



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

THE DIRECTOR

September 14, 2020

The Honorable James M. Inhofe
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As you negotiate the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021, I would like to convey the Administration's strong support for enactment of an NDAA for a 60th consecutive year. The Administration is grateful for the strong, bipartisan work this year by the Senate Armed Services Committee (Committee) on behalf of our national defense. The Administration also appreciates the work of the Intelligence Committees to ensure the Intelligence Community (IC) has the necessary tools to provide distinctive, timely insights that advance our national security, economic strength, and technological superiority.

The Administration applauds the bipartisan support in Congress for a national defense discretionary topline of \$740.5 billion, which is consistent with the President's 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 our Nation's conflicts; (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, S. 4049 includes several provisions that present serious concerns. Among other major provisions, the Administration strongly objects to section 377, which would empower an unconstitutionally structured commission to force the renaming of military bases throughout the country. As detailed in the enclosure, the Administration also has serious concerns about provisions of the bill that seek to micromanage the executive branch's budget formulation, interfere with DOD's ability to execute certain programs, and contravene the President's authority as Commander in Chief. Many of these provisions would pose significant challenges to continued execution of the NDS.

The Administration looks forward to working with Congress to address the Administration's 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.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Vought', with a stylized flourish at the end.

Russell T. Vought
Director

Enclosure

Identical Letters Sent to:

The Honorable James M. Inhofe

The Honorable Jack Reed

The Honorable Adam Smith

The Honorable Mac Thornberry

Commission on the Naming of Items of the Department of Defense (Section 377). The Administration strongly objects to section 377 of the bill, which would empower an unconstitutionally structured commission to force the renaming of DOD assets that 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, Korea, Vietnam, the War on Terror, and other conflicts. Further, the drive to rename will not stop at the limits written into section 377. Section 377 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 377, loud voices in America are also demanding the destruction or renaming of monuments and memorials to former Presidents, including 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.

Restrictions on Force Reductions in Korea and Egypt (Sections 1260 and 1284). The Administration objects to sections 1260 and 1284, which would constrain the President's constitutional authority to command and control the Armed Forces in the event of rapidly emerging regional or worldwide contingencies. These provisions would impede responses to no-notice contingencies that require immediately drawing on specialized capabilities that may reside within the forces in Korea or Egypt.

Necessary Decision Space to Right-size European Footprint with DOD's Assessment for European Operations (Section 2883). The Administration affirms the inherent need for a ready presence in the European theater. The Administration, however, objects to section 2883, which 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. This language may require DOD to maintain facilities that are no longer necessary.

Nuclear Weapons Budget (Sections 1652 and 3111). The Administration objects to sections 1652 and 3111, which, as currently written, would mandate a process that unconstitutionally interferes with the President's Article II duty to manage the executive branch. Those sections undermine the executive branch's budget formulation for the Department of Energy's (DOE) National Nuclear Security Administration (NNSA). Section 3111 violates the Recommendations Clause and would impinge on the President's Article II prerogatives by requiring subordinate agencies to provide to Congress pre-decisional deliberative information that has not been cleared by the President regarding the preparation of the President's Budget recommendation. This section would also require the President to include potentially conflicting proposals in his recommended budget to Congress.

Authority to Use F-35 Aircraft Withheld from Delivery to Government of Turkey (Section 172). The Administration strongly objects to section 172, which would authorize the Air Force to use, modify, and operate the six F-35 aircraft that were accepted by the Government of Turkey but never delivered due to Turkey's suspension from the program. Although the Administration appreciates the flexibility the Committee is attempting to provide, these aircraft are the subject of ongoing discussions with the Government of Turkey, and as such, there are potentially significant issues if the Air Force takes unilateral possession and flies these aircraft before the final settlement has occurred. DOD has placed the aircraft in storage and is working to address restitution to Turkey.

Limitations on Platform Divestment/Retirement (Sections 147, 148, 149, 155, and 371). The Administration strongly objects to sections 147, 148, 149, 155, and 371, which would limit DOD's ability to divest or retire specific platforms (KC-10, KC-135, U-2, RQ-4, F-15C, A-10, manned ISR, and MQ-9). The President's Budget submission divests or retires platforms to reinvest in leading-edge innovation, ensuring dominance across all domains: air, land, sea, space and cyber. Although deciding whether to divest legacy systems is a difficult decision, DOD employs a vigorous prioritization process to balance near-term challenges with future capability investments. Limiting DOD's flexibility to prioritize resource investment delays modernization of capabilities, preparation for great power competition, and implementation of the NDS.

Transfer from Commander of United States Strategic Command to Chairman of the Joint Chiefs of Staff (JCS) of Responsibilities and Functions Relating to Electromagnetic Spectrum Operations (Section 173). The Administration agrees with the Committee's assessed criticality of joint electromagnetic spectrum operations, but strongly objects to the approach and specificity outlined in section 173 as drafted. The Joint Staff was not created to oversee or direct operations. The direction conflicts with the Secretary's Defense Wide Review 1.0, which directed the JCS to develop a plan to transfer activities back to their respective Executive Agents to better align authority, responsibilities, and resources.

Ground-based Midcourse Defense Interim Capability (Section 1667). The Administration supports a robust, layered missile defense capability, but strongly objects to section 1667. This provision would divert resources into an interim Ground-based Midcourse Defense (GMD) capability, detracting from the development of the robust Next Generation Interceptor (NGI). DOD already has considered and rejected this course of action, as it would significantly increase costs and introduce schedule risk into the NGI program by taxing the Missile Defense Agency's capacities and resources. Most troubling, this language would force DOD to field a system that would neither meet requirements nor deliver an interim capability in a strategically relevant timeframe.

Next Generation Interceptor (NGI) (Section 4201). The Administration strongly objects to the \$310 million reduction in authorized funding for the NGI program. This significant reduction of nearly 50 percent would limit DOD's ability to effectively execute this critical program following the contract award and would impose additional challenges on an already tight development schedule.

Clarification of Food Ingredient Requirements for Food or Beverages Provided by the Department of Defense (Section 381). The Administration strongly objects to section 381, which would require a Federal Register notice process and 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 our service members, as it would dangerously delay by months a DOD-wide recall or prohibition of certain ingredients determined by the Food and Drug Administration, the Surgeon General of the United States, the Surgeons General of DOD, or other regulatory authority to be harmful for human consumption.

Construction of Ground-Based Strategic Deterrent Launch Facilities and Launch Centers for Air Force (Section 2802). The Administration objects to section 2802. Although the section provides some authorities requested by the Administration, it fails to authorize the use of Research, Development, Testing, and Evaluation (RDT&E) and Missile Procurement funding for all Ground Based Strategic Deterrence launch facility and launch center conversion activities. The Administration can proceed in the near future using RDT&E funding for planning and design of the conversions, but program delays could occur as the section does not authorize the future use of missile procurement funding to perform the actual conversions.

Fallon Range Training Complex Land Withdrawal (Section 2861). The Administration appreciates section 2861, which would extend the current withdrawal and reservation of lands known as the Fallon Range Training Complex (FRTC) to November 6, 2041. However, the Administration strongly urges Congress to adopt DOD's request to expand the FRTC to fully accommodate modern military training requirements. This requested expansion of FRTC range is essential to accommodate Naval Aviation and Sea, Air and Land (SEAL) training 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.

Nevada Test and Training Range (NTTR) Renewal (Section 2862). The Administration supports renewal of the NTTR but seeks inclusion of language to expand NTTR. This expansion is vital, as capabilities and technologies have advanced at a rate which exceeds the existing functional limits and geographic boundaries of the range. The proposed expansion will create a facility which will allow the Air Force to realistically train with newly procured systems and munitions, therefore enabling the Air Force to better train as it will fight.

Reprioritization of Military Construction Funding to Unrequested Projects (Section 4601). The Administration strongly objects to section 4601, which would realign military construction funding authorization from priority projects to other projects not included in the FY 2021 President's Budget request. The bill proposes to fund 11 military construction projects incrementally, effectively creating an unfunded obligation of \$800 million to complete these projects. In particular, the Administration strongly objects to eliminating the \$200 million authorization for military construction of a Medical Center at the Rhine Ordnance Barracks, Kaiserslautern, Germany. This is the final increment to complete the Medical Center, which is essential to ensure medical support requirements to U.S. European Command, U.S. Africa Command, and U.S. Central Command.

Safeguarding Defense-Sensitive United States Intellectual Property, Technology, and Other Data and Information (Section 891). The Administration objects to section 891, as drafted. The provision's intended scope is vague and potentially duplicates existing United States Government activities in this area. Subsection (a) would require the Secretary of Defense to "establish, enforce, and track actions" taken to protect defense-sensitive United States intellectual property (IP), technology, data, information, hardware, and software. As drafted, it is not clear whether subsection (a) is intended to be limited to IP, technology, hardware, and software within the control of DOD, or whether it might also apply to IP, technology, hardware and software within the control of other Federal Government agencies, including non-DOD IC elements. The Administration also objects to subsection (c), which would require restrictions on employees or former employees of the defense industrial base. The provision may present operational concerns for the IC. At a minimum, it should be revised to allow for a national security exception.

Repeal of Apprenticeship Program (Section 893). The Administration objects to section 893 because the repeal of 10 U.S.C. 2870 could have the effect of reducing the prevalence of apprenticeships in the military construction sector. The Administration strongly supports the expansion of quality apprenticeships as a proven workforce development strategy for developing a highly-skilled American workforce. In Executive Order 13801 (June 15, 2017), the Administration recommended a variety of strategies for expanding apprenticeships in the United States, and the Department of Labor recently released a Final Rule governing Industry-Recognized Apprenticeship Programs (IRAPs) that also aims to facilitate the expansion of quality apprenticeships in the United States.

Extension of Prohibition of Use of Funds for Transfer or Release of Individuals Detained at United States Naval Station, Guantanamo Bay, Cuba (GTMO), to the United States or to Certain Countries (Section 1031 and 1033). Sections 1031 and 1033 would maintain longstanding restrictions on the transfer or release of detainees. The Administration intends to keep the detention facility at GTMO open and to use it for detention operations, but strongly objects to any restriction on the transfer of Law of War detainees. In certain circumstances, restrictions on the President's authority to transfer detainees would violate constitutional separation of powers principles, including the President's authority as Commander in Chief.

Extension of Limitation on Military Cooperation between the United States and the Russian Federation (Section 1231). The Administration objects to section 1231, which would contravene the President's authority as Commander in Chief, as explained in past National Defense Authorization Act signing statements, and should be deleted from the bill.

Cybersecurity Responsibility (Section 3132). The Administration objects to section 3132, which covers responsibility for cybersecurity of NNSA facilities. The creation in statute of a Chief Information Officer for NNSA is contrary to the Federal Information Technology Acquisition Reform Act and the FY 2015 NDAA. The Administrator of NNSA should have the ability to delegate cybersecurity responsibilities to the most appropriate position for the security of the NNSA complex.

Inclusion of Certain Employees and Contractors of DOE in Definition of Public Safety Officer for Purposes of Certain Death Benefits (Section 3122). The Administration strongly objects to section 3122. This section would drastically expand the definition of a “public safety officer” under the Public Safety Officers’ Benefits (PSOB) Act to include for-profit contractors’ access to benefits intended to support law enforcement, firefighters, and other first responders injured or killed in the line of duty. The provision would also afford significantly broader coverage to DOE employees and contractors than the existing categories of public safety officers, who must be directly engaged in law enforcement categories to be eligible. The unwarranted expansion of the PSOB program in this manner would set an irresponsible precedent to cover a broader set of Federal employees and contractors, which would increase liabilities and administrative costs for the program.

Formerly Utilized Sites Remedial Action Plan (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 transfer administration of the program. The Administration urges the Senate to move FUSRAP from the Department of the Army to DOE. Transferring responsibility of this program to DOE will facilitate the more efficient cleanup of these contaminated sites by the Army Corps of Engineers, allow the 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.

Space Force (Sections 931-937; 941-943). The Administration is grateful for the continued partnership with Congress in establishing the Space Force as our Nation’s newest military branch. The Administration strongly supports sections 931-937, which support full integration of the Space Force into current law. While the bill provides opportunities for the Administration to continue to engage Congress on Total Force options for the Space Force, the Administration strongly urges exclusion of section 941(b), which would limit consideration of different options for building a 21st century military branch. Additionally, while the Administration fully supports building the Space Force through voluntary personnel transfers from other services, the Administration strongly objects to inclusion of section 942, which would contravene the intent for the Space Force to be a lean, operationally focused service that leverages support functions from the Air Force, due to its mandate that all personnel detailed or assigned to the Space Force become permanent members of the Space Force.

Governance of Fifth-Generation Wireless Networking in the Department of Defense (Section 212). Although the Administration supports 5G prototyping and experimentation in R&E, it objects to section 212 because the provision would be premature and disruptive to DOD’s ongoing and successful 5G activities. Transitioning technology to operations before it has matured sufficiently is a recipe for failure. The efforts being led in R&E will result in technological advances that will provide the basis for future policies, standards, and acquisitions, but they must be given the time to mature. Further, section 212 would create a cross-functional team (CFT) to coordinate across DOD. Creating a formal CFT is unnecessary and would introduce added bureaucracy. DOD is already successfully coordinating across its components and the services within its 5G Working Group.

Unmanned Surface Vessels (Section 4201). The Administration strongly objects to the absence of authorization language and funding to procure critical prototype vessels. The Administration believes that rigorous land- and sea-based testing is needed for a successful Large Unmanned Surface Vessel Program (LUSV), providing a lethal, distributed new capability to the fleet. These funds are critical to reduce risk and conduct integration and testing to ensure DOD is postured to transition LUSV to a program of record in FY 2023. The Administration urges Congress to fully support this critical capability at the levels in the FY 2021 President's Budget Request.

Rapid Prototyping Program (RPP) (Section 4201). The Administration objects to the \$20 million reduction for RPP, which is used to fund SCIFIRE, a joint/coordinated air-breathing hypersonic prototype effort. SCIFIRE provides the maturation vehicle for Defense Advanced Research Projects Agency Hypersonic Air-breathing Weapon Concept with our partner nation's co-investment (Allied Prototyping Initiative). This reduction would adversely impact both our allies and partners and our own domestic hypersonics programs.

Defense Technical Information Center (DTIC) Funding Reduction (Section 4201). The Administration objects to the reduction of \$50 million to DTIC's budget. Although the Administration acknowledges the Committee's concern with insufficient progress on data sharing and open repositories, this proposed cut would constitute a reduction of more than 80 percent of DTIC's primary funding and would impair DOD's principal means to collect and share information across services and agencies. This reduction also would result in the direct loss of 200 civilian jobs and more than 100 contractor personnel, and would disrupt at least 3,000 industry jobs in the Information Analysis Center program.

Defense Modernization and Prototyping (DM&P) (Section 4201). The Administration objects to the proposed \$20 million reduction because it would significantly delay DOD's Electronic Warfare (EW) and Space prototype efforts, which are key to competing with near peer adversaries. DM&P funds transformational EW initiatives in coordination with hypersonics development efforts to enable our forces to better compete in a highly contested environment. These cuts, if maintained, will result in a three-year delay to transitioning to service acquisition efforts.

Homeland Defense RADAR Hawaii (Section 4201). The Administration opposes the authorization of the first increment of funding for the Homeland Defense RADAR – Hawaii (HDR-H), which is estimated to cost more than \$1 billion, pending the completion of ongoing analysis by DOD to assess the operational effectiveness of this radar without the Pacific Radar and the Redesigned Kill Vehicle (RKV) program. DOD had planned to field RKV, HDR-H, the Pacific Radar, and the Long Range Discrimination Radar (LRDR) by the mid-2020s as a system of systems to improve homeland ballistic missile defense. The RKV program has been cancelled and the Pacific Radar has been indefinitely delayed. The Administration's highest missile defense priority is increasing 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 analysis being conducted will validate the most effective use of critical funds to quickly improve missile defense capabilities.

Additional Qualifications of Military Appellate Judges (Section 532(b)). The Administration strongly objects to section 532(b), which would, for military officers, impose a requirement of 12 years of military justice assignments before appointment to a Court of Criminal Appeals (CCA). This provision severely restricts the current assignment authority, undermines the talent management process, and fails to recognize the diversity of experience needed to serve as a CCA judge. The American Bar Association recognizes that specific experience in a single area of law is not a qualification to be a judge, and offers only 12 years in the overall practice of law as a non-binding factor in determining qualifications as a Federal judge. The Judge Advocates General are already statutorily required to certify that a military officer or civilian being assigned to a CCA is “qualified by reason of education, training, experience, and judicial temperament, for duty as an appellate military judge.” Assignment to the bench fundamentally requires a diversity of experience and perspective that is necessary to sit in judgment of those who serve, in cases that often involve complex questions of national security law and other topics outside of criminal justice.

Reviewing by Full Court of Finding of Conviction is Against the Weight of the Evidence (Section 532(c)). The Administration strongly objects to section 532(c), which would require a CCA to refer a decision that a conviction was against the weight of the evidence to the court as a whole (“en banc”). The provision interferes with the independent operations of a court of law, established to ensure justice in the individual case. The decision on the docketing and review of a case with a particular panel or with the court en banc should be left to the sound discretion and judgment of judges, operating under established legal principles.

Implementation of Information Operations Matters (Section 1640). The Administration objects to limiting travel Operation and Maintenance funds pending release of a report on structuring and manning of information operations (IO) capabilities and forces across DOD, as well as development of an IO strategy and accomplishing an IO posture review.

Expansion of Junior Reserve Officers’ Training Corps Program (Section 547). The Administration objects to the requirement to establish and support not fewer than 6,000 units of the Junior Reserve Officers’ Training Corps by September 30, 2031. Due to core warfighting tasks, including critical NDS priorities, the services are challenged to meet the resourcing requirements necessary to meet this expansion.

Modification of Authority to Purchase Used Vessels with Funds in the National Defense Sealift Fund (Section 1021). The Administration greatly appreciates the authority to purchase additional used vessels for the sealift mission without the requirement to procure new construction 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.

Modification to Support of Special Operations for Irregular Warfare (Section 1204). The Administration appreciates support for modifications to section 1202 of the NDAA for FY 2018, as amended, by raising the annual authorization of funding limitation to \$15 million. This provision would increase DOD’s ability to leverage and pursue additional Irregular Warfare options against NDS priority threats. However, the Administration urges support for its original

request of \$20 million. This additional authorization of funding is required to meet congressional directives to expand the scope of operations conducted with this authority.

Extension and Modification of Authority to Provide Assistance to Vetted Syrian Groups and Individuals (Section 1222). The Administration supports section 1222, which authorizes continued cooperation with the Syrian Democratic Forces (SDF) to maintain the gains made against the Islamic State of Iraq and ash-Sham (ISIS) in northeastern Syria and appreciates the sacrifices that the SDF has made in retaking 100 percent of the territory from the so-called territorial caliphate. Furthermore, the Administration supports the safe, humane detention of ISIS foreign terrorist fighters, repatriation of such fighters to their countries of origin, and the use of authorized funding for such purposes. Facilitating and gaining international community support to the maximum extent possible is required for continued repatriation efforts and long-term reduction in SDF-detained terrorists.

Investigative Reports, the Department of Defense Central Index of Investigations, and Other Records and Databases (Section 586). The Administration objects to section 586. Applicants who wish to obtain a security clearance for a certain position permit the government to access their personally identifiable information (PII) for the purpose of retrieving and reviewing records and reports to determine their eligibility for a clearance. This provision would undermine that policy by establishing a process for the expungement or removal of a person's PII in law enforcement and criminal investigative reports, making those investigative records no longer available to security clearance investigators. That would essentially require a re-investigation of the original charge by security clearance investigators, if disclosed, and if not disclosed, it could limit the ability of the Defense Counterintelligence and Security Agency to complete an appropriate risk assessment, as the criminal investigation report would no longer be retrievable through use of the applicant's PII. Finally, the passage of section 586 could lead to further delays in the operationalizing of the National Background Investigation Services by requiring changes to the design of data storage systems. In addition, the provision is overly broad in that it appears to allow for excision of accurate records that are needed for adjudication of the background investigation, particularly when those records establish patterns of behavior over time. More generally, section 586 appears to contravene available exemption provisions of the Privacy Act, which take into account the unique nature of law enforcement investigative processes.

Minimum Aircraft Levels for Major Mission Areas (Section 142). The Administration objects to section 142, the provision which would mandate a minimum inventory of aircraft across a range of Air Force mission areas. The provision restricts the ability of DOD to appropriately balance modernization and sustainment of legacy platforms in order to remain relevant to the NDS. The Administration looks forward to working with Congress to ensure adequate aircraft levels are maintained across all mission areas without compromising the ability to modernize for the future.

Defense Industrial Base Participation in Cybersecurity Threat Intelligence Sharing Program (Section 1631). The Administration supports appropriate cybersecurity threat intelligence sharing between defense industrial base companies and the United States Government. Any such sharing, however, must ensure the protection of intelligence sources and

methods with regard to cybersecurity threat intelligence related to information systems operated by agencies within the IC. The Administration expects to use the rulemaking authority that is currently in subsection (d) to address these concerns. The Administration also objects to the information silos created by this provision and the absence of coordination with the Department of Homeland Security. Cyber incidents and cyber threat information must be shared with the Department of Homeland Security, through the Cybersecurity and Infrastructure Security Agency, to ensure the protection of critical infrastructure broadly.

Report on and Limitation on Expenditure of Funds for Layered Homeland Missile Defense System (Section 1664). The Administration strongly objects to the reporting timelines and the authorization of funding restrictions outlined in section 1664. Based on analysis conducted by the Missile Defense Agency, DOD is investigating the potential for regional missile defense elements to be used in defense of the homeland. DOD has committed to demonstrations and initial risk reduction efforts to better understand the full potential and ramifications of fielding such an underlay. DOD has also directed several studies to examine the question raised in section 1664, and until these have been completed and the feasibility of the underlay demonstrated, it would be premature to assess what an underlay would look like or exactly how SM-3 and THAAD would fit. The funding request is necessary to conduct demonstration and risk reduction efforts. Reducing this funding will impact DOD's ability to make the assessments that both DOD and Congress would like. DOD will be happy to keep Congress apprised of these efforts and our evolving assessment of the underlay concept as that information becomes available.

Foreign Policy Matters. The Administration objects to provisions that purport to restrict or direct the conduct of diplomacy by the President, who is empowered by the Constitution to act as the sole representative of the United States in foreign relations. These provisions include section 1232, which purports to restrict the President's constitutional authority to recognize foreign territorial sovereignty; sections 1281 and 1286, which purport to direct or restrict the President's constitutional authority to negotiate and conclude international agreements; and section 1708, which purports to restrict the President's authority to receive diplomats. Furthermore, while provisions such as sections 1251, 6046, 1286, 6211, 1291, and 803 may advance efforts that the Administration supports, the Administration is concerned that these provisions do not ensure a significant role and guaranteed means of input for the Secretary of State.

Congressional Oversight of United States talks with Taliban Officials and Afghanistan Comprehensive Peace Process (Section 6211). The Administration strongly objects to section 6211, which inaccurately suggests that key materials regarding the United States-Taliban Agreement have been withheld from Congress. There are no secret annexes, appendices, or instruments being withheld, and the Administration has clearly communicated our understanding of the Agreement and our expectations for its implementation through extensive briefings, reports, and written correspondence. Further, the provision would add burdensome and duplicative reporting and briefing requirements that are overreaching and unnecessary. Substantial work remains to achieve a lasting peace in Afghanistan, and the Administration looks forward to remaining engaged with Congress as we move forward toward this shared goal.

USE IT Act (Section 6084). The Administration has concerns that this provision creates inefficiencies and overlapping authorities for agencies to the extent it would have the

Environmental Protection Agency (EPA) duplicate already existing direct air capture and carbon utilization efforts led by DOE. DOE is responsible for Federal research, development, and demonstration efforts on carbon capture utilization and sequestration (CCUS) technologies, and over the past decade has gained significant CCUS-related experience and expertise, including with respect to siting, permitting, financing, and regulatory frameworks for CCUS projects. Given DOE's expertise and resources, we recommend DOE lead these efforts jointly or in consultation with the EPA Administrator, and further recommend that DOE establish the geographically diverse task forces instead of the Council on Environmental Quality. We look forward to continuing to work with Congress to address these concerns.

Advanced Nuclear Fuel Security Program (Sec. 6704). The Administration thanks the Senate for supporting the Administration's efforts to enable the revitalization of the domestic nuclear industry. The Administration notes that section 6704 would require the Secretary of Energy to establish a program to make available high-assay, low-enriched uranium (HALEU) for use in commercial and noncommercial advanced nuclear reactors. The Administration opposes this requirement, which may shift material away from critical national security requirements and would not reflect market conditions. As many advanced reactor concepts may require HALEU, DOE is conducting a demonstration of a United States origin, enrichment technology for producing high-assay, low-enriched uranium, which will be brought to completion and ready for commercialization by June 1, 2022. The Administration looks forward to working with Congress to promote the advancement of United States leadership in nuclear energy.

Efficient Use of Sensitive Compartmented Information Facilities (Section 1052). The Administration strongly objects to section 1052 of the bill. This section would put the security of our Nation's most sensitive intelligence, operations, and acquisition programs at risk by requiring the establishment of universal facility equivalence for the handling of sensitive compartmented information (SCI) or special access program information. This section may also jeopardize the United States Government's ability to conduct accurate damage assessments or respond accurately to information access requests, such as discovery or congressional requests for information, because it would permit SCI to be handled in sensitive compartmented information facilities (SCIFs) without the awareness of the agencies with cognizance of the SCI or the SCIF.

Intelligence Authorization Act Provisions

National Manager for National Security Telecommunications and Information Systems Security (Section 9303). The Administration has significant concerns that the provision, as drafted, could be read to have a substantially negative impact on the cybersecurity and signals intelligence missions of the National Security Agency (NSA), and that it could result in a loss of effectiveness if NSA becomes unable to bring the power of its intelligence mission and the insights learned from breaking adversary cryptography to its National Security Directive 42 National Manager responsibilities to build the cryptography for the Nation's most sensitive networks, including the nuclear triad. Such a result would be in conflict with the role assigned to the NSA under Executive Order 12333.

Exclusivity, Consistency, and Transparency in Security Clearance Procedures and Right to Appeal (Section 9401). The Administration strongly objects to section 9401. The security clearance appeals process is already well-established, understood, and practiced across the executive branch, and its elements are readily available to the public via various mechanisms. This provision would require significant changes to current processes, as it includes trial-like provisions that may be difficult or inappropriate for agencies to implement and that would place the protection of sensitive or classified information at unnecessary risk. Some of its restrictions on the grounds for denying a security clearance would also intrude on the President’s constitutional authority to determine the conditions under which an individual may receive access to classified information. The Administration also strongly objects to the requirement for the Security Executive Agent (SecEA) to establish a “higher-level” review panel, which would be empowered to overturn the clearance determination of a department or agency head. Specific clearance determinations are best left to the individual department or agency head, who are best positioned to reach an appropriate determination regarding protection of classified information placed under their care. Likewise, departments and agencies are better positioned to appropriately staff, resource, and manage their individual security clearance appeal responsibilities. Moreover, the changes required by section 9401 have the potential to significantly extend the length of current security clearance processes.

Sharing Derogatory Information Pertaining to Contractor Employees (Section 9403). The Administration recognizes and agrees on the need for enhanced insider threat and security protections in contractor companies and supports, in principle, the sharing of information between the government and contractor employers on issues of common concern regarding insider threats and security. Nonetheless, the Administration strongly objects to Section 9403 as drafted, and requests that consideration of it be deferred pending further review and discussion between the intelligence community and the intelligence committees. Section 9403 would place contractor employees in peril of adverse actions by their employers before the completion of fact finding and adjudicative actions by the government. This is inherently unfair to the contractor employee because it would require the government to share uncorroborated and incomplete information that may not be appropriate for private companies, potentially resulting in termination of the contractor employee. For similar reasons, section 9403 potentially exposes both the executive branch, as well as contractor employers, to significant liability risk. It would blur the lines between employment decisions by private sector employers and government decision-making regarding security clearances. In any resulting litigation, security information that may otherwise be protected by current laws and exemptions could become subject to discovery. Likewise, in revealing the mere fact of an investigation or adjudication to an employer before resolution of the issue—as well as the investigation’s specific facts—there is a distinct danger that sources and methods for collecting data might be compromised.