



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

May 24, 2011
(House Rules)

STATEMENT OF ADMINISTRATION POLICY

H.R. 1540 – National Defense Authorization Act for FY 2012

(Rep. McKeon (R-CA) and 1 cosponsor)

The Administration supports House passage of H.R. 1540, the National Defense Authorization Act for Fiscal Year 2012. The Administration appreciates the House Armed Services Committee's continued support of our national defense, including its support for the topline budget requests for both the base budget and for overseas contingency operations and for supporting most of the Administration's initiatives to control the Department of Defense's spiraling health costs.

The Administration appreciates the support of the Committee for authorities that assist the ability of the warfighter to operate in unconventional and irregular warfare, authorities that are important to field commanders, such as the Commanders' Emergency Response Program, the Global Train and Equip Authority, the Office of Security Cooperation-Iraq, and other programs that provide commanders with the resources and flexibility to counter unconventional threats or support contingency or stability operations. The Administration looks forward to reviewing a classified annex and working with the Congress to address any concerns on classified programs as the legislative process moves forward.

While there are many areas of agreement with the Committee, the Administration has serious concerns with several provisions that: (1) constrain the ability of the Armed Forces to carry out their missions; (2) impede the Secretary of Defense's ability to make and implement management decisions that eliminate unnecessary overhead or programs to ensure scarce resources are directed to the highest priorities for the warfighter; or (3) depart from the decisions reflected in the President's Fiscal Year 2012 Budget Request. The Administration looks forward to working with the Congress to address these and other concerns, a number of which are outlined in more detail below.

F-35 Joint Strike Fighter Propulsion System: The Administration strongly objects to the language in section 215, which limits the obligation or expenditure of funds for performance improvements to the F-35 Lightning II propulsion system unless there is competitive development and production of such a propulsion system. As the test program unfolds, some improvements are likely to be needed. And this would result in the continued development of an extra engine that adds significant extra costs to the program for something the Administration and the Department of Defense (DoD) have determined is not needed and would destabilize the F-35 program when it is beginning to stabilize. Additionally, section 215 would delay development of the main engine and affect the viability of the short take off and vertical landing variant. If the final bill presented to the President includes funding or a legislative direction to continue an extra engine program, the President's senior advisors would recommend a veto.

The Administration also strongly objects to section 252, which requires the Secretary to store

and preserve the property developed under the F136 program – a termination that ended an unnecessary and extravagant expense, particularly during this period of fiscal restraint. The legislation would constitute a new requirement for the preservation and storage of over 250,000 pieces of Government property located with hundreds of suppliers and add costs for preserving and storing that property.

Limitations on Nuclear Force Reductions and Nuclear Employment Strategy: The Administration strongly objects to sections 1055 and 1056, which impinge on the President's authority to implement the New START Treaty and to set U.S. nuclear weapons policy. In particular, section 1055 would set onerous conditions on the Administration's ability to implement the Treaty, as well as to retire, dismantle, or eliminate non-deployed nuclear weapons. Among these conditions is the completion and operation of the next generation of nuclear facilities, which is not expected until the mid-2020s. The effect of this section would be to preclude dismantlement of weapons in excess of military needs. Additionally, it would significantly increase stewardship and management costs and divert key resources from our critical stockpile sustainment efforts and delay completion of programs necessary to support the long-term safety, security, and reliability of our nuclear deterrent. Further, section 1056 raises constitutional concerns as it appears to encroach on the President's authority as Commander in Chief to set nuclear employment policy – a right exercised by every president in the nuclear age from both parties. If the final bill presented to the President includes these provisions, the President's senior advisors would recommend a veto.

Detainee Matters: The Administration strongly objects to section 1034 which, in purporting to affirm the conflict, would effectively recharacterize its scope and would risk creating confusion regarding applicable standards. At a minimum, this is an issue that merits more extensive consideration before possible inclusion. The Administration strongly objects to the provisions that limit the use of authorized funds to transfer detainees and otherwise restrict detainee transfers and to the provisions that would legislate Executive branch processes for periodic review of detainee status and regarding prosecution of detainees. Although the Administration opposes the release of detainees within the United States, Section 1039 is a dangerous and unprecedented challenge to critical Executive branch authority to determine when and where to prosecute detainees, based on the facts and the circumstances of each case and our national security interests. It unnecessarily constrains our Nation's counterterrorism efforts and would undermine our national security, particularly where our Federal courts are the best – or even the only – option for incapacitating dangerous terrorists. For decades, presidents of both political parties – including Presidents Ronald Reagan, George H.W. Bush, Bill Clinton, and George W. Bush – have leveraged the flexibility and strength of our Federal courts to incapacitate dangerous terrorists and gather critical intelligence. The prosecution of terrorists in Federal court is an essential element of our counterterrorism efforts – a powerful tool that must remain an available option. The certification requirement in section 1040, restricting transfers to foreign countries, interferes with the authority of the Executive branch to make important foreign policy and national security determinations regarding whether and under what circumstances such transfers should occur. The Administration must have the ability to act swiftly and to have broad flexibility in conducting its negotiations with foreign countries. Section 1036 undermines the system of periodic review established by the President's March 7, 2011, Executive Order by substituting a rigid system of review that could limit the advice and expertise of critical intelligence and law enforcement professionals, undermining the Executive branch's ability to ensure that these decisions are informed by all available information and protect the full spectrum of our national security interests. It also unnecessarily interferes with DoD's ability to

manage detention operations. Section 1042 is problematic and unnecessary, as there already is robust coordination between the Department of Justice, the Department of Defense, and the Intelligence Community on terrorism-related cases, and this provision would undermine, rather than enhance, this coordination by requiring institutions to assume unfamiliar roles and could cause delays in taking into custody individuals who pose imminent threats to the nation's safety. If the final bill presented to the President includes these provisions that challenge critical Executive branch authority, the President's senior advisors would recommend a veto.

Attempts to Prevent, Delay, or Undermine the Repeal of "Don't Ask, Don't Tell": On December 22, 2010, President Obama signed into law the Don't Ask, Don't Tell Repeal Act of 2010, in order to strengthen our national security, enhance military readiness, and uphold the fundamental American principles of fairness and equality that warfighters defend around the world. As required by that statute, DoD is diligently working to prepare the necessary policies and regulations and conducting educational briefings to implement the repeal. Should it be determined, as required by the statute, that the implementation is consistent with the standards of military readiness and effectiveness, unit cohesion, and military recruiting and retention, then the President, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff will send forward the required certification. The Administration strongly objects to any legislative attempts (such as section 533) to directly or indirectly undermine, prevent, or delay the implementation of the repeal, as such efforts create uncertainty for servicemembers and their families.

Military Regulations Regarding Marriage: The Administration strongly objects to sections 534 and 535, believes that section 3 of the so-called Defense of Marriage Act (DOMA) is discriminatory, and supports DOMA's repeal.

Limitation on Funds to Provide Russian Federation with Access to U.S. Missile Defense Technology and International Agreements Relating to Missile Defense: The Administration strongly objects to the following two sections: (1) section 1228 would prohibit the provision to the Russian Federation of a range of missile defense data, when the appropriate reciprocal exchange of such data may improve the ability of the United States and NATO to provide effective missile defenses of our military forces and other citizens; and (2) section 1229 would unnecessarily impede the Administration's ability to conduct discussions with the Russian Federation on missile defense matters both bilaterally and in the NATO context, and would be impractical to implement, for example by requiring that the Administration report on all "suggestions" made by representatives of the Russian Federation in government to government contacts (which could include the legislative branch). Among other things, section 1229 raises constitutional concerns, as it appears to encroach on the President's exclusive authority to determine the time, scope, and objectives of international negotiations and to maintain the confidentiality of sensitive diplomatic discussions.

Extended Deterrent in Europe: The Administration strongly objects, including on constitutional grounds, to the elements of section 1230 that would limit the President's ability to determine military requirements in Europe, conduct diplomacy, and negotiate treaties. The Administration also objects to this section's limitation on Administration efforts to address tactical nuclear weapons, a step called for in the Senate's Resolution of Ratification of the New START Treaty and a priority of U.S. arms control policy. Further, the Administration notes this section would inhibit our ability to function within NATO.

Limitation on Force Management Efficiencies: The Administration strongly objects to provisions such as sections 1094, 2307, 2705, and 2862 that would limit the Secretary's discretion in determining and executing force management efficiencies. For example, section 1094 would require the Secretary of the Navy to maintain a minimum force of 10 aircraft carrier air-wings and a dedicated headquarters for each. However, a reduction from 10 to 9 aircraft carrier air wings staff is projected to save DoD approximately \$22.2 million over five years (FYs 2012-2016) and meets the needs of the Navy which has no operational need for a 10th carrier air wing. Additionally, sections 2307, 2705, and 2862, requiring additional study and notice of proposed disestablishment, closure or realignment of certain military installations, or the reduction in the number of military personnel and waiting times prior to execution, impedes the Secretary's ability to make and implement force management decisions that would ensure scarce resources are directed to the highest priorities for the warfighter.

Unified Medical Command: The Administration strongly objects to section 711, which would require the President to create a new unified combatant command for medical operations. DoD will shortly complete a study on how to best deliver high-quality medical care to servicemembers and their families in an effective and cost-efficient manner. Among the options this study will consider is a joint medical command similar to this provision; however, this section presumes the outcome of the study and of decisions to be made by DoD leadership on this important subject.

Designation of Main Propulsion System of the Next-Generation Long Range Strike Bomber Aircraft as Major Subprogram: The Administration objects to language in section 220, which would require the Secretary of Defense to designate the main propulsion system of the next-generation long-range strike bomber as a major subprogram and require a competitive acquisition strategy. A major tenet of the new bomber program is to maximize the use of existing engine systems. The approach needs to rely on minor modifications to existing engines and give the prime contractors freedom to select the engine that is right for their design. Moreover, the prime contractor's design concepts may differ so widely that it would be impractical to have a separate engine competition and then insert the winning engine into the winning airframe. Mandating such development would likely result in increased cost and risk. Also, this provision would require the designation of a major subprogram on a program that has not yet been designated as a major defense acquisition program.

Mission Force Enhancement Transfer Fund: The Administration objects to sections 1433 and 4501, which authorize the transfer of \$1 billion through the "Mission Force Enhancement Transfer Fund" to support efforts not requested in the FY 2012 Budget.

Diversion of Funding: Over a hundred provisions of the bill (sections 1601-1699M) direct that the relevant Secretary "shall obligate" specified funding in particular ways. The Administration is concerned that these provisions could preclude the use of DoD funds for higher priority military needs. The Administration requires more time to review these provisions and assess their impact on DoD.

PATRIOT/MEADS Combined Aggregate Program (CAP): The Administration appreciates the support for DoD's air and missile defense programs; however, it objects to the \$149.5 million authorization reduction in the PATRIOT/MEADS Combined Aggregate Program. This reduction could trigger a unilateral withdrawal from the MEADS Memorandum of Understanding (MOU) with Germany and Italy, which could further lead to a DoD obligation to pay all contract costs—a scenario that would likely exceed the cost of satisfying its commitment under the MOU. This

reduction also could call into question DoD's ability to honor its financial commitments in other binding cooperative MOUs, leading to negative consequences for other current and future international cooperative programs.

Advance Appropriations: The Administration appreciates the Committee's stated support for the Administration's new strategy for reforming space acquisition. However, the Administration is disappointed that no requested advance appropriations are authorized. Section 132 would only authorize the Secretary of the Air Force to procure two Advanced Extremely High Frequency (AEHF) satellites through incremental funding. Further, H.R. 1540 authorizes only a small portion of the total remaining cost of \$4.1 billion requested in regular and advance appropriations to enable full-funding of procurement of AEHF satellites and certain classified programs. Providing the full procurement costs in advance appropriations before proceeding with the acquisition is central to the Administration's new acquisition strategy and cost discipline approach.

Ship and Military Construction Incremental Funding: The Administration objects to the incremental funding in section 121, which would authorize an additional year of incremental funding for the LHA-7 amphibious assault ship. Large-deck amphibious ships are already funded over two years, and any additional incremental funding period runs counter to sound budgeting principles and fiscal discipline. Section 4601 would incrementally fund military construction projects, which raises the same concerns and increases the costs of the projects.

Military Activities in Cyberspace: The Administration agrees that appropriate military operations in cyberspace are a vital component of national security, but objects to Section 962. The Administration has concerns about this provision and wants to work with Congress to ensure that any such legislation adds clarity and value to our efforts in cyberspace.

Diversion of Pension Funding: The Administration strongly objects to the restriction in section 3113 of Executive branch authority to manage obligations for contractor pension obligations. In the FY 2012 Budget, the Administration added substantial funds to ensure that defined-benefit pension plans of Department of Energy contractors are financially viable. This legislation circumvents efforts by the Administration to implement long-term solutions for pension funding shortfalls.

Abrams/Bradley Upgrades: The Administration objects to \$425 million of unrequested authorization in section 4101, line 007 and 014 for upgrades to M-1 Abrams tanks and M-2 Bradley Fighting Vehicles for unneeded upgrades in a fiscally-constrained environment.

Amphibious Assault Vehicle (AAV): Section 214 would restrict the ability to develop improvements to existing AAVs until the completion of an analysis of AAV requirements and the completion of an analysis of alternatives of various options to fill such requirements. The Marine Corps is committed to a follow-on for the AAV; however, this provision would limit the ability to both improve the existing fleet and inhibit analysis of the best replacement options.

Troops to Teachers Program: The Administration urges the House's support for the transfer of the Troops to Teachers Program to DoD in FY 2012, as reflected in the President's Budget and DoD's legislative proposal to amend the Elementary and Secondary Education Act of 1965 and Title 10 of the U.S. Code. The move to Defense will help ensure that this important program supporting members of the military as teachers is retained and provide better oversight of

program outcomes by simplifying and streamlining program management. The Administration looks forward to keeping the Congress abreast of this transfer, to ensure it runs smoothly and has no adverse impact on program enrollees.

A number of the bill's provisions raise additional constitutional concerns, including encroachment on the President's exclusive authorities related to international negotiations. The Administration looks forward to working with the Congress to address these and other concerns.

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