

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

September 21, 2021 (House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 4350 - National Defense Authorization Act for Fiscal Year 2022

(Rep. Smith, D-WA, and Rep. Rogers, R-AL)

The Administration strongly supports enactment of a National Defense Authorization Act (NDAA) for a 61st consecutive year and is grateful for the strong, bipartisan work this year by the House Armed Services Committee on behalf of America's national defense.

The Administration looks forward to continuing to work with Congress to set an appropriate and responsible level of defense spending to support the security of the Nation. At the same time, the Administration looks forward to working with Congress to provide appropriate resources for non-security investments and security investments outside the Department of Defense (DOD). A strong economy is critical to ensuring our Nation is positioned for strategic competition, and investments in diplomacy, development, and economic statecraft enhance the effectiveness of national defense spending and promote national security.

The Administration opposes the direction to add funding for platforms and systems that cannot be affordably modernized given the need to prioritize survivable, lethal, and resilient forces in the current threat environment and eliminate wasteful spending. Our national security interests require forces that can fight across the spectrum of conflict.

The Administration looks forward to working with the Congress to address its concerns, a number of which are outlined below. The Administration also looks forward to reviewing the classified annex to the committee report and working with the Congress to address any concerns about classified programs.

Optimizing Program Investments and Modernization. The Administration strongly opposes restoration of funding to systems that limit DOD's ability to divest or retire lower priority platforms not relevant to tomorrow's battlefield. The President's Budget divests or retires vulnerable and costly platforms that no longer meet mission or security needs, and reinvests those savings in transformational, innovative assets that match the dynamic threat landscape and advance the capabilities of the force of the future. The Administration strongly opposes language limiting retirement or inactivation of Ticonderoga Class Cruisers (section 1017). The Administration also strongly opposes language that would establish minimum inventory requirements of systems such as the KC-10 (section 133) and tactical airlift aircraft (section 134), which would limit the Department's flexibility to prioritize resource investment, delay modernization of capabilities, and impede implementation of the National Defense Strategy.

Afghanistan Security Forces Fund. The Administration appreciates the authority provided in section 1212 to enable the responsible termination of the Afghanistan Security Forces Fund (ASFF). The termination will involve, at a minimum, closing out several hundred contracts and in many cases negotiating financial settlements with the contractors, developing a full accounting for all ASFF-funded equipment and supplies that are outside Afghanistan, and assessing potential contract settlement costs and the cost of transporting and storing ASFF-funded material for purposes of treating it as DOD stocks. More analysis is necessary to develop prudent estimates of these costs and of timelines for completing these actions.

Recommendations of the Independent Review Commission on Sexual Assault (IRC). The Administration commends the determined effort to advance our shared goal of making real progress on preventing and, when prevention fails, improving the response to sexual assault and other related crimes, as well as supporting survivors. Additionally, the Administration appreciates the willingness to build rapidly on the work of the IRC by seeking to enshrine many of its recommendations in law and looks forward to working with the Congress to ensure these recommendations are implemented effectively and achieve their intended results.

Section 533, as currently written, would require each Service's Office of Special Victim Prosecutors (OSVP) to be headed by a general or flag officer who would report directly to the Secretary of the Military Department concerned, without intervening authority. To preserve the Secretaries' discretion, the Administration believes that language should be added to this section to allow the Secretary of a Military Department to choose a supervisor of the OSVP that is a Senior Executive Service civilian with equivalent experience.

The Administration recommends amendments to the qualification standards in section 532 in order to permit otherwise highly-qualified judge advocates at the grade of O-5 or higher to be able to serve as a Special Victim Prosecutor (SVP) in light of limitations on the number of personnel at grade O-6 or higher currently available to fill these positions. Additionally, the Administration recommends requiring a minimum of three years of relevant criminal justice experience for Assistant SVPs, due to the challenges of ensuring sufficient personnel with five or more years of experience. Though the Administration sees great benefit in facilitating victim access to protective orders and maximizing such orders' effectiveness, the Administration believes that additional time is needed in order to study the military judicial resources implications of the changes proposed in section 529. The Administration recommends requiring the completion of an implementation study within one year of enactment, followed by the requirement to develop regulations implementing this section within two years of enactment. Finally, the Administration urges Congress to pass its requested sexual harassment punitive articles.

Other Military Justice Measures. Though the Administration similarly appreciates the commitment to further improving the military justice system, the Administration opposes provisions that could have unintended and deleterious impacts on the administration of justice and DOD's related programs. The Administration strongly opposes section 517 as currently written, which authorizes the Secretaries of the Military Departments to act on characterization of service determinations notwithstanding the separation board's recommendation, and

recommends that a study be undertaken instead to assess potential changes. Further, the Administration is concerned that military criminal investigative organizations (MCIOs) lack the personnel and resources to complete section 528's notification requirement within 180 days. Many of the individuals who would have to be notified are no longer in the military and MCIOs would have to conduct a search for their current contact information. Therefore, the 180-day timeframe is not feasible.

Space National Guard (SNG). The Administration strongly opposes the creation of a Space National Guard. When the Space Force was established, Congress and the Administration alike emphasized the need to minimize administrative expenses and prioritize the development of space capabilities; this Administration remains committed to that approach. Establishing a Space National Guard would not deliver new capabilities—it would instead create new government bureaucracy, which the Congressional Budget Office estimates could increase costs by up to \$500 million annually. The Air National Guard and Air Force Reserve units with space missions have effectively performed their roles with no adverse effect on DOD's space mission since the establishment of the Space Force. The Administration looks forward to working with the Congress on alternative Space Force concepts that are efficient, effective, and appropriate for space missions.

<u>Limitations on Use of Funds in the National Defense Sealift Fund</u>. The Administration urges support for the necessary relief to recapitalize the sealift fleet with used vessels by removing existing statutory limitations. The Administration strongly encourages Congress to remove the statutory cap on the number of used sealift vessels DOD can procure and to remove the statutory link between the use of National Defense Sealift funding for the purchase of used vessels and the requirement to procure new construction vessels. This will allow the Administration to recapitalize the sealift fleet, with all used ship conversions in U.S. shipyards, for a fraction of the cost of procuring new vessels.

<u>F-35 Sustainment Costs</u>. The Administration strongly opposes section 141, as it places artificial constraints on F-35 aircraft inventory using outdated and unrealistic fiscally-constrained F-35A affordability targets. Based on current F-35 sustainment cost estimates, DOD does not see a realistic path to reach the \$4.1 million (Constant Year 2012 dollars) cost per tail per year affordability target for the F-35A.

<u>Basic Needs Allowance For Low-Income Regular Members</u>. The Administration supports a basic needs allowance. The Administration needs a more comprehensive data analysis to determine the inclusion or exclusion of basic allowance for housing. Using this analysis, the Administration would like to work with Congress to develop an appropriate calculation for targeting recipients of a basic needs allowance.

<u>Countering Extremism in the Armed Forces</u>. The Administration shares the goal of preventing prohibited extremist activities and holding offenders accountable, but opposes section 529A, because it would impose onerous and overly specific training and data collection requirements and would foreclose other options to address extremism.

Prohibition on Adverse Personnel Actions Taken Against Certain Members of the Armed Forces Based on Declining COVID-19 Vaccine and Expansion of Exemptions from Vaccination Requirement. The Administration strongly opposes section 716, which would detract from readiness and limit a commander's options for enforcing good order and discipline when a Service member fails to obey a lawful order to receive a vaccination. To enable a uniformed force to fight with discipline, commanders must have the ability to give orders and take appropriate disciplinary measures. The Administration also strongly opposes section 720, which would create a new and overly broad exemption from the vaccination requirement for previous infection that would undermine the effectiveness of the requirement. The Department will make available a full range of resources to Service members, including individual and professional medical advice, to demonstrate the safety and effectiveness of COVID-19 vaccine and to ensure they are fully informed about vaccination.

Minimum Wage for Employees of Department of Defense Contractors. Although the Administration supports contract workers and increasing the minimum wage for workers under federal contracts, it objects to section 804 because it is inconsistent with E.O. 14026, "Increasing the Minimum Wage for Federal Contractors." Different application depending on whether or not the contract is with DOD or another Federal department or agency would lead to significant confusion by applying different requirements to many of the same contractors

Global Bulk Fuel Management and Delivery. The Administration strongly opposes section 342, which would designate a single combatant command to be responsible for global bulk fuel management and delivery. This designation would not address the challenges posed by the degraded availability and survivability of assets supporting the distribution of fuel to dispersed and austere operating locations and the need for rapid decision-making in support of changing operational environments. It would also introduce significant risk by degrading the Joint Force's ability to meet operational requirements.

Modification of Restriction on Department of Defense Procurement of Certain Items
Containing Perfluorooctane Sulfonate or Perfluorooctanoic Acid. The Administration is committed to working with Congress to address the challenges posed by per- and polyfluoroalkyl substances (PFAS). However, it is concerned with section 317 which would prohibit DOD from procuring a wide range of items that may contain PFAS. If implemented in its current form, it would not be feasible for DOD to test all of these items to determine if they contain PFAS. In addition, some of these products may not have PFAS-free alternatives available. The Administration will continue to work with Congress to both address PFAS contamination and find alternative products and solutions.

<u>Information Regarding Solicitation and Award of Subcontracts Under Military</u>
<u>Construction Contracts</u>. The Administration strongly opposes section 2803, which would create burdensome new information collection and reporting requirements that would impose an unfunded mandate on industry while contradicting the Paperwork Reduction Act and providing no benefit to project execution.

Limitation on Availability of Funds for the B-52 Commercial Engine Replacement

Program (**CERP**). The Administration strongly opposes section 132, which would limit the availability of funds for the B-52 CERP and establish a premature and inadequate cost estimate for the program. This would delay the CERP and postpone delivery of new commercial engines for the B-52 by up to two years. Such a delay from 2029 to 2031 would exceed the projected 2030 end of life for the current B-52 TF-33 engines and add risk to B-52 availability.

Missile Defense Radar in Hawaii. The Administration strongly opposes the requirement in section 1643 to certify funding for the Homeland Defense Radar – Hawaii (HDR-H). The Department had planned to field HDR-H, the Pacific Radar, the Redesigned Kill Vehicle (RKV), and the Long Range Discrimination Radar by the mid-2020s as a system of systems to improve homeland ballistic missile defense. The Pacific Radar has been delayed indefinitely due to stalled negotiations with the host nation, and the RKV program has been cancelled. Hawaii is currently defended against missile threats to the same extent as the rest of the United States, and DOD is currently investing in other capabilities, such as the Next Generation Interceptor, which will support the long-term defense of Hawaii.

Authority of Under Secretary of Defense for Intelligence and Security to Engage in Fundraising for Certain Nonprofit Organizations. The Administration strongly opposes section 1613, which runs counter to longstanding law and policy that prohibits Federal personnel from fundraising on behalf of non-Federal entities. This would unnecessarily and improperly entangle senior DOD personnel in the fundraising and operations of potentially numerous non-Federal entities.

Reprioritization of Military Construction Funding to Unrequested Projects. The Administration opposes the bill's realignment of military construction funding from priority projects to other projects. Contrary to the Administration's fiscally responsible policy to fully fund projects, the bill proposes to fund 12 military construction projects incrementally, effectively creating an unfunded obligation of almost \$900 million needed to fully fund these projects over time. The bill diverts these funds to other unrequested projects.

Fallon Range Training Complex (FRTC) Modernization. The Administration urges Congress to adopt DOD's request to expand the FRTC to provide the area needed to fully accommodate modern military training requirements while upholding Tribal trust responsibilities and responsible management of public lands.

<u>Modernization of the Selective Service System</u>. The Administration supports section 513 and the registration requirement for all citizens, which further ensures a military selective system that is fair and just. However, the Administration opposes the removal in subsection (f) of Federal incentives for registration, which must remain to achieve an equitable system that can be implemented effectively.

<u>Nuclear Weapons Provisions</u>. The Administration opposes several provisions that would prejudge the outcome of the Nuclear Posture Review now underway. These include the prohibition on funding for extending the service life of the B83-1, the restrictions on changing intercontinental ballistic missile (ICBM) alert levels or the number of deployed ICBMs, and the prohibition on reconverting or retiring W76-2 warheads.

<u>Defense Review Requirements</u>. The Administration objects to requirements in section 1653, which purport to require the Chairman of the Joint Chiefs of Staff, the Vice Chairman of the Joint Chiefs of Staff, and the U.S. STRATCOM Commander to provide pre-decisional and deliberative materials associated with the Integrated Deterrence Review, as well as the Nuclear Posture Review and Missile Defense Review. These requirements encroach on the constitutional prerogatives of the President.

<u>Significant Foreign Policy Provisions Relevant to Defense Matters</u>. The Administration is concerned that the bill includes certain provisions requiring DOD engagement in, analysis of, or reporting on significant foreign policy issues, that lack a sufficient means for State involvement and looks forward to working with Congress on these matters.

Anomalous Health Incidents. The Administration appreciates the Committee's continued engagement on anomalous health incidents and would like to work with the Congress to reconcile structural and reporting requirement differences between these sections and other proposed legislation in order to standardize inter-agency processes, increase multi-committee reporting, and increase pro-active care options to affected individuals.

<u>Constitutional Concerns.</u> Certain provisions of the bill, such as sections 901 and 1232, raise constitutional concerns. The Administration looks forward to working with Congress to address these and other constitutional concerns.