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OFFICE OF MANAGEMENT AND BUDGET
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(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 6395 – William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021

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

The Administration strongly supports enactment of a National Defense Authorization Act (NDAA) for a 60th consecutive year. It is also grateful for the strong, bipartisan work this year by the House Armed Services Committee (Committee) on behalf of America's national defense.

The Administration applauds the Committee's bipartisan support for a national defense discretionary topline of \$740.5 billion, which is consistent with the President's Fiscal Year (FY) 2021 Budget Request and the Bipartisan Budget Act of 2019, and for the Committee's full support of the President's Active Duty Forces end-strength request. Such consistent funding and end-strength numbers will further enable irreversible implementation of the National Defense Strategy's (NDS) key lines of effort: (1) Sustaining and building readiness to deter, fight, and win; (2) Strengthening alliances, deepening interoperability, and attracting new partners; (3) Reforming the Department of Defense (DOD) for greater performance and accountability; and (4) Supporting the backbone of America's national security – our service members, military families, and DOD civilians.

Nevertheless, H.R. 6395 includes several provisions that present serious concerns. Among other major provisions, the Administration strongly objects to section 2829, which would require renaming of certain military institutions. It also has serious concerns about provisions of the bill that seek to micromanage aspects of the executive branch's authority, impose highly prescriptive limitations on the use of funds for Afghanistan, and otherwise constrain the President's authority to protect national security interests. Many of these provisions would pose significant challenges to continued execution of the NDS.

The Administration looks forward to working with Congress to address its significant concerns with these aspects of the bill, the most significant of which are discussed below. The Administration also looks forward to reviewing the classified annex to the committee report and working with Congress to address any concerns about classified programs.

If H.R. 6395 were presented to the President in its current form, his senior advisors would recommend that he veto it.

Renaming Certain Military Installations and Other Defense Property (Section 2829). The Administration strongly objects to section 2829 of the bill, which would require renaming of any military installation or defense property named after any person who served in the political or military leadership of any armed rebellion against the United States. Over the years, these locations have taken on significance to the American story and those who have helped write it that far transcends their namesakes. The Administration respects the legacy of the millions of American servicemen and women who have served with honor at these military bases, and who from these locations have fought and died in two World Wars, Vietnam, the War on Terror, and other conflicts. Further, the drive to rename will not stop at the limits written into section 2829. Section 2829 is part of a sustained effort to erase from the history of the Nation those who do not meet an ever-shifting standard of conduct. Beyond section 2829, loud voices in America are also demanding the destruction or renaming of monuments and memorials to former Presidents, including the our first President, George Washington; the author of the Declaration of Independence, Thomas Jefferson; and the Great Emancipator, Abraham Lincoln. President Trump has been clear in his opposition to politically motivated attempts like this to rewrite history and to displace the enduring legacy of the American Revolution with a new left-wing cultural revolution.

Modification and Clarification of Construction Authority in the Event of a Declaration of War or National Emergency (Section 2801). The Administration strongly objects to section 2801 because it would significantly curtail the authority of DOD under 10 U.S.C. 2808 by imposing spending caps, limiting the source of funds, constraining the Secretary of Defense's ability to waive laws that impede expeditious response to an emergency, and imposing burdensome congressional reporting requirements. Section 2808 was originally enacted to allow for the adjustment of military construction priorities in the event of a declaration of war or national emergency, and this section would greatly restrict that ability. These arbitrary limits increase risks to the Armed Forces and the national security of the United States.

Requirement of Consent of the Chief Executive Officer for Certain Full-time National Guard Duty Performed in a State, Territory, or the District of Columbia (Section 513). The Administration strongly objects to section 513, which would grant the Mayor of the District of Columbia the authority to deny the President the use of the District of Columbia National Guard under the authority of 32 U.S.C. 502(f)(2)(A). This provision would alter how the District of Columbia National Guard is administered and employed under current statute and Executive Orders. Currently, the Mayor of the District of Columbia has no authority over the District of Columbia National Guard. This provision would grant the Mayor authority over certain uses of the District of Columbia National Guard. This is particularly problematic in circumstances when it becomes necessary for the President, the Secretary of Defense, or the Secretary of the Army to use the District of Columbia National Guard under the authority of section 502(f)(2)(A) to support Federal law enforcement agencies in the District of Columbia or to defend the seat of the United States Government.

Force Reduction in Afghanistan Limitations (Section 1213). The Administration strongly objects to section 1213's highly prescriptive limitations on the use of funds for Afghanistan and its measures to reduce forces in Afghanistan, until the Secretary of Defense, with the concurrence of the Secretary of State, the Director of National Intelligence, the Chairman of the

Joint Chiefs of Staff, the Commander of U.S. Central Command, the Commander of U.S. Forces—Afghanistan, and the Permanent Representative of the United States to the United Nations, submits a report certifying that they will not harm counterterror operations, risk United States personnel, or increase risk of expanding terrorist safe havens in Afghanistan. It would also contravene the President’s constitutional authority as Commander in Chief. This provision would restrict the President from discharging his Constitutional authority to reduce forces levels in Afghanistan if he deems it necessary. It also would subordinate the President’s authority to the discretion of the officials whose concurrence would be required for the certification. Further, by requiring the concurrence of three military officers for the certification, the provision also would subordinate the Secretary of Defense’s discretion to the judgment of those military subordinates, upending the military chain of command and the principle of civilian control of the military.

Force Reduction in Germany Limitations (Section 1241). The Administration affirms the inherent need for a ready presence in the European theater, but it strongly objects to section 1241. This section would prohibit the closure of any base or facility under the European Consolidation Initiative until the Secretary of Defense can certify that there is no longer a need for a rotational military presence in the European theater. The constraint on reducing the numbers of active duty service members would also contravene the President’s authority as Commander in Chief.

United States participation in the Open Skies Treaty (Section 1234). The Administration is deeply concerned by the highly prescriptive text mandating joint notification by the Secretaries of Defense and State on the conclusion of agreements to secure notifications of observational overflights from countries that host United States military forces, and reports on such agreements and where the United State did not secure them. The provision also requires the sharing of imagery and reporting on diplomatic exchanges that are within the prerogative of the executive branch to protect.

Indo-Pacific Reassurance Initiative (IPRI) (Section 1251). The Administration supports the Committee’s intent to emphasize our deep commitment to defending our interests and those of our allies in the Indo-Pacific region. The Administration looks forward to working with the Committee on IPRI to prioritize our investments, maintain a credible deterrent, and demonstrate an enduring, whole-of-government commitment to the region, but does have some concerns that this provision may limit DOD’s flexibility to adjust to an evolving regional security environment, and looks forward to further discussions with Congress on these matters.

Diversity and Inclusion (Section 912). The Administration also appreciates the Committee’s support for DOD’s strong commitment to advancing equal opportunity, diversity, and inclusion throughout our Armed Forces. In light of the initiatives already being implemented at Secretary Esper’s direction, the Administration strongly objects to section 912, which would create four new presidentially appointed, Senate-confirmed (PAS) officials who would compete directly with the Under Secretary of Defense for Personnel and Readiness and the Assistant Secretaries of the Military Departments for Manpower and Reserve Affairs. This bifurcation of responsibility would add unnecessary bureaucracy and internal competition into this critical area at a time when a focused effort is needed, and is already underway at the highest levels of DOD and the U.S. Coast Guard.

Limitations on Use of Funds in the National Defense Sealift Fund (Section 1022). The Administration objects to section 1022. While the Administration appreciates the Committee's support to procure additional used vessels for the sealift mission, the Administration urges removal of the requirement to procure new construction sealift vessels. This will allow the Administration to begin the necessary step of recapitalizing the sealift fleet for a fraction of the cost of procuring new vessels.

Coordination in Transfer of Funds by DOD to National Nuclear Security Administration (Section 1641). The Administration objects to section 1641, which attempts to micromanage the executive branch's budget formulation for the Department of Energy's (DOE) National Nuclear Security Administration (NNSA). The Secretary of Defense does not transfer "nuclear budget request authority" to the NNSA. The President is responsible for managing the executive branch budget formulation process and determines requested levels for resources among competing priorities and departments.

Advanced Naval Nuclear Fuel System Based on Low-Enriched Uranium (Section 3116). The Administration objects to the bill's direction to establish a program to assess the viability of using low-enriched uranium in naval nuclear reactors. In 2018, the Secretary of Energy and the Secretary of the Navy jointly determined that the United States should not pursue such research and development because such a system would be far less capable and more expensive than current reactor designs.

Formally Utilized Sites Remedial Action Program (Section 3103). The Administration objects to section 3103 because it would reduce DOE funding for the Formerly Utilized Sites Remedial Action Program (FUSRAP), thereby rejecting the Budget proposal to transition administration of the program. The Administration urges the House to move the FUSRAP from the Department of the Army to DOE. Transferring responsibility of this program to DOE will facilitate more efficient cleanup of these contaminated sites by the Army Corps of Engineers, allow DOE to consider the full range of cleanup responsibilities in prioritizing work, reduce the costs of activities now undertaken by both agencies, and simplify the process for transferring these sites back to DOE for long-term surveillance and maintenance.

Information and Intelligence Exclusions (Sections 1631-1632 and 1712). The Administration supports the intent of sections 1631, 1632, and 1712. These sections, however, do not adequately reflect the Director of National Intelligence's statutory responsibility to protect intelligence sources and methods with regard to cybersecurity threat intelligence related to information systems operated by agencies within the Intelligence Community. With respect to section 1631, the Administration supports appropriate collaboration on cyber threat information within the United States Government. The Administration, however, strongly objects to the lack of an opt-out provision reasonably tailored to address sources and methods information sharing related to such systems. With respect to section 1632, the Administration expects to use the rulemaking authority in subsection (e) to address similar concerns. Finally, the Administration strongly objects to section 1712, which would lead to the potential disclosure in public reports of classified information and information relating to intelligence sources and methods. It should be noted, however, that the National Archives and Records Administration has already done much of what is contemplated in section 1712 under its existing authorities. In order to protect

intelligence sources and methods related to such systems, the Administration looks forward to working with Congress to craft appropriate exclusions.

Assistant Secretary of Defense for Space and Strategic Deterrence Policy (Section 921). The Administration is grateful for the continued partnership with Congress in standing up the Space Force as our Nation's newest military branch. The Administration, however, strongly objects to adding nuclear deterrence and missile defense responsibilities to the responsibilities of the Assistant Secretary of Defense for Space Policy. The Administration is finishing the statutorily required study directed in the FY 2020 NDAA and looks forward to working with Congress on the most efficient and impactful roles and responsibilities of the new office.

Military Construction Infrastructure and Weapon System Synchronization for Ground-Based Strategic Deterrent (Section 2404). The Administration welcomes the Committee's general approach in section 2404 to provide some of the flexibility requested by the Administration for Ground-Based Strategic Deterrent launch facility and launch center conversion activities. In order to keep these critical projects on time and on budget, however, the Administration requests that Congress provide the authority to use RDT&E and Missile Procurement funding to carry out the construction and conversion projects.

Limitations on Divestiture and Retirement (Sections 122-125, 1045, and 1047). The Administration strongly objects to language in sections 122 (RC-135), 123 (E-8), 124 (RQ-4), 125 (KC-135, KC-10), 1045 (EQ-4), and 1047 (A-10) that limits DOD's ability to divest or retire specific platforms. The President's Budget divests or retires platforms to reinvest in leading-edge innovation, ensuring dominance across all domains: air, land, sea, space and cyber. Limiting DOD's flexibility to prioritize resource investment delays modernization of capabilities, preparation for great power competition, and implementation of the NDS.

Bombers (Section 129). The Administration strongly objects to this provision because it would constrain DOD's flexibility to adjust its weapons system inventory to meet NDS imperatives, and inhibit its ability to manage its resources effectively. The Air Force is focused on prototyping new war-winning capabilities to enhance capacity of fires such as palletized munitions, which could offer enhanced capacity of fires without increasing demand for additional aircraft platforms that are more expensive.

Enhanced Domestic Content Requirement for Major Defense Acquisition Programs (Section 825). The Administration strongly objects to section 825 requiring Major Defense Acquisition Programs (MDAPs) to be 100 percent manufactured domestically by the arbitrary deadline of October 1, 2026. The proposal would have a significant and detrimental effect in weakening the integrity of our contracting process, driving increases to acquisition lead times, adding to project costs, and impacting delivery of critical MDAP capabilities to the warfighter.

Documentation Relating to the F-35 Aircraft Program (Section 131). The Administration strongly objects to section 131, which would limit the ability of the Secretary of Defense to grant Milestone C approval for the F-35 program or enter into full-rate production until 30 days after the Secretary has submitted extensive congressional reporting requirements that go well beyond the requirements of 10 U.S.C. 2366c for a Milestone C decision. The reporting requirements are

overly burdensome and, in some cases, would be extremely difficult, if not impossible, to answer. The requirements would therefore cause significant delay in achieving a full-rate production decision and providing critical warfighting capability.

Reprioritization of Military Construction Funding to Unrequested Projects (Section 4601).

The Administration objects to the bill's realignment of military construction funding from priority projects to other projects not included in the FY 2021 President's Budget Request. 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 \$600 million needed to fully fund these projects over time. The bill diverts these funds to other unrequested projects.

Pilot Program on Prosecution of Special Victim Offenses Committed by Attendees of Military Service Academies (Section 549A). The Administration strongly objects to this provision because it outsources authority for discipline, as well as undermines commander accountability and the chain of command relationship. This provision is inconsistent with many provisions in the Uniform Code of Military Justice, necessitating major revision of the Rules for Courts-Martial, which is not practicable by the provision's effective date. The likely consequence is that there would be no operable military justice system for sexual assault cases and other covered cases arising from the military service academies for some period of time. Additionally, section 540F of the FY 2020 NDAA called for a study and report to assess the feasibility of such a pilot program, which is due by October 15, 2020. Legislation directing this pilot program before the study and report is completed is premature.

Authority of Military Judges and Military Magistrates to Issue Military Court Protective Orders (Section 542). The Administration strongly supports providing necessary protections to victims but strongly objects to section 542 because it would strain the military justice system's limited resources and greatly expand the authority of military judges into an area reserved to civil courts. This provision is unnecessary because commanding officers have authority to issue military protective orders and service members, dependents, and non-DOD affiliated civilian victims in the United States have access to State civil courts, which have established infrastructure to receive, consider, and adjudicate protection order petitions, unlike military courts. If enacted, this provision would likely result in a significant expansion of the military justice system's caseload, for which the system does not have adequate personnel, thereby producing undesirable systemic delays, including in sexual assault cases. Finally, this provision would, in practice, represent a major expansion of the portion of the Gun Control Act of 1968 codified at 18 U.S.C. 922(g)(8).

Basic Needs Allowance for Low-Income Regular Members (Section 602). The Administration strongly objects to providing a basic needs allowance to low-income members because DOD already provides for the complete food and housing needs of members. Military members are well-compensated, and more junior enlisted members are paid between the 95th and 99th percentiles relative to their private-sector peers. In addition, the housing allowance, a significant part of a member's compensation, is excluded from the basic needs allowance eligibility calculation. Instead, the basic needs allowance is based on a member's household size and would require roommates and unrelated individuals in the household to disclose their

detailed, personal income information to DOD to calculate the member's allowance. This section would also raise fairness concerns by excluding members of the United States Coast Guard, members assigned outside the United States, and members of the Active Guard and Reserve.

Notice and Comment for Proposed Actions of the Secretary of Defense Relation to Food and Beverage Ingredients (Section 1753). The Administration strongly objects to the requirement to publish a Federal Register notice and provide opportunity for public comment before limiting or prohibiting any food or beverage ingredient in military food service, military medical foods, or commissary foods. This law would jeopardize the safety of service members, as it would dangerously delay by months a DOD-wide recall or prohibition of certain ingredients that have been determined by the Food and Drug Administration, the Surgeon General of the Public Health Service, the Surgeons General of the DOD, or other regulatory or public health authority to be harmful for human consumption.

Modification to Limitation on the Realignment or Reduction of Military Medical Manning End Strength (Section 715). The Administration strongly objects to any prohibition related to realignment or reduction of military medical end strength until the Secretary of Defense submits a report to Congress on whether specific conditions and analyses have been completed. Prohibiting DOD from converting medical end strength to higher priority needs for a year prevents DOD from appropriately shaping the force in a planned, timely way to meet NDS requirements.

Mandatory Criteria for Strategic Basing Decisions (Section 1048). The Administration strongly objects to section 1048 because isolating a limited set of basing factors, reporting pre-decisional basing information, and providing publicly releasable quantitative analysis on community support will embolden special interest groups to influence Air Force decisions and circumvent proper application of military judgment to make strategic basing decisions to best support the NDS.

Limitation on Reserve Components of the Air Force (Section 517). The Administration strongly objects to section 517 because it would restrict routine personnel reassignments within the Air Force Reserve and Air National Guard as well as strategic basing actions until certain conditions are met. Ultimately, section 517 restricts the ability of the Secretary of the Air Force to manage and posture forces to support the NDS.

Support Provided to Other United States Agencies for Counterdrug Activities and Activities to Counter Transnational Organized Crime (Section 1012). The Administration objects to the language in section 1012 requiring congressional notification 15 days before providing counterdrug and counter transnational organized crime support to United States law enforcement agencies under 10 U.S.C. 284(b) authority. This requirement would effectively terminate the authority delegated to Combatant Commanders to provide short-notice support to United States law enforcement agencies, including the fulfillment of short-notice intelligence analysis requests and transportation requests, such as the fulfillment of ad hoc translation or intelligence analysis requests and short-notice transportation requests for law enforcement agency personnel, contraband, or for controlled deliveries.

Nonimmigrant Status for Certain Nationals of Portugal (Section 1755). The Administration objects to the provision that certain nationals of Portugal, for purposes of clauses (i) and (ii) of section 101(a)(15)(E) of the Immigration and Nationality Act (8 U.S.C. 11101(a)(15)(E)), shall be considered eligible to apply for E treaty trader nonimmigrant visas if the Government of Portugal provides similar nonimmigrant status to nationals of the United States. A separate bill, H.R. 565, was passed by the House and sent to the Senate in December 2019. Adding this provision to the NDAA would subvert the usual process for addressing E treaty trader nonimmigrant visa status. The Administration looks forward to Congress continuing its work on H.R. 565 and coming to a final resolution on this issue.

Limitation on Authority to Exclude Employees from Chapter 71 of Title 5 (Section 1102). The Administration objects to section 1102 because it would constrain the President's authority to protect national security interests through a critical workforce management tool. This authority has allowed Presidents to respond quickly to emerging threats and national emergencies since 1978, and this prohibition is unwarranted.

Limiting the Number of Local Wage Areas Defined Within a Pay Locality (Section 1106). The Administration strongly objects to section 1106 because it would unnecessarily increase the costs for Federal agencies to conduct business in certain parts of the country by forcing agencies to pay their employees well above market wage levels. The U.S. Office of Personnel Management (OPM), with the advice of the Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on the administration of the Federal Wage System, is in the best position to administer the prevailing rate system in accordance with existing laws and administrative procedures, which fully consider the views of affected agencies, employees, and the public.

Modification of Requirements Relating to Certain Cooperative Research and Development Agreements (Section 213). The Administration strongly objects to section 213, which introduces new and undefined terms and concepts that obscure congressional intent, and, in some cases, are detrimental to the DOD's ability to cooperate with allies and partners in accordance with the NDS. It also adds layers to authorities already possessed under 10 U.S.C. 2350a and 22 U.S.C. section 2767. The existing authorities under 10 U.S.C. 2350a are long-standing and have proven to be fully sufficient and broad at this time, in conjunction with other existing authorities, to enable a wide array of cooperative research and development agreements with DOD partners globally.

Pilot Program to Support Combatant Command Military Construction Priorities (Section 2807). Although the Administration supports the Committee's intent to expedite the posture priorities in the Indo-Pacific Command, it objects to section 2807, which would establish a pilot program to reserve 10 percent of all appropriated military construction funds for execution by the Combatant Command. The Administration has placed a significant focus on ensuring that the necessary capabilities are achieved in the United States Indo-Pacific region, and a separate reserve would divert funding from other priority military construction projects that are also required for critical global capabilities.

Homeland Defense Radar—Hawaii (HDR-H) (Section 4201). The Administration strongly disagrees with the authorization of funding for the Homeland Defense Radar – Hawaii. The Administration’s highest missile defense priority is to increase the size and reliability of its interceptor fleet as soon as possible. To provide a more robust defense of the continental United States and Hawaii, the Department is prioritizing the Next Generation Interceptor and underlay demonstrations.

Modifications to Supervision and Award of Certain Contracts (Section 841). The Administration strongly objects to section 841 because the provision will increase acquisition time, add to project costs, affect construction quality, and duplicate existing reporting and advertising requirements to well-known SBA and Federal systems. It would insert the government in prime contractors’ subcontracting arrangements by promoting government-directed subcontractor arrangements. It also would limit technical capability at the subcontractor level by creating a regional preference for firms, potentially affecting contractor performance by excluding more experienced firms, and could exclude competitive and cost-effective small businesses outside those parameters, extend contract lead times, and increase project costs.

Standardization of Payment of Hazardous Duty Incentive Pay for Members of the Armed Forces (Section 613). The Administration objects to section 613 because it restricts the ability to prorate payments of all forms of hazardous duty pay. Requiring the payment without proration would be a notable departure from the norm and equity of other incentive pay authorities in which the payment amounts reflect the duration of actual qualifying service. Without proration, a member who performs a hazardous duty for only part of a month would receive a “windfall,” and this devalues the payment for a member who must perform the hazardous duty for an entire month. This provision, with its narrow scope and restrictive provisions, removes the Secretary’s discretion and flexibility concerning the payment method for hazardous duty pay.

Chair of DOD Explosive Safety Board (Section 361). The Administration strongly objects to section 361, which would adversely impact DOD’s performance of its Acquisition and Sustainment mission by limiting its ability to execute or obligate more than 75 percent of FY 2021 funds. This funding is limited until the services and OSD appoint military officers to the Explosives Safety Board and its Chair, which eliminates DOD’s ability to appoint the most qualified explosives safety professionals, many of whom are civilians.

Analysis of Alternatives for Homeland Missile Defense Missions (Section 1656). The Administration strongly objects to section 1656, which would direct an Analysis of Alternatives for Homeland Missile Defense. In 2016, Missile Defense Agency (MDA) analysis showed that regional missile defense systems have the potential to provide ballistic missile defense for strategic attacks against the homeland.

Responsibility for the Sector Risk Management Agency Function of DOD (Section 1624). The Administration strongly objects to this provision’s assignment of responsibilities for the Defense Industrial Base within DOD. This direction would contradict existing policies, blur statutory authorities, and necessitate a significant recalibration of existing efforts. Further, it would impose substantial unbudgeted costs in an austere fiscal environment, delay initiatives to

secure the Defense Industrial Base, and limit the management authority and flexibility of the Secretary of Defense.

Assistant Secretary of Defense for Industrial Base Policy (Section 902). The Administration strongly objects to section 902. The provision would constrain the Secretary of Defense's discretionary authority to use Assistant Secretary of Defense positions for his highest priorities. Further, this provision would create a legal inconsistency by creating an Assistant Secretary of Defense for Industrial Base Policy with authority over export control issues, when current law vests that authority with the Under Secretary of Defense for Policy.

Modifications to Implementation Plan for Restructure or Realignment of Military Medical Treatment Facilities (Section 716). The Administration strongly objects to the addition of a year-long waiting period before executing the changes to the military medical treatment facilities required by Congress in the FY 2017 NDAA. A year-long delay will complicate the ability for local providers to plan for additional staff and any increase in facilities necessary to care for additional DOD beneficiaries. This will make implementation more difficult to coordinate and is counterproductive to achieving Congress's original goals expressed in legislation.

Limitation on the Physical Move, Integration, Reassignment, or Shift in Responsibility of Marine Forces Northern Command (Section 1050). This provision unduly restricts the Commandant's ability to manage his service by placing artificial barriers to realignment of commands that are intended to provide the following: (1) Better posturing of Marine Corps organizations to provide support to Combatant Commanders, in this case of Northern Command, by co-locating the service component (Marine Forces North) with the force provider (Marine Forces Command); and (2) Aligning the Marine Corps structure to that of the Navy, an objective outlined in the Commandant's Planning Guidance, by locating Marine Forces North and Marine Forces Command geographically with Fleet Forces Command and Naval Forces North.

Extension of Limitation Relating to Classification of High-Level Waste (Section 3113). The Administration strongly objects to section 3113, which impairs DOE's ability to manage the lifecycle of radioactive waste under the Atomic Energy Act of 1954 (AEA). This impairment could limit DOE's ability to advance its cleanup mission, including the cleanup of reprocessing waste, and potentially could increase the costs to complete such efforts, which is in conflict with DOE fulfilling its mission in a cost-effective manner. This provision could also cause potential legal conflicts concerning State authority when read alongside AEA provisions that unambiguously grant exclusive authority to the Federal Government to store, process, transport, and dispose of radioactive waste resulting from weapons production.

Nuclear Warhead Acquisition Processes (Section 3111). The Administration objects to section 3111, which would impose overly prescriptive and duplicative requirements on the DOE/NNSA and DOD's joint nuclear weapons acquisition processes. The requirements set forth in section 3111 are unnecessary because there are well-established processes for nuclear weapons acquisition. The existing Phase X processes and procedures include control points, approvals, independent cost reviews, peer reviews, and reporting requirements. Section 3111 would add delays and costs with little benefit.

Plutonium Pit Production (Section 3115). The Administration objects to section 3115, which adds unnecessary requirements for an independent cost estimate that assigns a “confidence level.” DOE Order 413.3B processes for managing capital asset acquisition already include the development of independent cost estimates at each critical decision milestone, including confidence levels based on project scale, complexity and scope reasonable at the expected milestone, as well as independent cost estimates when appropriate.

Small Business Contracting and Category Management (Section 833). The Administration is proud of the record-setting level of contract awards that have been made to small business contractors, and the ability to do so in harmony with the use of category management principles that are helping agencies achieve greater value for the taxpayer and save tens of billions of dollars. The Administration, however, objects to constraints in section 833 that could complicate how best to balance the participation of section 8(a) contractors, women-owned small businesses, service-disabled veteran-owned small businesses, and HUBZone contractors on local, agency-wide, and government-wide contracts. The Administration recognizes the critical need to minimize barriers to entry. The Frictionless Acquisition Cross Agency Priority Goal reflects our commitment to ensure that category management practices are used to reduce barriers to entry and increase the level of opportunity available to small business and strengthen small business resiliency in the Federal marketplace.

Foreign Policy and Assistance Related Matters (Sections 1213, 1258-1259, and 1266). Sections 1213, 1258, 1259, and 1266, among other provisions, concern foreign policy and foreign assistance priorities, and while they may advance efforts that the Administration supports, the Administration is concerned that these provisions do not have a means to ensure the implementation of these authorities are consistent with United States foreign policy interests and to avoid serious unintended consequences.

Clarifications regarding scope of employment and reemployment rights of members of the uniformed services (Section 534). The Administration objects to the arbitration provision of section 534. Barring military service discrimination claims from being sent to arbitration in accordance with existing agreements would circumvent established contracts and add unnecessary legal procedures. This would not clarify or reinforce the rights of members of the uniformed services. Instead, it would fundamentally alter the process of dispute resolution to an unknown end.

Amendment to definition of qualified apprentice (Section 817). The Administration objects to section 817 because it would attempt to undercut Industry-Recognized Apprenticeship Programs and other private sector-led workforce training models, which support workers in developing skills and finding jobs. Undermining high-quality and successful apprenticeship programs that have been developed by industry is a move in the wrong direction.

Special Rules for Certain Monthly Workers’ Compensation Payments and Other Payments for Federal Government Personnel under Chief of Mission Authority (Section 1110). The Department of State is currently authorized to provide additional compensation and medical benefits to its employees who are injured abroad while under the authority of a chief of mission. Section 1110 expands eligibility for these additional benefits to other Federal

employees who likewise are injured under authority of the chief of mission. The Administration objects to the provision because it would create ambiguity in the scope of coverage provided and uncertainty regarding the coordination of the expanded benefit and the benefits provided under the Federal Employees' Compensation Act (FECA), increasing the risk of improper payments.

Competition requirements for purchases from Federal Prison Industries (Section 814). The Administration supports section 814, which would remove the five percent statutory cap on DOD non-competitive procurements from Federal Prison Industries ("FPI"). The cap prohibits FPI from exceeding five percent of the market share of DOD purchases in any given product category without competition.

Development of Hypersonic and Ballistic Missile Tracking Space Sensor Payload (Sections 1651 and 1653). The Administration appreciates the intent of section 1653 and agrees with the need to mature space-based sensing capabilities that could provide value for missile defense. The Administration, however, objects to the requirement that the MDA be solely responsible for the development of the hypersonic and ballistic tracking space sensor payload because it would fragment space capabilities across multiple agencies.

Modification of Joint AI Research, Development and Transition Activities (Section 217). The Administration strongly objects to section 217, which would realign the Joint Artificial Intelligence Center (JAIC) to the Deputy Secretary of Defense (DSD). Elevating JAIC to report directly to the DSD would afford the high visibility that DSD direct reports enjoy, as well as high priority in the Secretary of Defense's control of the budget request process and ability to grant waivers from any bureaucratic process requirements not grounded in law. However, no matter where you place JAIC in the organization, oversight will need to be delegated to an organization (such as the DOD Chief Information Officer) that has the competency and expertise to lead and integrate JAIC capabilities into a broader portfolio.

Report on Risk to National Security Posed by Quantum Computing Technologies (Section 1614). The Administration objects to provisions that have already been completed by the National Institute in Standards and Technology in (a)(2)(B) and (C) – the assessments of quantum-resistance cryptographic standards and the feasibility of alternate quantum-resistance models. Requiring DOD to report on these subjects would create confusion and could undermine these important efforts.

Renewal of Fallon Range Training Complex Land Withdrawal and Reservation (Section 2842). The Administration appreciates section 2842, which would extend the current withdrawal and reservation of lands known as the Fallon Range Training Complex (FRTC) to November 6, 2046. However, the Administration strongly urges Congress to adopt DOD's request to expand the FRTC to provide the area needed to fully accommodate modern military training requirements. This requested expansion of the range is essential to accommodate Naval Aviation and Sea, Air and Land (SEAL) training at Naval Air Station Fallon needed to support the National Defense Strategy. The FRTC is currently too small to accommodate realistic training with precision-guided munitions, and is too small for SEAL ground mobility maneuver training in a tactical and relevant environment.

Renewal of Nevada Test and Training Range (NTTR) Withdrawal and Reservation (Section 2843). The Administration supports renewal of the NTTR, but seeks inclusion of additional expansion language, as capabilities and technologies have advanced at a rate that exceed the existing functional limits and geographic boundaries of the range. The expansion will create a facility that will allow the Air Force to realistically train with newly procured systems and munitions to enable the Air Force to train as it will fight.

Constitutional Concerns. Certain provisions in this bill raise constitutional concerns. The Administration looks forward to working with the Congress to address these and other concerns as this legislation advances.