by aircraft eligible for the Civil Reserve Air Fleet program to be awarded to air carriers in the program. Section 1085 would significantly expand the range of contracts to which section 9516 applies and affect hundreds, if not thousands, of DOD contracts for supplies and services in which the use of air transportation is incidental to the performance of the contract or subcontracts at every tier. This provision would provide little benefit to DOD, restrict the Department's operational flexibility, significantly increase costs to the taxpayer, and place impractical and unnecessary constraints on DOD contracts.

Plans on Transfer of Acquisition and Funding Authority of Certain Weather Missions to National Reconnaissance Office (NRO): The Administration objects to section 1609, which would transfer acquisition and funding authority for some environmental monitoring missions from the Air Force to the NRO. The DOD weather enterprise should be managed as an integrated mission. The Air Force currently provides space-based environmental monitoring systems, services, and data products to support a large number of strategic and tactical users. Section 1609 would make integrated sensor collection, mission management, data processing, and forecasting less efficient by segregating overlapping requirements across multiple organizations. Managing the DOD weather enterprise as a whole is the most affordable and effective way to meet warfighter requirements within available resources. There is currently no Air Force

investment funding for a cloud characterization and theater weather imagery system or capability that could be transferred to the NRO.

Hypersonic Boost Glide Vehicle Defense: While appreciating the Committee's support to ensure defense against hypersonic boost glide vehicles, the Administration objects to section 1657, which would direct the Director of the MDA to establish a program of record. This provision could limit the Administration's ability to establish the best Service or Agency to establish a program of record to defend against hypersonic boost glide vehicles.

Establishment of Unified Combatant Command for Cyber Operations: The Administration appreciates the Committee's support for DOD's cyber mission and forces, but objects to statutorily requiring the establishment of a unified combatant command for cyber operations in section 911. The Secretary of Defense and Chairman of the Joint Chiefs of Staff should retain the flexibility to recommend to the President changes to the unified command plan that they believe would most effectively organize the military to address an ever-evolving threat environment.

Restructuring of the Distributed Common Ground System of the Army (DCGS-A): The Administration objects to section 219, which would restrict the development and integration of DCGS-A Increment 2 components where a commercial software is capable of fulfilling at least 80 percent of the component's requirement. This provision is duplicative and unnecessary and mandates a commercial solution without regard for price, ability to support a modular open system architecture, or cost associated with proprietary software maintenance. In practice, the provision could mandate acquisition of a system comprised of commercial products that do not fully meet required Key Performance Parameters without due consideration of integration costs and schedule impacts, putting the system's affordability, functionality, and interoperability at risk.

Consolidation of Nuclear Command, Control, and Communications (NC3) Functions of the Air Force: The Administration objects to section 1646, which would require the Air Force to consolidate NC3 under a single commander and include the Integrated Tactical Warning and Attack Assessment (ITW/AA) system as a part of NC3. The Administration objects to the inclusion of ITW/AA within NC3 because it would fracture the space and missile-warning enterprise and adversely affect critical missile-warning and air defense operations. Furthermore, the consolidation would violate Commander of North American Aerospace Defense Command (NORAD) authorities for executing NORAD's aerospace warning mission and, thus, would require revision of the U.S. bi-national agreement with Canada. Also, the Air Force has already made significant progress towards consolidating the mission under a single commander (Commander of Air Force Global Strike Command).

Joint Improvised Explosive Device Defeat Fund (JIEDDF): While the Administration appreciates the Committee expanding the authority to interdict improvised explosive device precursor chemicals in foreign countries of concern, section 1532 fails to address the successor fund to the JIEDDF mandated by the NDAA for FY 2016. Without the authorization of the JIEDDF, the successor fund proposed by DOD, the Administration is constrained in its ability to rapidly respond to non-traditional, unanticipated improvised threats on the battlefield and to protect against the rapidly emerging improvised threats currently faced by U.S. forces.

Reduction in General Officer and Flag Officer Grades and Positions: While the Administration supports simplifying and improving command and control of the military, particularly where the number of four-star positions have made headquarters either top-heavy or less efficient, it objects to section 910, which would limit the grade of service or functional component commanders of combatant commands to be no higher than lieutenant general or vice admiral, and reduce the total number of officers serving in the grade of general or admiral by five. The Administration intends to reduce the number of four-star positions and across-the-board mandated reductions are unnecessary.

Restriction on the Application of the Prohibition on Performance of Non-Defense Audits by Defense Contract Audit Agency (DCAA): The Administration strongly objects to section 840, which provides a limited roll-back of the prohibition on performance of non-defense audits by DCAA. The Administration recommends simply rescinding the prohibition on performance of non-defense audits contained in section 893 of the FY 2016 NDAA. Maintaining the current prohibition on performance of non-defense agencies by DCAA extends the length of time it would take DCAA to reduce its incurred cost backlog and creates additional burdens and audit inefficiencies on the audit process for both contractors and Government agencies. The requirement in the Committee report for a comprehensive review by the Comptroller General of the United States of DCAA's current backlog is a more appropriate vehicle to identify potential remedies to address DCAA's incurred cost backlog.

Dual Status Military Technicians: The Administration objects to section 514, which would exempt dual status military technicians from civilian employee furloughs. Military technicians are civilian employees and should be treated in the same manner as all Federal civilian employees. As civilian employees, there are civilian furlough exemptions allowed by statute that would permit certain technicians to continue working. In addition, in the event of an emergency, these personnel could be activated, at which point they would convert to military status and would no longer be subject to furlough.

Unobligated Balances Reductions: The Administration objects to the \$2 billion reduction for unobligated balances across multiple appropriations. For Operation and Maintenance appropriations, \$1.1 billion of the reductions will only be applied to those programs funded in section 4301, which include the military services' readiness, depot maintenance, base operations support, and facilities sustainment, restoration, and modernization line items. These reductions will delay the Department's full-spectrum readiness recovery efforts and increase the backlog of maintenance at the services' depot facilities. As part of the budget analysis, the Department reviewed the services' unobligated balances and realigned savings from historically underperforming accounts into readiness and operations accounts for FY 2017. The remaining \$200 million reduction for Operation and Maintenance unobligated balances will affect Army Operation and Maintenance programs funded in section 4302, which include contingency operations and reset. This reduction will delay the Department's efforts to support ongoing overseas contingency operations and reset for equipment returning from theater.

National Biodefense Strategy: The Administration strongly objects to section 1086 which would require the Secretaries of Defense, Health and Human Services, Homeland Security, and Agriculture to jointly develop a biodefense strategy and an associated implementation plan. The Executive Branch already works under several existing Presidential Policy Directives covering biodefense and these make section 1086 redundant. Additionally, biodefense is a cross agency national security priority that needs to be coordinated by the EOP. As such, the National

Security Council staff is currently working with all relevant departments and agencies to develop, coordinate, implement and review biodefense efforts. Implementing a new structure and process outside of the normal Executive Branch coordinating mechanism will lead to confusion, and may slow or reverse the strong progress the agencies have made in developing robust biodefense programs.

Joint Urgent Operational Needs Fund (JUONF): The Administration objects to the elimination of its base funding JUONF request of \$99.3 million. This funding is vital to the Department's ability to quickly begin responding to urgent operational needs. Eliminating this funding may increase life-threatening risks to service members and contribute to critical mission failures.

Uniform Code of Military Justice (UCMJ) Reform: The Administration appreciates that the bill adopts a number of the UCMJ reforms proposed by the Administration, including enhanced victims' rights (including anti-retaliatory measures), improvements to trial procedures, and updated sentencing guidelines.

Housing Unaccompanied Children: The Administration strongly objects to section 2812, which would prohibit the use of a military installation located in the United States to house any unaccompanied child. The Department of Health and Human Services' Office of Refugee Resettlement (ORR) is required by law to provide for the shelter, care, and placement of unaccompanied children referred to its custody. The number of children referred to ORR custody is difficult to predict and fluctuates throughout the year. As a result, ORR continually works to identify shelter options in the event of caseload increases, including space to temporarily house children when standard capacity is exceeded. These additional shelter options may include, but are not limited to, DOD facilities. DOD assists with the identification of those sites to ensure that such use would not adversely impact DOD operations. In addition, ORR reimburses DOD for the temporary use of DOD facilities and children are not cared for by DOD personnel. Given the unpredictability of flows in unaccompanied children arrivals, limiting the available shelter options would present serious difficulties for ORR contingency planning and would likely increase costs to U.S. taxpayers.

Personnel Provisions: The Administration has concerns with section 1109, which would limit the period of time for which an employee of the Federal Government may be put on administrative leave. The provision substantially limits Federal agencies' discretion, would be administratively burdensome, and, in many cases, would not allow time for the agency to thoroughly investigate and adjudicate issues in a legally defensible manner due to many factors. Section 1109 could also pose safety and national security issues, as it would restrain an agency's use of administrative leave in conjunction with a proposed adverse action and where an agency believes the employee may otherwise pose a threat to safety and security in the workplace, or to the proper safeguarding of sensitive information or operations. Further, for IC agencies, the requirement for notice to Congressional committees other than their authorizing committees could create unacceptable counterintelligence or security risks. The Administration also has concerns with section 1110, which would require an agency head to make a permanent personnel file notation for an individual who resigns while under investigation if an adverse finding is made. This section would be difficult to implement because it is unclear what would be expected of an agency under these circumstances since they are often precluded from taking any disciplinary action against individuals who are no longer employed by the agency. While section 1110 would provide for a process for notification and appeals, the process in and of itself would not correct the inherent flaw of placing a notation in an individual's official personnel file based

on what may be an incomplete investigation, and without a full determination by the agency that an adverse personnel action would have been warranted.

Small Business Set-Aside Threshold: The Administration strongly opposes section 1804, which would synchronize the dollar amount of the statutory small business set-aside threshold in the Small Business Act to the level of the simplified acquisition threshold (SAT). The Administration seeks to increase the SAT from its current level of \$150,000 to \$500,000 in order to make transacting with the Government easier and less costly for contractors, including many enterprising small businesses offering emerging technologies that can be used to fight cyber-attacks and support forward-leaning twenty-first century digital activities. Despite the important benefits associated with raising the SAT, a parallel increase in the set-aside threshold could, by significantly reducing the value of procurements accessible to them, create friction with our trade agreement partners, who could seek to retaliate by reducing the ability of U.S. small businesses from competing for Government procurement contracts in their markets. Small businesses already receive a significant portion of Federal contract work between \$150,000 and \$500,000 and do not require imposition of the statutory set-aside in order to effectively compete for and receive work from the Government under \$500,000.

Exemptions to Civil Rights Laws: The Administration strongly objects to section 1094, which would undermine important protections put in place by the President to ensure that Federal contractors and subcontractors do not engage in discriminatory employment practices. This Administration is committed to promoting equal employment opportunities for all Americans regardless of who they are or who they love while at the same time preserving longstanding safeguards in the law for religious liberty, including the religious exemption codified in Title VII of the Civil Rights Act of 1964. In authorizing certain Federal awardees to discriminate in Government-funded jobs, section 1094 represents a step in the wrong direction for our country that will keep qualified American workers from being able to hold jobs funded by the American people.

Supply of Specialty Motors from Certain Manufacturers: The Administration objects to section 346 because this provision would erode energy and consumer cost savings from the final rule that amended the energy conservation standards for electric motors, undermine the Department of Energy's consensus agreement that involved a wide range of stakeholders in the rulemaking process, and exploit the loopholes that exist in the current regulations by allowing small businesses not to comply. This provision could harm domestic businesses and further complicate the market as cheap imports could also exploit this proposal.

Impairment of Endangered Species Act (ESA) Conservation and Public Land Management: The Administration strongly objects to sections 2864 and 2865, which undermine State and Federal cooperative efforts to protect the Greater Sage Grouse and Lesser Prairie Chicken, as well as Section 2866, which removes the American Burying Beetle from the Endangered Species List. Section 2864 would effectively override longstanding principles of major Federal land management statutes, including the Federal Land Policy and Management Act and the National Forest Management Act. Congressionally-mandated removal from the Endangered Species List, delays in determining species status, and State control over Federal public lands undermine the science-based decision-making at the core of the ESA, are unnecessary for military readiness, and are ill-advised for purposes of public land management. These provisions are non-germane to the NDAA, would impair the protection afforded by the ESA, and undermine years of collaborative conservation work with private landowners, States, and other stakeholders.

The National Historic Preservation Act: The Administration objects to section 2855, which would amend the National Historic Preservation Act to allow Federal agencies to object to a designation of Federal properties for reasons of national security. Listing a property on the National Register of Historic Places, or designating it as a National Historic Landmark, does not limit any Federal agency's decision-making authority. Decisions on how to manage the property, informed by the evaluation of its significance and integrity, remain the responsibility of the agency with jurisdiction over that property. The Administration is not aware of any specific instance where such a designation has adversely affected national security. Enactment of this section could lead to a fundamental weakening of highly successful and widely admired programs that Congress intended to help recognize and protect our shared heritage.

Military Land Withdrawals: The Administration has concerns with sections 2841 and 2842 relating to military land withdrawals. With regard to the provisions applicable to public lands, the responsible agencies will continue to coordinate to facilitate responsible use of public lands to support military readiness, training, and testing, acknowledging the current system of periodic legislative re-withdrawals is not particularly efficient and does not provide for the optimum land management regime. However, the Administration is not prepared to support transfers of such lands without a process that provides careful consideration of the evolving needs, interests, and any supporting legislative provisions. The Administration stands ready to consider measures and approaches to make the use of public lands for military needs more efficient. The Administration cannot support provisions that would alter the current use and management structure of the Desert National Wildlife Refuge and strongly opposes provisions that could allow unrestricted Air Force activities in areas of the Refuge. The Administration also recommends adoption of its proposal to standardize various land withdrawal termination dates, a measure that was replaced by the current section 2841.

Utah Test and Training Range: While the Administration supports the appropriate and responsible use of public lands for military purposes, the Administration opposes provisions in Title XXX that would prevent the effective management of Federal lands, including those proposed for temporary use and closure. Further the Administration strongly objects to exchanges of Federal land in Utah without adequate consideration to the Federal taxpayer or NEPA contained in section 3023 and to section 3031, which would recognize the existence and validity of unsubstantiated and disputed claims of road rights-of-way across Federal lands in Utah. These sections are not necessary to further the military mission of the Utah Test and Training Range.

Ballast Water: The Administration objects to Title XXXVI, which undermines the ability to fight the spread of invasive species in our Nation's waters because it, in part: would lack critical civil and criminal enforcement mechanisms present in the existing statutory and regulatory regime, the absence of which would irreparably hinder the successful prosecution of unlawful discharges; would effectively discard the existing body of domestic environmental laws as those laws apply to vessel discharges; would jettison well-established statutory and regulatory regimes that implement U.S. international legal obligations; and would fail to preserve expressly the authorities of the Secretary of Commerce and the Secretary of the Interior to exercise administrative control over waters under each Secretary's jurisdiction.

Maritime Administration/U.S. Merchant Marine Academy Restrictions: The Administration opposes sections 3507 and 3508. Section 3507 would preclude many qualified candidates with experience in managing higher learning institutions from applying for the position of

Superintendent or Commandant and would interfere in the operation of an institution of higher learning which could adversely impact its accreditation. Section 3508 would eliminate MARAD's ability to use sales proceeds from National Defense Reserve Fleet non-retention vessels, leaving MARAD without funding to manage its 7,000 maritime heritage assets, many of which are on loan to maritime museums and other organizations throughout the country.

Removal of Commissioned Officers: Section 503 would amend 10 U.S.C. § 1161 to authorize the Secretary of Defense, or the Secretary of the department in which the Coast Guard is operating, to remove commissioned officers in certain enumerated circumstances. Commissioned officers are appointed either by the President with the advice and consent of the Senate (10 U.S.C. § 531(a)(2)) or by the President alone (10 U.S.C. § 531(a)(1)). Authorizing a subordinate official other than the President to remove an officer whom the President has appointed raises constitutional concerns under the Appointments and Take Care Clauses. The Administration would be happy to provide technical assistance to the Congress in achieving the aims of section 503 through other constitutional means.

Senior Reserve Officers' Training Corps (ROTC) Programs at Schools That Display the Confederate Battle Flag: Section 567 would prohibit the Secretaries of military departments from establishing, maintaining, or supporting an ROTC program at any educational institution that displays the Confederate battle flag anywhere on campus other than in a museum exhibit. The Administration strongly supports the removal of the Confederate battle flag—a divisive symbol and reminder of systematic oppression and racial subjugation—from the Nation's universities and other institutions. Cutting off Federal funding for a ROTC program on the ground that an institution displays the flag, however, raises First Amendment concerns. The Administration therefore urges Congress to pursue this important objective through other means.

Other Constitutional Concerns: In addition, certain other provisions in this bill raise constitutional concerns, including interference with the President's exclusive authority to recognize foreign nations (section 1236) and to engage in the conduct of diplomacy (section 1234).

The Administration looks forward to working with the Congress to address these and other concerns.

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