



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

STATEMENT OF ADMINISTRATION POLICY

H.R. 2810 – National Defense Authorization Act for Fiscal Year 2018

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

The Administration appreciates the House Armed Services Committee's (Committee) continued work on behalf of our national defense and supports a number of provisions in H.R. 2810, 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 force 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 important 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.

The bill authorizes \$18.5 billion above the President's FY 2018 Budget request for base national defense spending, as well as an additional \$10 billion in Overseas Contingency Operations (OCO) funding. 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 strongly supports reductions to spending elsewhere in the Federal budget, as outlined in the President's FY 2018 Budget request.

While the bill contains many promising reforms, it fails to authorize a new Base Realignment and Closure (BRAC) round, which would result in substantial recurring savings and allow DOD to align infrastructure with force structure. The Administration is in the midst of conducting several strategic reviews that affect multiple provisions in this bill, such as those addressing space organization and management and naval ship force structure. Once these reviews are complete, the Administration will be prepared to suggest modifications to these provisions.

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 Congress to address any concerns about 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 scarce resources on unneeded infrastructure. The Department estimates that a new BRAC round in 2021 would save it an

additional \$2 billion annually—resources it could apply to higher priorities such as readiness and modernization.

Establishment of Space Corps in the Department of the Air Force: The Administration appreciates the Committee’s concerns with the organization and management of DOD’s space capabilities as reflected in section 1601, which calls for the establishment of a separate Space Corps within the Department of the Air Force. As the Secretary of Defense has testified, the Administration recognizes the criticality of our access to and use of space, and we understand the increasing threats posed to our continued use of space capabilities. As directed by the FY 2017 NDAA, the Administration is assessing a wide range of organizational options, including a Space Corps. The creation of a separate Space Corps, however, is premature at this time. Upon completion of these analyses, the Administration looks forward to working with Congress to implement military space organizational changes (while considering the budget implications) in a practical timeframe to best posture the Nation’s joint forces to meet the challenges of the 21st Century.

Extension and Modification of Authority to Provide Assistance to Counter the Islamic State of Iraq and Syria: The Administration appreciates the increased funding authority included in section 1222, but notes its concern that the provision does not contain additional requested authority for small-scale construction of temporary facilities that are necessary to meet operational needs and force protection requirements in both Iraq and Syria. As the campaign to defeat ISIS transitions beyond the liberation of Mosul and Raqqa, operational commanders will need the requested authority to build temporary intermediate staging facilities, ammunition supply points, and tactical assembly areas that have adequate force protection. These facilities, supply points, and assembly areas will enable the pursuit of ISIS into the Euphrates River Valley and help improve the security of Iraq’s borders. Current authorities, limited only to repair and renovation of existing Iraqi facilities, severely limit the coalition’s maneuverability and its ability to respond quickly to changing operational conditions.

Extension and Modification of Authority to Support Operations and Activities of the Office of Security Cooperation in Iraq: The Administration appreciates the continuation of existing authority, but is disappointed by the lack of authority in section 1223 to expand the list of eligible recipients to include the “military and other security forces of or associated with the Government of Iraq with a national security mission.” The expanded authority would help address capability gaps, professionalization efforts, and defense institution building across the breadth of the Government of Iraq’s (GoI’s) national security institutions. By aiding the development of the GoI’s most critical missions—counterterrorism, border security, and the protection of critical infrastructure—the expanded authority proposed by the Administration would help Iraqis prevent the emergence of a successor to ISIS, safeguard their nation’s hard-fought gains, and guide their recovery from combat operations toward a more secure and stable nation.

Evolved Expendable Launch Vehicle (EELV) Modernization and Sustainment of Assured Access to Space: The Administration strongly objects to section 1615, which would restrict development of new space launch systems, including those whose development is significantly funded by industry, in exclusive favor of rocket engines and modifications to existing launch

vehicles. The provision limits domestic competition, which will increase taxpayer costs by several billions of dollars through FY 2027 and stifle innovation. It also ignores key recommendations of the Committee's independent panel of experts, who proposed broad funding at the launch-system level. The Administration's innovative, agile approach has already saved taxpayers \$300 million and is the quickest path to delivering modern, domestic, cost-effective launch capabilities that will support national security requirements for decades to come. This provision would make the Administration's strategy impossible to execute, causing delays in transitioning from Russian engines and increased risks to continued assured access to space.

Industrial Base for Large Solid Rocket Motors and Related Technologies: The Administration strongly objects to section 1699, which would require the Secretary of Defense to pursue multiple sources for the various components of modern solid rocket missile systems. The large solid rocket motor industrial base has many single sources for components and materials. In many cases, the quantities of systems, subsystems, or components or materials acquired by DOD are not sufficient to support multiple suppliers. In addition, if a second source for these materials is required, it would trigger requalification on not only the rocket motor, but also the entire missile. This would be cost prohibitive to DOD, totaling nearly \$1 billion.

Notification Requirements for Sensitive Military Cyber Operations and Cyber Weapons: The Administration objects to section 1651, which would require the Secretary of Defense to notify the congressional defense committees within 48 hours about the conduct of sensitive military cyber operations and the results of any legal review by a military department of a cyber capability that is intended to be used as a weapon. DOD already regularly briefs the House and Senate Committees on Armed Services on major cyber operations. This provision would risk exposure, and potentially restrict use, of cyber capabilities; jeopardize foreign partnership cooperation; and impose additional, unwarranted administrative requirements on DOD.

Misuse of Overseas Contingency Operations (OCO) Funds: The Administration is concerned by the use of OCO funds for items not related to contingency operations, including an additional \$558 million for Israel missile defense funding. The bill also proposes using OCO to fund additional end strength, ships, and homeland defense. Funding these enduring requirements in OCO would complicate the funding stability for associated outyear costs and runs contrary to the purpose of OCO.

Development of Intermediate-Range Nuclear Forces (INF) Range Ground-Launched Missile System: The Administration objects to sections 1244 and 1245, which would establish a program of record to develop a road-mobile, ground-launched cruise missile system and would purport to abrogate Article VI of the INF treaty. The Administration is currently developing an integrated diplomatic, military, and economic response strategy that maximizes 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 missile system, which would limit potential military response options. Section 1245(d) would also raise concerns among NATO allies and could deprive the Administration of the flexibility to make judgments about the timing and nature of invoking our legal remedies under the treaty. 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.

Limitation on Availability of Funds Relating to Implementation of the Open Skies Treaty: The Administration objects to section 1235(b), which would prohibit the expenditure of funds for procurement for the Digital Visual Imaging System to modify the United States sensors and aircraft. This section will prevent the United States from keeping pace with Russian Open Skies aircraft sensor upgrades, fully implementing the Open Skies Treaty, and increasing the value of the treaty to United States national security. Cancellation of the project at this late date, after significant resources have already been expended, would further put the United States in breach of contract, thus incurring cancellation fees. The provision would result in limited or no cost savings and possibly a cost increase, which would be an unacceptable waste of taxpayer dollars.

Foreign Commercial Satellite Services: Cybersecurity Threats and Launches: The Administration strongly objects to section 1612, which would limit the Department's ability to procure satellite services from foreign entities. It also would prohibit entering into a contract for satellite services with any entity if such services will be provided using satellites launched from, or designed or manufactured in, a covered foreign country or by an entity controlled by the government of a covered foreign country, regardless of the location of the launch. For satellite communications services, three-quarters of services acquired today are from foreign-incorporated companies that make widespread use of international launch vehicles.

Compensation Reform: The Administration objects to section 601, which would place restrictions on the President's authority to set an alternative pay adjustment for members of the uniformed services. The President's FY 2018 Budget request provides the funding necessary to ensure servicemembers continue to receive an appropriate package of pay and benefits. The Administration, however, must balance this requirement against other investments critical to readiness, equipment, and modernization to ensure the military is the most capable warfighting force in the world. The Administration strongly encourages members of Congress to support its basic pay raise, TRICARE modernization, and pharmacy co-pay proposals, which would save \$600 million in FY 2018 and \$7.1 billion through FY 2022. Similarly, the Administration objects to section 604, which would prevent the Secretaries of the military departments from implementing a reduced per diem for uniformed servicemembers and civilian employees who travel to one location for more than 30 days. This provision is unnecessary because DOD has already implemented a policy allowing the services to pay travelers' actual expenses up to the full per diem rate when the reduced flat rate for meals and incidental expenses is insufficient for the assignment. If adopted, this section would add \$56 million or more annually to DOD's travel costs.

TRICARE Reform: The Administration is disappointed that the Committee did not include the Administration's proposals to strengthen and improve the TRICARE benefit. The current system creates confusion and increases administrative costs because it provides separate benefits for members and retirees based on their dates of initial entry into military service. Vulnerable populations, including medically-retired members and their families, and survivors of those who died on active duty, also would be the first to pay increased costs under the new system. In addition, the Administration is concerned that the Committee did not include reasonable

pharmacy co-pays. The Administration believes strongly that the President's FY 2018 Military Health System benefit reform package represents a reasonable and financially sound proposal for our beneficiaries. It protects vulnerable populations, eliminates a confusing and costly two-benefit program, and institutes reasonable pharmacy co-pays that will ensure TRICARE remains a generous, yet sustainable, health benefits program.

Limitation on Basic Allowance for Housing (BAH) Modification Authority for Members of the Uniformed Services Residing in Military Housing Privatization Initiative (MHPI) Housing: The Administration objects to section 602, which would temporarily prohibit the Secretary of Defense from further reducing BAH below the current level for servicemembers residing in MHPI housing until 2019. This would create two classes of uniformed members: those who reside in privatized housing and receive a higher housing allowance and those who reside within the local community and receive a lower housing allowance. This is neither fair nor equitable since the opportunity to live in privatized housing on post is not always available. Administering this section would require an additional set of rates for members in privatized housing, necessitating challenging and costly modifications to military pay systems.

Clarification of Roles of Commanders of Military Medical Treatment Facilities (MTFs) and Surgeons General: Section 711 would designate each MTF commander as the individual responsible for the operation of the MTF they supervise. The Administration is concerned that this section would establish a potentially confusing organizational paradigm, as the Defense Health Agency (DHA) is also responsible for the management and administration of MTFs. The Secretary of Defense should be allowed to determine the most effective management structure for the Military Health System.

Unobligated Balances Reductions: The Administration objects to the \$1.3 billion reduction for unobligated balances across multiple appropriations. The reductions would only be applied to those programs funded in sections 4301, 4401, and 4501, which include military pay and allowances, military health care, readiness training, depot maintenance, base operations support, and facilities sustainment, restoration, and modernization line items. These reductions would delay the DOD's full-spectrum readiness recovery efforts and increase the backlog of maintenance at the services' depot facilities.

Performance of Incurred Cost Audits: The Administration objects to multiple provisions in section 802. Mandating the acceptance of the claimed costs in their entirety if audit findings are not issued within one year of proposal receipt, restricting the use of multi-year audits, mandating that an arbitrary 25 percent of incurred costs be audited by qualified private auditors in lieu of a data-driven process, and mandating materiality thresholds will result in significant inefficiencies in the DOD audit process and result in significant unallowable costs being paid to contractors. Further, the materiality thresholds are significantly more prescriptive and detailed than defined in commercial or Government audit standards and are not risk-based.

Missile Defense Programs: The Administration objects to section 1686, which would require the Secretary of Defense to ensure that anti-air warfare capabilities are deployed at the Aegis Ashore site in Romania by no later than one year after the date of enactment of this Act, and at the Aegis Ashore site in Poland no later than one year after the declaration of operational status at that site.

The accelerated timeline would require DOD to field an unproven defensive system without full knowledge of its combat effectiveness or the unintended consequences of operating a high-powered radar and weapon system in a populated area surrounding Deveselu, Romania. The diplomatic requirements to coordinate these issues with other nations are significant, even after proving the system and understanding the consequences of the system on local populations. In addition, the Administration strongly objects to section 1685, which would mandate a flight test of the SM-3 Block IIA missile against an ICBM class threat within 270 days of enactment.

Reinstatement of Requirement to Preserve Certain C-5 Aircraft: The Administration strongly objects to section 143, which would require the Air Force to maintain at least 25 C-5A Avionics Modernization Program (AMP)-modified aircraft in flyable storage. The Air Force currently has 52 C-5Ms within its total strategic aircraft inventory. Requiring the maintenance of an additional 25 C-5As in flyable condition would eliminate the relief provided in the FY 2017 NDAA from the FY 2013 NDAA requirement to keep retired C-5As in flyable storage. The total estimated cost to regenerate 25 C-5A AMP aircraft into flyable condition would exceed \$5.6 billion, not including aircrew and maintenance training costs, and would take an estimated nine years to complete.

Limitation on Expenditure of Funds for Emergency and Extraordinary Expenses for Intelligence and Counterintelligence Activities and Representation Allowances: While the Administration understands the Committee's concern with the use of these funds and will thoroughly examine this practice, the Administration objects to section 1031, which would prohibit using Emergency and Extraordinary Expenses authority for recurring expenses and lower the congressional notification threshold for intelligence and counterintelligence activities. These changes would severely impede DOD's ability to conduct intelligence and counterintelligence operations and negatively affect ongoing counterterrorism and other critical DOD operations.

Open Discovery Rule: The Administration shares Congress' goal of preventing sexual assault in the military and holding accountable those who commit the offense. Although the Administration is sympathetic to the motivation behind section 524, affording victim's counsel with open file discovery may have the unintended consequence of impairing the successful prosecution of cases by creating additional opportunities for the defense to challenge the victim's testimony. In addition, the Administration encourages Congress to consider whether the information required by section 528 is already provided in annual Family Advocacy Program reports.

Modernization of Army Lower Tier Air and Missile Defense Sensor (LTAMDS): The Administration objects to section 1683, which would direct the Secretary of the Army to issue an acquisition strategy no later than April 15, 2018, for a 360-degree lower tier air and missile defense sensor that achieves initial operational capability by January 1, 2022, and completes fielding to all Army units by January 1, 2026. The requirements and timelines in this provision are not feasible. They would prevent the Army from developing LTAMDS integrally as part of its phased modernization approach for integrated air and missile defense based on Army and Joint Staff validated requirements. Additionally, the Administration opposes the provision's direction to transfer the acquisition responsibility of the sensor to the Missile Defense Agency should the Army not issue the strategy in time.

Issues for Relocation of Marines to Guam: The Administration appreciates the inclusion of section 1062, which would authorize the admission before October 1, 2020, of H-2B workers coming to Guam to perform certain military-related work or as health care workers under modified admission requirements. The Administration strongly urges Congress to adopt the Administration's request, which would, among other things, extend the authority through December 31, 2023, and address specified needs in both Guam and the Commonwealth of the Northern Mariana Islands (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.

In addition, the Administration objects to section 2822, which provides for the land conveyance of the Naval Ship Repair Facility, Guam. The property is not excess to the needs of the Department of the Navy, as Military Sealift Command awarded a contract for ship repair that will require use of this property. Opening this property to commercial use also would pose security concerns to nearby berthed Navy vessels, including the Department of the Navy losing control of whether the commercial entity can perform work on foreign vessels.

Palau: The Administration appreciates the Committee's efforts in section 1265 to fund the 2010 United States-Palau Compact Review Agreement (CRA), but is disappointed that the Committee did not include the provision requested provision that would approve the 2010 CRA. As a sovereign and freely associated state in the western Pacific, the Republic of Palau carries significant foreign policy and national security significance for the United States. Congressional approval is required for the United States to enter into the CRA and modify the CRA's funding schedule as necessary for the United States to meet its international commitments. Failure to approve the CRA could imperil ongoing national security initiatives with the Republic of Palau and destabilize United States access and influence in a region that is increasingly contested by China.

Mixed Oxide (MOX) Fuel Fabrication Facility: The Administration strongly objects to section 3119 directing construction of the Mixed Oxide (MOX) Fuel Fabrication Facility. The Administration appreciates the flexibility provided to the Secretary of Energy to waive that requirement and terminate the MOX project. The MOX project is unaffordable and risky, with \$12 billion in remaining construction costs, based on the most recent estimate prepared in collaboration with the Army Corps of Engineers and the Department of Energy. The project would bring total construction costs to \$17 billion, when including \$5 billion in sunk-costs to date. In addition, the projected operating costs are between \$800 million and \$1 billion per year for nearly two decades. The Administration supports the Committee's recommendation to authorize funds for the Savannah River Site's (SRS) dilute and dispose capability to remove from South Carolina, and dispose of, surplus plutonium stored at SRS. Dilute and dispose is a proven approach with significantly less risk and expense, and it can be implemented decades sooner than the MOX approach.

Incremental Funding for National Geospatial-Intelligence Agency's (NGA) New Campus West (N2W): The Administration appreciates the support for NGA's N2W facility, but objects to the proposed incremental funding approach. The authorized level in the bill could lead to higher total project costs, delay the delivery of the campus, and negatively impact other mission-critical priorities.

Constitutional Concerns: Certain provisions in this bill raise constitutional concerns. These include, for example, sections 1232 and 921(b). Section 1232 would interfere with the President's exclusive authority to recognize foreign nations, and section 921(b) would contravene the Appointments Clause by authorizing incumbent officials to serve in new offices without further appointments.

The Administration looks forward to working with the Congress to address these and other concerns as this legislation advances.

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