



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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(Senate)

STATEMENT OF ADMINISTRATION POLICY

S. 1519 – National Defense Authorization Act for Fiscal Year 2018

(Sen. McCain, R-AZ)

The Administration appreciates the continued work by the Senate Armed Services Committee (Committee) on behalf of our national defense and supports a number of provisions in S. 1519, the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018.

The bill supports key Administration priorities including ending the defense sequester, rebuilding our military readiness, and modernizing our Armed Forces for the future. It authorizes funding for our ongoing efforts to destroy the Islamic State of Iraq and Syria (ISIS), to deter potential adversaries, and to bolster our allies. The bill also includes substantial reforms to Department of Defense (DOD) management and business practices, and the Administration looks forward to working with the Committee to continue finding efficiencies at DOD. In particular, the Administration is fully committed to DOD's full financial statement audit efforts starting in FY 2018 and shares the Committee's goal of achieving a positive audit opinion over time. The Administration will work closely with the Committee on language that facilitates this effort. The Administration also appreciates the bill's inclusion of the 2010 Compact Review Agreement with Palau and its related authorities.

The bill authorizes \$692.1 billion in total discretionary funding for FY 2018, consisting of \$631.9 billion of base national defense funding (\$36.7 billion above the President's FY 2018 Budget request) and \$60.2 billion of Overseas Contingency Operations (OCO) funding (\$4.4 billion below the President's FY 2018 Budget request). The previous Administration enacted harmful cuts to defense spending, and this Administration strongly supports eliminating them. To ensure that our military is not rebuilt on the backs of future generations of Americans, however, the Administration looks forward to enacting reductions to non-defense spending, including those proposed in its FY18 Budget.

While the bill contains many promising reforms, it prohibits a new Base Realignment and Closure (BRAC) round, which would produce substantial recurring savings and allow DOD to align infrastructure with force structure.

The Administration looks forward to working with Congress to address its concerns, a number of which are outlined in more detail below. The Administration also looks forward to reviewing the classified annex and working with the Congress to address its concerns about the bill provisions regarding classified programs.

Prohibition on Conducting Additional Base Realignment and Closure Round: The Administration strongly objects to section 2702 and strongly urges Congress to provide BRAC authorization, as requested, so that DOD can ensure it is not wasting resources on unneeded infrastructure. The Department estimates that a new BRAC round in 2021 would save an additional \$2 billion or more annually, resources which could be devoted to higher priorities such as readiness and modernization.

Mixed Oxide (MOX) Fuel Fabrication Facility: The Administration strongly objects to continued construction of the Mixed Oxide (MOX) Fuel Fabrication Facility as directed in section 3112. While the Administration appreciates the waiver authority to terminate the MOX project provided to the Secretary of Energy, the project is unaffordable and risky. The most recent estimates, produced by the Department of Energy and the Army Corps of Engineers, project \$12 billion in remaining costs and total construction costs of \$17 billion. In addition, the projected operating costs are between \$800 million and \$1 billion per year for nearly two decades. The alternative, known as dilute and dispose, is a proven approach that is significantly less risky and expensive, and it can be implemented decades sooner than the MOX approach.

TRICARE Benefit Reform: The Administration appreciates the Committee's inclusion of meaningful TRICARE benefit reform proposals reflected in sections 706 and 707. Section 706 institutes reasonable pharmacy co-pays that will retain TRICARE as one of the most generous health benefits available while also making it sustainable in the long term. Section 707 eliminates confusion and reduces administrative costs by creating one generous, consistent health benefit that is equal for all members while making special accommodations for the most vulnerable populations, including medically retired members and their families and survivors of those who died on active duty.

Authority to Provide Assistance to Counter ISIS and to the Vetted Syrian Opposition: The Administration appreciates the expanded authority in sections 1231 and 1232 for small-scale construction of temporary facilities to meet operational needs and force protection requirements in both Iraq and Syria. The Administration objects, however, to language in section 1232 that requires the Secretary to provide a 30-day notice to Congress on new initiatives. This provision will hamper DOD's ability to respond rapidly to opportunities on the battlefield.

Modification of the President's Authority to Determine Alternative Pay Adjustment in Annual Basic Pay of Members of the Uniformed Services: The Administration strongly objects to section 604, which would place restrictions on the President's authority to set an alternative pay adjustment for members of the uniformed services. This change would place more restrictions on the President's ability to set pay for members of the uniformed services than for the Federal workforce. Being able to adjust military compensation nimbly in response to serious economic conditions affecting the general welfare is not only essential to the Administration's responsibility to recruit and retain a ready and capable uniformed services, but it is also required to balance military compensation costs against other investments critical to readiness, equipment, and modernization.

Provisions on the Organization and Structure of the Office of the Secretary of Defense (OSD):

The Administration is concerned with sections 901, 902, 910, and 921, which would significantly reorganize DOD and its components. In order to address those concerns, DOD hopes to work collaboratively with the Committee to better understand the justifications for these provisions. In their current form, these sections seem to hinder DOD's ability to stabilize its senior leadership team and manage the functions and capabilities needed to plan, execute, and oversee national security policies, capability development, and operations. Sections 901 and 902 would alter DOD's planning and would require adjustments before DOD is able to implement changes enacted last year. The Administration is also concerned with the creation of additional Executive Schedule Level II positions in OSD. This reporting structure could complicate the relationship between the Deputy Secretary of Defense and the Secretary of Defense. In addition, section 921 would eliminate each of the military department Assistant Secretaries charged with real property, installation, and facility management. Eliminating these three Assistant Secretary positions would jeopardize each military department Secretary's ability to comply with his or her title 10 responsibilities.

Personnel Limitations: The Administration strongly objects to section 912, which would modify the definition of personnel in section 143(b) of title 10, United States Code, by adding the contractor personnel counts against the statutory limitation of 3,767 for military, Government civilian, and detailed personnel in OSD and the OSD direct support activities of the Washington Headquarters Services. Management of the contractor personnel counts in OSD has been addressed through the funding ceiling imposed on all departmental headquarters by section 346(b). The Administration also strongly objects to section 931, which would further increase the Senior Executive Service (SES) reduction set forth in the FY 2017 NDAA by an additional 10 percent, because it would be detrimental to the overall DOD mission and, especially, the SES workforce. Requiring the Department to arbitrarily cut additional SES positions across-the-board would have long-term negative effects or likely effects for various DOD services and organizations. Any further reductions to SES positions in DOD should be made in a deliberate manner following a review and analysis of the impact of such reductions on the functioning of each component or agency.

Adjustment to Basic Allowance for Housing (BAH) of Certain Members of the Uniformed Services: The Administration objects to section 603, which would make a military member who is married to another military member ineligible for a BAH at the "with dependents" rate. This section would inappropriately penalize military families in which both spouses have chosen to serve their country and, by providing a lesser compensation package than other members of equal grade, send a clear message that their service is not valued as highly.

Aviation Bonuses: The Administration strongly objects to sections 616 and 617, which would eliminate DOD's current flexibilities and impair DOD's ability to manage the payment of aviation bonuses for well-established reasons. Sections 616 and 617 would harm DOD's ability to respond to current heavy recruiting by the civilian airline industry from the military pilot community and would hamper DOD's ability to appropriately manage bonuses and to differentiate bonus levels for enlisted members who pilot remotely piloted aircraft.

Modification of Cost Limitation Baseline for CVN-78 Class Aircraft Carrier Program: The Administration strongly objects to section 125, which would limit the procurement cost for aircraft carriers after CVN-79 to \$12 billion. The Administration shares the Committee's concern with the cost of the CVN-78 Class Aircraft Carrier Program and CVN-80 and beyond. The Navy's estimate for CVN-80, however, is \$12.6 billion, not including class spares, which is approximately \$900 million lower than CVN-79 in constant dollars. Reducing procurement cost for CVN-80 and follow-on ships to \$12 billion cannot be achieved without a fundamental change in acquisition strategy (such as multi-year procurement or block-buy contracts that leverage economies of scale) and continuous construction efficiencies, along with significant design modifications that will reduce ship capability. Stability in ship design and funding is the most effective way to achieve significant cost reductions.

Discharge in the Selected Reserve of the Commissioned Service Obligation of Military Service Academy Graduates who Participate in Professional Athletics: The Administration strongly objects to section 543, which would allow newly commissioned officers graduating from the military service academies, who obtain employment as professional athletes, to forego any active duty service and immediately serve in the Selected Reserve until the completion of their commissioned service obligation. The military service academies exist to develop future officers who enhance the readiness and lethality of the military services. Following graduation from a military service academy, individuals should serve as full-fledged military officers, carrying out the normal work and career expectations of an officer who has received the extraordinary benefits of a taxpayer-funded military academy education.

Transfer of Lead of Guam Oversight Council (GOC) from the Deputy Secretary of Defense to the Secretary of the Navy: The Administration strongly objects to section 951, which would transfer lead of the GOC from the Deputy Secretary of Defense to the Secretary of the Navy. The GOC oversees more than just Navy and Marine Corps activities and, when led by the Deputy Secretary of Defense, is able to balance international commitments against various Service considerations in developing policy direction. In addition to the realignment of Marine forces from Okinawa to Guam, the GOC is monitoring U.S. Pacific Command's Commonwealth of the Northern Mariana Islands Joint Military Training proposal to develop live-fire ranges and training areas in the Commonwealth of the Northern Mariana Islands (the CNMI) (Tinian and Pagan), and U.S. Air Force Divert and Exercise Airfield for up to 12 tankers on the CNMI. The interagency coordination necessary to complete required environmental analyses for these complex initiatives is most effectively accomplished with direct oversight by the Deputy Secretary of Defense.

Workforce Issues for Relocation of Marines to Guam: The Administration appreciates the inclusion of section 1264, which would authorize the admission before December 31, 2023, of H-2B workers coming to Guam to perform certain military-related work under modified admission requirements. The Administration strongly urges Congress to adopt the Administration's request, which would address specified needs in both Guam and the CNMI. The Department of the Navy's current workload projections indicate that approximately 2,300 H-2B workers would be required to supplement the Guam or CNMI workforce on military build-up construction projects. Without additional H-2B workers, limited access to construction

workers would harm our ability to relocate Marines to Guam on planned timelines. This could be a factor in meeting the commitment of the United States to return land to Japan.

Policy of the United States on Cyberspace, Cybersecurity, and Cyberwarfare: The Administration strongly objects to section 1621, which would establish United States policy for deterring and responding to cyber-attacks or other malicious cyber-activities against United States interests. This section would enact certain foreign policy and military determinations that are traditionally within the purview of the President. Development of such policy decisions must necessarily take into account changing circumstances on a more rapid timeline than the proposed legislative process would allow. In particular, section 1621(f) would require the United States to notify and encourage the governments of countries whose computer networks are being used by malicious cyber actors to take action themselves to eliminate the threat, to the greatest extent practicable. This would severely constrain the President's decision space and undermine the ability of the Armed Forces to act rapidly and decisively, in accordance with applicable law, to neutralize threats and to defend United States national interests in cyberspace.

Reductions to Army Networking Programs: The Administration strongly objects to the severe funding reductions in sections 4101 and 4201, and prohibitive language in sections 112 and 234, which would affect the Warfighter Information Network-Tactical, Distributed Common Ground System-Army, and Army Integrated Air and Missile Defense programs. These limitations would cripple the Army's efforts to provide commanders with a unified communications network while working on a solution to fill a critical capability gap regarding on-the-move communications. These constraints also would hamper the ability to provide reliable intelligence analysis down to the battalion level and to ensure that integrated sensors and weapons support current and future Air and Missile Defense systems. At this stage of development, limitations of this magnitude would delay delivery of critical capabilities to our soldiers by at least two years.

Development of Intermediate-Range Nuclear Forces (INF) Range Ground-Launched Missile System: The Administration objects to section 1635, which would establish a program of record to develop a road-mobile, ground-launched missile system and would prohibit any authorization of funds for research and development until a detailed analysis of systems is delivered to defense committees. The Administration is currently developing an integrated diplomatic, military, and economic response strategy to maximize pressure on Russia. It is also evaluating those military capabilities that are needed to protect our national security. This provision unhelpfully ties the Administration to a specific type of missile system and funding requirements, which would limit potential military response options. The Administration would support broad authorization of research and development on missile systems, including those prohibited by the treaty, to determine candidate systems that could become programs of record.

Counter Unmanned Aerial Systems: The Administration is disappointed that its proposal on Unmanned Aircraft Systems (UAS) is not included in the bill. For multiple economic and national security reasons, the Administration supports the safe and secure integration of UAS into the national airspace, but that requires the development of a legal framework that protects the public from those who would misuse this technology, such as recklessly flying near major airports, intentionally conducting surveillance, or facilitating attacks. Under current law, the Government is unable to fully evaluate or use essential detection, tracking, and mitigation

technologies to counter these rapidly advancing threats. The proposal would provide a tailored grant of authority within a framework for effective oversight and protections of privacy, civil liberties, and airspace safety.

Next National Geospatial-Intelligence Agency (NGA) West (N2W) Campus: The Administration strongly objects to the Committee's decision to reduce N2W by \$331 million through an incremental funding approach and recommends that funding be provided at the President's FY 2018 Budget request level. The Administration objects to this type of incremental funding for military construction projects because it undermines program stability and cost discipline and could negatively impact other mission-critical priorities. In the case of this project, the NGA expects to obligate the full amount of the budget request in FY 2018.

Navy Shipbuilding: The Administration appreciates the Committee's strong support for Navy shipbuilding; the Administration, however, objects to the authorization of funding for only one Littoral Combat Ship, one fewer than the Administration requested, as well as the authorization of partial funding for an additional amphibious ship LX(R). In addition, the Administration strongly objects to section 124, which provides permanent incremental funding authority for the procurement of the LX(R) ship class or the amphibious transport dock ship (LPD-30) class. Incremental funding undermines program stability and cost discipline.

Missile Defense: The Administration appreciates the Committee's support for missile defense; the Administration, however, regards section 1653 as premature given that the Ballistic Missile Defense Review (BMDR) is still underway. The provision would require the Secretary of Defense to deploy up to 14 additional ground-based interceptors (GBIs), store up to 14 GBIs, and complete any required supporting construction at Fort Greely, Alaska, no later than December 31, 2021. After the BMDR is completed, the Administration will provide recommendations on how best to strengthen our Nation's missile defense.

Exercise on Assessing Cybersecurity Support to Election Systems of States: The Administration strongly objects to section 1630, which would require DOD to exercise for a mission inconsistent with its statutory authority, as well as with democratic norms on the role of the military in American political affairs. The Department of Homeland Security is the Federal lead for critical infrastructure, including electoral infrastructure. In addition, section 1630 would direct the Secretary of Defense to intrude on the authority of State Governors to determine how to use their own State National Guard forces to carry out a State cybersecurity mission to protect State election systems.

TRICARE Advantage Demonstration Program: The Administration objects to section 701, which would require the Secretary of Defense to establish a demonstration program to contract with and automatically enroll TRICARE beneficiaries in Medicare Advantage plans. Automatic enrollment of beneficiaries eligible for both Medicare and TRICARE into a Medicare Advantage plan is undesirable and unworkable. In addition, there is existing demonstration project authority under both Medicare and TRICARE to evaluate any appropriate collaborative initiatives.

Foreign Military Sales: The Administration objects to section 1283, which would require the Defense Security Cooperation Agency to consult with United States commercial entities before

delivering a formal pricing and availability response to a foreign customer. Section 1283 would significantly delay responses to a partner's request for price and availability data, and also could result in the United States not being able to respond in time for an international competition. Mandating such procedures would be inconsistent with existing federal procurement rules, could negatively affect open competition in the acquisition process, and slow it to the point of resulting in loss of sales.

Special Defense Acquisition Fund (SDAF): The Administration appreciates the Committee's willingness to revise changes made to the SDAF in the FY 2017 NDAA. The Administration objects, however, to section 1281 because it would preclude using available funding in the SDAF account to purchase defense articles and services other than precision guided munitions. The SDAF is a revolving fund and the available funding obligational authority amount fluctuates throughout the year. By mandating that 20 percent of the available obligation authority be used to purchase precision guided munitions every year, the Administration will not have sufficient funding available to purchase any other defense articles or services that will likely be urgently needed by our friends and allies, including those participating in coalition operations that directly support our national interests. SDAF is an important security cooperation authority, as it makes the United States more responsive to the military needs of our international partners, and enhances readiness of our Armed Forces by reducing the need to divert assets from them to support urgent foreign requirements.

Defense Export Licensing: The Administration supports the goals in section 867 to use flexible comprehensive defense export authorizations, including for large international cooperation defense programs, but emphasizes that the Secretary of State already has the authority to undertake this effort. Since enactment of the Arms Exports Control Act (AECA) in 1976, the Secretary of State has had exclusive responsibility for defense sales and defense exports, including defense export licensing. Over the years, the State Department has always worked closely with its key partner agency, DOD, on these issues. Therefore, no additional authority is needed, and such authority could cause confusion. Should this section be retained, the authority should be vested in the Secretary of State so as to minimize overlapping, duplicative statutory authorities and frameworks. Further, the Administration objects to the mandate in subsection (b), since the longstanding practice is to permit industry to select which of the available licensing authorizations it wishes to use, and restricting this practice would likely create unnecessary regulatory burdens.

DOD Support for Corporate Activities and Charitable Organizations: The Administration recognizes the value of United States charitable organizations and notes the existing mechanisms through which DOD supports State and United States Agency for International Development (USAID)-led reconstruction, development, and stabilization efforts globally, including foreign disaster relief and humanitarian assistance. The Administration has not, however, assessed whether support to a particular organization, as outlined in section 1083, may be undertaken consistent with any other relevant law concerning the provision of non-reimbursable assistance such as military personnel and the use of DOD facilities and other assets by such organizations. The Administration is also concerned about the implications of having a private entity receive preferential support from DOD in security cooperation or operational efforts. Such preferential treatment would cause confusion among existing networks of non-governmental organizations

supported by State and USAID in these programmatic areas regarding the recognized need for maintaining a distinction between military and civilian missions, actors, and activities in providing humanitarian assistance. The Administration also believes that section 1082, which facilitates foreign assistance, should be subject to foreign policy direction of the Secretary of State, with input from USAID. Section 1083 also appears premature, insofar as section 1082 directs the DOD to review its collaboration with charitable organizations. Therefore, the Administration objects to section 1083 pending further interagency coordination and internal DOD analysis.

Defense Industrial Base: The Administration strongly objects to section 863, which would sunset certain procurement requirements related to sourcing goods exclusively from the national technology and industrial base. The existing procurement requirements act as a key guarantor of strategic supply chain security. They protect DOD's ability to reliably source goods such as chemical weapons antidotes and components for naval vessels, among others.

Expanding Competition: The Administration objects to the breadth of section 811, which would grant waiver authority to the Secretary of Defense in expanding competition for DOD contracts where there is only one responsible bidder. In cases where only one bidder exists, DOD already possesses the necessary capabilities to ensure proper quality and quantity of procured goods, as well as the reasonableness of prices. This waiver authority, if used to override current Buy American laws, would result in further losses of existing American capabilities and jeopardize American jobs. To avoid unintended consequences, the Administration urges Congress to narrow the authority by authorizing its exercise only on a case-by-case basis approved by the Secretary and by exempting certain laws from waiver, including, at a minimum, those that impose domestic source restrictions.

Simplified Acquisition Threshold: The Administration supports the increase in the simplified acquisition threshold (SAT) that would be provided by section 812, but objects to expansion of the waiver to the Berry Amendment and Specialty Metals requirements whose thresholds are tied to the SAT and would automatically increase if the SAT is raised. These provisions provide vital protections for American manufacturing and American jobs. For this reason, the Administration urges Congress to maintain the current threshold for applicability of the Berry Amendment and Specialty Metals requirements. This would enable agencies and contractors to enjoy the benefits of simpler and less costly transactions made possible by an increase in the SAT without erosion of critical domestic source protections.

Wearable Electronics: The Administration objects to section 817, which would repeal domestic source restrictions related to wearable electronics. The Berry Amendment has protected American manufacturing and American jobs since its enactment in 1941. Wearable electronics are an emerging industry in the United States, and this legislation should not hamstring American capabilities in this young field by allowing it to be opened up for foreign bidding. The section also should provide a definition of "wearable electronics." Congress should also consider whether less intrusive means, such as the availability subsection already encompassed in subsection (c) of the Berry Amendment, are sufficient for the acquisition of wearable electronics.

Berry Amendment Exceptions: The Administration objects to section 865, which would create exceptions to the Berry Amendment under memoranda of agreement with foreign governments. Opening up the end-item market to foreign competitors could collapse upstream industries in the United States such as weaving, cloth-making, cotton growing, sheep herding, and many others. It is important to defend the Berry Amendment, which supports American jobs and protects American supply chains.

Civilian Workforce Provisions: The Administration is disappointed that the Committee did not include the Administration's proposals to provide for key workforce flexibilities to improve, expand, and harmonize the Federal Government's efforts to restructure and reshape the Federal workforce. Many of the proposals enacted in the FY 2017 NDAA, and the Administration's proposals seek to expand those flexibilities across the Federal Government so that the benefits and impacts of the flexibilities they provide can be used across the Federal civilian workforce. The proposals aim to improve the speed and precision with which the Government can hire temporary, term, and student employees; expand access to qualified talent; improve the attractiveness and utility of buyouts as a workforce reshaping tool; and allow for a broader exchange of ideas and talent between the Government and the private sector through industry exchange authority. We highly encourage Congress to include the Administration's five proposals because all Federal agencies would greatly benefit from these workforce flexibilities as they seek to improve efficiency, effectiveness, and accountability to the American taxpayer.

Procurement Standardization: The Administration urges inclusion of the Administration's proposals to expand to civilian agencies the procurement provisions applied to DOD by the last Congress to standardize basic acquisition procedures and flexibilities across the Federal Government. Consistent treatment of issues, including task order protests and use of purchase cards, will reduce unintended costs and complications associated with bifurcated acquisition processes.

Constitutional Concerns: Certain provisions in this bill raise constitutional concerns. These include, for example, section 1242, which would interfere with the President's exclusive authority to recognize foreign nations; section 1265 and 1653, which would interfere with the President's authority to command the armed forces; and section 1241, which would interfere with the President's authorities to conduct diplomacy and command the armed forces. Section 901(e) would contravene the Appointments Clause by authorizing an incumbent official to serve in a new office without further appointment.

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

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