



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

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JUL 14 2015

The Honorable John McCain
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As you begin the conference on the National Defense Authorization Act for Fiscal Year 2016 (NDAA), I would like to call to your attention several provisions that affect the Department's ability to operate efficiently and effectively. These provisions are described in detail in the enclosed paper.

Like you, I am committed to providing unwavering support for military personnel as they carry out their missions, strengthening the capabilities of the armed forces to defend America and American interests around the globe, and improving the quality of life for the members of our military and their families. I welcome the many provisions in your bill that further these vital objectives.

I have significant concerns, however, about the effect on the Department of both the House and Senate bills in their current form. I am hopeful you will address these concerns during your conference process. Specifically, the House and Senate bills do not authorize sufficient funding for our military's priorities in the base budget, and instead shift base budget resources into Overseas Contingency Operations (OCO). While the OCO funding approach clearly recognizes that the budget total we have requested is needed, it fails to provide the stable, multi-year budget on which defense planning is based and has proven to be a road to nowhere. This approach also maintains sequestration funding levels for crucial national security activities carried out at non-defense agencies, and ignores the vital linkage between our national security and our economic security. Legislation that implements this approach would therefore be subject to veto. I hope that members of Congress can come to an agreement on a longer-term, multi-year deal that ends the threat of sequestration and provides the budget stability and resources we need by locking in defense and non-defense budget levels consistent with the President's request. We need to start on this path today, so that we have the benefit of time to work together ahead of the fiscal year's end. Leaving the hard decisions for late September will only increase the probability of an unacceptable solution, and our military's Service members and families deserve better than that. The time for action is now.

I am pleased by the Committee's determination and your leadership to partner with me and the Department to enact reforms that will ensure that every dollar of the Department's budget is spent well. Waste, inefficiency, unneeded infrastructure, and perpetuation of activities that the armed forces have determined to have lower priority should not crowd out the high



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priority capabilities needed to fulfill our strategy. I am disappointed that critical FY 2016 reform proposals, some of them proposed this year for the fourth time, are denied by both bills. Provisions that would slow growth in compensation and reduce wasteful overhead—such as those authorizing an additional Base Realignment and Closure (BRAC) round and modernizing TRICARE through a Consolidated Health Plan structure—were not included in either bill and they are thus not discussed in the enclosed paper. Failing to enact reforms and adjustments that improve military efficiency and ensure that limited resources are available for the highest priorities will compel the Department to make unnecessary and inappropriate reductions in areas like readiness, modernization, and force structure. Both bills also fail to adopt many of the needed force structure and weapons system reforms that would allow the alignment of military capability with defense strategy and include provisions that limit my ability to effectively and efficiently manage Department personnel and infrastructure. Similarly, I would encourage you to support compensation and benefit reforms that will allow us to attract and retain the force of the future, while pursuing necessary reforms to provide for critical efficiencies. Denying needed strategic adjustments and efficiency initiatives at the very moment we face continued budget turmoil represents a “double whammy” for the Department.

The House and Senate bills also continue unwarranted restrictions, and impose onerous additional ones, regarding detainees at Guantanamo Bay, impeding the closure of the facility.

Finally, provisions in the House and Senate bills also restrict the Department’s ability to ensure treaty compliance and work effectively with foreign partners, safeguard access to space, optimize the deployment of missile defense resources, and effectively and efficiently manage the nuclear stockpile.

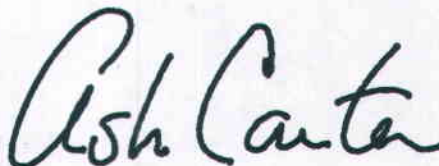
If a bill is presented to the President in the current form of either version of the NDAA, I will join with the President’s other senior advisors in recommending that he veto the legislation. I am, however, hopeful that you will resolve these issues during your conference negotiations.

The NDAA is important legislation for our national security. I am hopeful that you will be able to resolve the concerns with the House and Senate bills. Further, while this letter discusses many of the principal concerns the Department has with provisions of the House or Senate bills, we will also continue to communicate other views to assist your staff in understanding the Department’s position on the wide range of provisions in the House and Senate bills, in order to facilitate your conference process. The Department appreciates your consideration of the attached views and looks forward to working with you to resolve these concerns.

Sincerely,

Enclosure:
As stated

cc:
The Honorable Jack Reed
Ranking Member

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DEPARTMENT OF DEFENSE CONCERNS WITH H.R. 1735 AS PASSED BY HOUSE AND SENATE

The Department of Defense (DOD) urges the conferees to carefully review the Statements of Administration Policy (SAP) on H.R. 1735 and S. 1376, which lay out many issues of concern that remain for the Department.

Providing the Stable, Multi-year Budget on Which Defense Planning is Based. The Department continues to strongly object to the authorization of sequester-level appropriations for items that were requested in and belong in the base budget, and the use of OCO—a funding mechanism intended to pay for wars and not subject to the budget caps—to pay for \$38 billion in base requirements. While the OCO funding approach clearly recognizes that the budget total we have requested is needed, it fails to provide the stable, multi-year budget on which defense planning is based and has proven to be a road to nowhere. This approach also maintains sequestration funding levels for crucial national security activities carried out at non-defense agencies, and ignores the vital linkage between our national security and our economic security. Legislation that implements this approach would therefore be subject to veto.

Closing the Detention Center at Guantanamo Bay. The time has come to work together to responsibly close the detention facility at Guantanamo Bay, Cuba. The Statements of Administration Policy articulate our concerns with the various provisions that impede that goal.

- The addition of onerous new restrictions on foreign transfers—such as those in House sections 1038 and 1039 and Senate sections 1033 and 1035—would undermine our national security by limiting our ability to act as our military, diplomatic, and other national security professionals deem appropriate in a given case.
- Provisions that prohibit the use of funds to transfer Guantanamo detainees to the United States or to construct or modify any facility in the United States to house detainees are unwarranted and would further impede efforts to responsibly close the facility. While the Senate bill would relax certain of these restrictions if Congress approves a plan to close the facility by joint resolution, this process for congressional approval is unnecessary and overly restrictive.
- Provisions that would require us to disclose sensitive diplomatic communications with foreign governments would have a chilling effect on the foreign governments' willingness to cooperate on detainee transfers.

Aligning Military Capability with Defense Strategy. The Department must be able to align military capability with defense strategy to ensure that scarce resources are directed to the highest priorities for national security.

- *Limitations on Retirement, Management, or Acquisition of Aircraft.* The Department strongly objects to provisions in both bills that would restrict DOD's ability to retire, acquire, or transfer weapon systems and aircraft platforms in accordance with current strategic and operational plans. The prohibitions in sections 131 - 136 and 138 of the Senate bill and section 133 of the House bill would limit or delay savings, efficiencies, and operational capabilities necessary to meet mission objectives in the current fiscal environment. In the case of the A-10, DOD believes the Joint Strike Fighter and other multi-mission aircraft will

replace the A-10's singular mission of close air support while also providing other critical capabilities. Similarly, Senate sections 1044 and 1045 would place new limitations on implementation of the Army's Aviation Restructure Initiative and would damage the Army's readiness and ability to prepare and deploy forces to meet ongoing operations.

- *Modernization of Ticonderoga Class Cruisers.* The House restrictions on DOD's plan to modernize its Ticonderoga Class Cruisers would erase planned savings of \$300 million to \$400 million, result in early depletion of Ship Modernization, Operations and Sustainment Fund funds, and accelerate the retirement of the cruisers. The Department also strongly objects to the provision restricting the removal of ballistic missile defense capability from the cruisers. Maintaining this capability on cruisers will prevent scheduled combat systems upgrades, and upgrading the ballistic missile defense capability on these cruisers will increase overall modernization costs and delay the Navy's cruiser modernization.
- *Restrictions Imposed on CVN 78 Class Aircraft Carrier Program.* The Department also strongly objects to Senate section 111, which would reduce the cost limitation baseline for CVN 79 and subsequent FORD-class carriers to \$11.398 billion. A \$100 million reduction would degrade the capabilities of CVN 79 and follow-on ships or increase the risk of a breach of the cap. The current cost cap represents a significant reduction from CVN 78 and further reductions may affect the delivery of integral warfighting capability. The Department also strongly objects to Senate section 112, which would add restrictions to the construction and cost of CVN 79 by requiring Full Ship Shock Trials (FSST) on CVN 78 by September 30, 2017. Planning efforts and other post-delivery test and trial requirements prevent the Navy from executing the FSST before fiscal year (FY) 2018 at the earliest.
- *Littoral Combat Ship and Frigate.* The Department objects to the limitations on Research, Development, Test, and Evaluation (RDT&E) and Shipbuilding and Conversion, Navy funding for Littoral Combat Ships (LCS) and Frigate (FF) ships in the Senate bill. Withholding 75 percent of the RDT&E Frigate funding would prevent the Navy from completing the necessary design and integration efforts required to execute a Frigate production contract in FY 2019. A delay in this contract would result in a gap in the production lines, additional procurement costs, and extend the time necessary to meet the validated requirement for 52 small surface combatants.
- *Alternative Fuels.* The Department reiterates the strong objections in the Statement of Administration Policy to House sections 315 and 316, which would impede DOD's efforts to foster a diverse, cost-competitive energy supply that enhances energy security for both military uses and civilian aviation. A diverse approach to energy security—one that includes both conventional and new sources—would benefit the economy and enhance our military capability.
- *Defense Meteorological Satellite Program.* The Department objects to Senate section 1607, which would limit the availability of all funding for the Defense Meteorological Satellite Program (DMSP)-20 and its launch until several prerequisites are met. The Department is committed to launching its satellite by no later than 2017 and section 1607 would unnecessarily delay this launch, elevating risks to a variety of national missions and incurring hefty storage costs while these reporting requirements are satisfied. By 2017, only one DMSP satellite will be within its design life. This recently-refurbished satellite will satisfy

space-based environmental monitoring needs for which the Department is responsible and is a cost effective solution. Because weather satellite data are shared among defense, intelligence, civil, and international users, delays in launching this satellite would have broad implications, including reduced accuracy of weather prediction models and degraded efficiency of surveillance and reconnaissance platforms.

Management of Department Personnel and Infrastructure for Maximum Efficiency. To optimize the efficiency of the Department, the Secretary must have the ability to organize, structure, and manage Department personnel and infrastructure. The Department strongly objects to provisions in the bill that would limit this ability.

- *Defense Acquisition.* As outlined in recent correspondence on this issue, the Department strongly objects to Senate section 843 and related provisions, which are inconsistent with the Secretary of Defense's exercise of authority, direction, and control over all DOD programs and activities. Section 843 would significantly reduce the Secretary of Defense's ability—through the Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L))—to guard against unwarranted optimism in program planning and budget formulation, and prevent excessive risk taking during execution—all of which is essential to avoiding overruns and costly delays. Program planning, management, and execution are already Service responsibilities. The prohibition on documentation without a determination by the Deputy Chief Management Officer also would abrogate the ability of the Secretary and Under Secretary to conduct routine execution monitoring of programs, thus handcuffing their ability to intercede unless and only until notified programs are at risk of failure. DOD is committed to reducing unnecessary bureaucracy and continuing the important work of improving the performance of its defense acquisition system in close coordination with Congress, including increasing the military Service Chiefs' role. The Department strongly objects to these provisions because they would not accomplish that goal, and would significantly increase the risk of overly optimistic program planning and budgeting.
- *Prohibition on Conducting Additional BRAC Round.* Provisions in both bills which would preclude any funds being authorized for use toward an additional BRAC round would impair the ability of the Executive Branch to plan for contingencies or make other needed adjustments that would improve military effectiveness and efficiency.
- *Streamlining DOD Management and Operational Headquarters.* While the Department welcomes the support for DOD's plans to reduce headquarters personnel and spending by 20 percent in section 351 of the Senate bill, the Department strongly objects to any provision that: (1) fails to acknowledge the reductions that have already occurred; (2) directs reductions in activities other than headquarters or headquarters staff support functions or excludes activities that include headquarters and headquarters staff support functions; or (3) requires deep, across-the-board cuts that would undermine critical functions that support the warfighter. The Department's execution of then-Secretary of Defense Hagel's Department-wide 20 percent headquarters reduction plan projects savings of \$5.3 billion and the realignment of over 11,000 military and civilian billets from headquarters activities to higher Departmental priorities. This means that there will be 11,000 fewer positions in DOD headquarters and more workforce and budgetary resources available to support the operational requirements of the Department. The Department will continue to work to ensure

that only necessary resources are applied to headquarters activities while more resources are available for critical and warfighter needs. The Department urges the conferees to exclude section 351 of the Senate bill and adopt an amendment to section 905 of the House bill that addresses these concerns.

- *Operation and Maintenance and Military Personnel Reductions.* The Department objects to the billions of dollars of undistributed reductions in the House and Senate bills across the operation and maintenance and military personnel accounts. The operation and maintenance reductions would be applied to those programs which support readiness, depot maintenance, base operations support, and facilities sustainment, restoration, and modernization line items. These reductions would delay the Department's full-spectrum readiness recovery efforts and increase the backlog of maintenance at the military departments' depot facilities.
- *Revised Policy on Network Services for Military Services.* Senate section 591, which would require the Secretary of Defense to minimize and reduce, to the maximum extent practicable, the number of uniformed military personnel providing network services to military installations within the United States, would arbitrarily cut the military cyberspace workforce without sufficient regard to the impact on cyberspace operations and force readiness. In particular, the Navy and Marine Corps are maritime, forward-deployed forces that provide their own organic network services and support in the afloat and expeditionary operational environment. It would be neither fiscally nor operationally feasible for them to transition the responsibility for enterprise networks to a civilian-only model. Section 591 also would prevent cyberspace forces from fully understanding DOD information network operations, and affect the training of military members in support of military operations both within the Continental United States and to the tactical edge. The ability to attract, train, employ and retain the Department's cyberspace workforce depends in large part upon the capacity of the Services to offer professionally meaningful assignments, hands-on oversight, operation and support of information networks at the installation, post, camp and station level.
- *Annual Reports of the Chief of the National Guard Bureau.* The Department strongly objects to Senate section 1066, which would undercut the title 10, United States Code, authorities of the Secretaries of the Army and the Air Force to organize, train, and equip the active and reserve components of the Army and the Air Force by having the Chief of the National Guard Bureau report on the ability of National Guard to meet its federal missions directly to the Secretary of Defense instead of through the responsible Secretaries. In requiring the Chief of the National Guard Bureau to report on the ability of the National Guard to carry out emergency support functions of the National Response Framework independent of the Secretaries of the Army and the Air Force, the provision fails to consider the contributions available from all regular and federal reserve forces, and would not provide a comprehensive, holistic look at military capabilities available to governors since it does not include the significant capabilities available within those Reserve Components for which the Chief of the National Guard Bureau has no oversight, authority, or responsibility.

Compensation and Benefits to Attract and Retain the Force of the Future. To sustain and attract the force of the future, the Department believes it is imperative to slow the growth of personnel costs and modernize military healthcare.

- ***Military Pay Raise.*** The Department strongly opposes the automatic 2.3 percent military pay increase included in the House Bill. The Department appreciates the 1.3 percent pay increase in the Senate provision for members in pay grades O-6 and below; however, the Department opposes the continued pay freeze for military members in the grades of O-7 through O-10. The cost of increasing the FY 2016 military pay raise by the additional 1.0 percent, which would occur under the House bill, would be \$672 million in FY 2016 and approximately \$4.3 billion over the Future Years Defense Program. The Department urges support of the Senate provision to authorize a 1.3 percent military basic pay increase, modified to include all military members, consistent with the FY 2016 President's Budget request.
- ***Compensation Reform and TRICARE.*** The Department appreciates the Senate's support for certain compensation reforms. In order to mitigate a projected significant shortfall in fiscal year 2016 in health care funding, the Department urges the conferees to support the Senate provision reasonably updating TRICARE pharmacy fees and to permit sensible management authority by DOD to improve the cost-effectiveness of health care services in military hospitals and clinics, adjust military and civilian staffing, and to develop the role of the Defense Health Agency in moving toward a more integrated health system.
- ***Military Compensation and Retirement Modernization Commission Recommendations.*** The Department also encourages Congress to support the recommendations of the Military Compensation and Retirement Modernization Commission for which the Department has transmitted legislation. These changes are a key step in modernizing the Department's ability to recruit, retain and maintain the talent we require of our Future Force. In addition, the Department encourages Congress to adopt the other elements of our proposal regarding the commissaries as the primary means to offset operating costs and develop effective commissary business practices without significantly affecting patron savings. Finally, the Department renews the strong objection articulated in the Statement of Administration Policy to restrictions in Senate section 604 on Basic Allowance for Housing (BAH) for uniformed Service members who are married to another member and to limits on BAH for members who choose to share housing with other members.

Ensuring Treaty Compliance and Working Effectively with Foreign Partners. The Department has serious concerns with provisions in both bills that restrict the Department's ability to meet existing treaty obligations or affect our ability to work with foreign partners.

- ***Limitation on Funds for Implementation of the New START Treaty.*** The Department strongly urges the conferees to exclude House section 1249, which would prohibit the obligation of FY 2016 funds for New START Treaty implementation activities. The prohibitive language will limit the Air Force and Navy's ability to safely, securely, and effectively implement New START by the Treaty Central Limits deadline of February 2018. The New START implementation plan balances efforts to reach New START limits while also managing and maintaining the force. Little to no margin remains in the schedule and any delays to implementation may affect force readiness and availability and would limit the Department's ability to safely, securely, and effectively meet Treaty obligations. As such, this provision would constitute a serious risk to New START compliance and would result in the United States failing to meet legally binding, international obligations. The Department urges the

conferees to eliminate the provision so as to allow implementation activities to proceed as planned.

- *Prohibition on De-alerting Intercontinental Ballistic Missiles.* The Department also urges the conferees to exclude or modify House section 1657, which prohibits the obligation or expenditure of FY 2016 funds to reduce, or prepare to reduce, the responsiveness or alert level of United States intercontinental ballistic missiles (ICBMs). The clarifying language specifically allows activities required for ICBM maintenance or sustainment and ensuring ICBM safety, security, or reliability. Unfortunately, the clarifying language fails to specifically allow New START missile non-deployments, which are a treaty compliance requirement and not accomplished for maintenance or sustainment purposes. While we understand the provision does not address New START reductions, the Department urges the conferees to either eliminate or amend the provision to specifically allow reductions in deployed intercontinental ballistic missiles to meet New START limits.
- *Counterterrorism Partnerships Fund.* The Department objects to the elimination of the Counterterrorism Partnerships Fund (CTPF) in the House bill and the reduction of \$1.1 billion in the Senate bill because it removes a flexible, partnership-focused approach to counterterrorism. While the Department is appreciative of support for the border security and capability enhancements for Jordan, military construction, and specific counter-ISIL programs, redirecting CTPF funding to these other activities precludes the Department from building on existing tools and authorities to respond to a range of terrorist threats. The Department has overcome many of the challenges associated with executing a new fund and continues to work to address specific concerns raised by Congress. The Department strongly encourages Congress to authorize the \$2.1 billion originally requested to continue support of CTPF activities in FY 2016.
- *Modification of Authority to Provide Assistance to Counter the Islamic State of Iraq and the Levant.* The Department strongly objects to House section 1223, regarding the direct arming of the Kurdish Peshmerga, Sunni Forces and other forces in Iraq, as it is inconsistent with the longstanding U.S. foreign policy of working to maintain a stable, unified Iraq and risks undermining the Government of Iraq's central authority and undercutting ongoing coalition military operations. This language also fuels the narratives in Iraq and elsewhere in the region that the U.S. intends to partition the country. This narrative directly counters U.S. and coalition efforts to demonstrate to all Iraqis that we are the partner of choice in the Middle East. Lastly, legislation focused on direct support to factions within Iraq potentially puts supporting U.S. forces at risk as a number of Shia groups have threatened publicly to attack U.S. personnel in Iraq should Congress pass legislation that facilitates Iraq's partition.
- *Open Skies Treaty.* The Department objects to House section 1244 and Senate section 1672, which would change the reporting requirement on the Open Skies Treaty to require the provision of an assessment to Congress of Russian proposals to introduce new or modified sensors or aircraft under the Treaty 90 days prior to the United States certifying the aircraft or sensors. The current reporting requirement is to provide the assessment 30 days prior to certification. The 90-days requirement is not feasible because it would not allow sufficient time for the U.S. Government to assess the Russian proposal adequately and is only 30 days after we would be informed of Russia's notification of intent to certify. The Department also

objects to House section 1265, which would limit the availability of RDT&E funds for arms control implementation in the Air Force until the Secretary of Defense reports to Congress on issues related to the Open Skies Treaty. This provision could affect the ability of the United States to modernize its observation aircraft sensors by delaying funding needed to upgrade from wet film to digital sensors.

- *Effective Peaceful Nuclear Trade.* As noted, the Administration strongly objects to House section 3119, which would limit and condition authorizations under 10 CFR Part 810 of technology transfers and assistance to countries that have a naval nuclear propulsion program, and as amended to those in which companies may reside that have violated trade sanctions. Countries with such programs include generally authorized countries such as Russia, China, India, and Brazil for which specific authorization is required. The Secretary would be prohibited from issuing authorizations with respect to such countries until the Director of National Intelligence and the Chief of Naval Operations submit an assessment to the specified committees of the risks of diversion of such nuclear technology transfer to a country's naval nuclear propulsion program, even if the technology or assistance has no relationship to or utility in naval propulsion. Halting these authorizations would have a significant negative financial impact on U.S. nuclear industry and on diplomatic relations between the United States and the impacted countries.

Ensuring Access to Space. The Department is committed to the same goals for space espoused in the House and Senate bills—assured access to space via commercially-viable, competitive, domestic launch providers using U.S.-developed launch systems for national security space. Provisions in the House and Senate bills would impede achievement of those goals.

- *Rocket Propulsion System Development Program.* The Department strongly objects to House section 1603, which would place restrictions on the funds to eliminate the Nation's use of non-allied space launch engines for national security space launches by 2019. The Department also strongly objects to moving Evolved Expendable Launch Vehicle (EELV) development funding into the more restrictive Rocket Propulsion System Development line item. The Department is committed to transitioning from the RD-180 rocket engine, but engine development is only part of the solution. While rocket engines are a major component of a launch vehicle, they are only one of many critical components. These components must be designed and developed together to meet the ultimate cost and performance goals, not only for the launch vehicle but also for the support, operations, and production infrastructure. Without a comprehensive strategy that ensures the availability of operational launch systems capable of lifting the entire national security space manifest, the government risks investing hundreds of millions of dollars without any guarantee of preserving assured access to space. For similar reasons, the Department strongly objects to the Senate section 1606; the requirement for a plan to develop and field a full-up rocket propulsion system would not, by itself, preserve the Nation's assured access to space.
- *Evolved Expendable Launch Vehicle Program Contracts.* The Department strongly objects to Senate section 1603, which would effectively eliminate the opportunity for meaningful competition during EELV Phase 2 and leave restrictions in place that could inhibit DOD's ability to maintain assured access to space for National Security Space satellites. The Department also strongly objects to Senate section 1604's restriction on the award of a future

contract or contract line item for the procurement of property or services for space launch capabilities, because procuring these capabilities from an EELV launch service provider may be required to maintain two families of launch vehicles and support the Department's mandate of having assured access to space. In the event that it is necessary for the Government to procure space launch capabilities, the Department will ensure that it does not create an unfair competitive advantage for any of the EELV launch service providers.

- *Allocation of Funding for Evolved Expendable Launch Vehicle Program.* Finally, the Department strongly objects to Senate section 1605, which does not account for the 2-3 year lead time between the procurement and launch of the system. There also is significant capability variation between single-core and three-core (heavy) launch vehicles.

Optimizing Deployment of Missile Defense Resources. While the Department appreciates the House and Senate's support of ballistic missile defense programs, the Department objects to provisions in both bills that restrict the Department's ability to manage these assets.

- *Missile Defense Capability in Europe.* The Department objects to House section 1668, which requires a concurrent anti-air warfare capability at the Aegis Ashore site in Poland and Romania by 2018. This would entail hardware and software upgrades not previously planned and would introduce additional costs and potentially delay the deployment in Poland. Installing this capability would also require amending previously negotiated agreements with the host nation as well as extensive discussions with our NATO Allies. For the same reasons, the Department objects to Senate section 1653, which would require a plan to deploy anti-air warfare capability to the Aegis Ashore sites in Poland and Romania. The Department also objects to the requirement in House section 1668 that a Terminal High Altitude Area Defense battery be available for rotational deployment to U.S. European Command's area of responsibility. This would constrain DOD's flexibility in managing these high-demand/low-density assets.
- *Continental United States Interceptor Site.* The Department objects to the House section 4601 authorization of \$30 million in FY 2016 for the planning and design of an East Coast missile field. The authorization is premature and other missile defense requirements have higher priority. The Department also objects to Senate section 1651, which would require DOD to provide a plan to accelerate by two years the fielding of a potential future Continental United States interceptor site within 30 days of the completion of the ongoing Environmental Impact Statement. Consistent with section 234 of the FY 2013 NDAA, DOD is already preparing a contingency plan and believes this added requirement is premature and inconsistent with best acquisition practices.
- *East Coast Homeport of Sea-based X-band Radar.* The Department objects to the House section 1673 requirement to homeport the Sea-based X-band (SBX) radar on the East Coast in 2020, which does not take into consideration the threat environment or cost and may constrain DOD's ability to best defend the United States. Finally, the Department objects to the Senate section 1652 requirement to deploy a long-range discrimination sensor by December 30, 2020, to defend against potential future long-range ballistic missile threats from Iran. DOD is conducting a comprehensive sensor analysis of alternatives, and mandating deployment of a missile tracking radar by 2020 is premature and unfunded.

- *Destruction of Anti-Personnel Landmines.* The Administration strongly objects to House section 1057, which would limit the availability of funds for the destruction of anti-personnel landmines. This provision would interfere with DOD's ability to implement the Administration's policy of working to eliminate anti-personnel landmine stockpiles other than those required for the defense of the Republic of Korea.



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JUL 14 2015

The Honorable William M. "Mac" Thornberry
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

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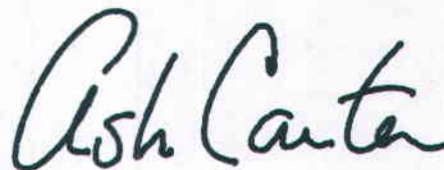
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The Honorable Adam Smith
Ranking Member

DEPARTMENT OF DEFENSE CONCERNS WITH H.R. 1735 AS PASSED BY HOUSE AND SENATE

The Department of Defense (DOD) urges the conferees to carefully review the Statements of Administration Policy (SAP) on H.R. 1735 and S. 1376, which lay out many issues of concern that remain for the Department.

Providing the Stable, Multi-year Budget on Which Defense Planning is Based. The Department continues to strongly object to the authorization of sequester-level appropriations for items that were requested in and belong in the base budget, and the use of OCO—a funding mechanism intended to pay for wars and not subject to the budget caps—to pay for \$38 billion in base requirements. While the OCO funding approach clearly recognizes that the budget total we have requested is needed, it fails to provide the stable, multi-year budget on which defense planning is based and has proven to be a road to nowhere. This approach also maintains sequestration funding levels for crucial national security activities carried out at non-defense agencies, and ignores the vital linkage between our national security and our economic security. Legislation that implements this approach would therefore be subject to veto.

Closing the Detention Center at Guantanamo Bay. The time has come to work together to responsibly close the detention facility at Guantanamo Bay, Cuba. The Statements of Administration Policy articulate our concerns with the various provisions that impede that goal.

- The addition of onerous new restrictions on foreign transfers—such as those in House sections 1038 and 1039 and Senate sections 1033 and 1035—would undermine our national security by limiting our ability to act as our military, diplomatic, and other national security professionals deem appropriate in a given case.
- Provisions that prohibit the use of funds to transfer Guantanamo detainees to the United States or to construct or modify any facility in the United States to house detainees are unwarranted and would further impede efforts to responsibly close the facility. While the Senate bill would relax certain of these restrictions if Congress approves a plan to close the facility by joint resolution, this process for congressional approval is unnecessary and overly restrictive.
- Provisions that would require us to disclose sensitive diplomatic communications with foreign governments would have a chilling effect on the foreign governments' willingness to cooperate on detainee transfers.

Aligning Military Capability with Defense Strategy. The Department must be able to align military capability with defense strategy to ensure that scarce resources are directed to the highest priorities for national security.

- *Limitations on Retirement, Management, or Acquisition of Aircraft.* The Department strongly objects to provisions in both bills that would restrict DOD's ability to retire, acquire, or transfer weapon systems and aircraft platforms in accordance with current strategic and operational plans. The prohibitions in sections 131 - 136 and 138 of the Senate bill and section 133 of the House bill would limit or delay savings, efficiencies, and operational capabilities necessary to meet mission objectives in the current fiscal environment. In the case of the A-10, DOD believes the Joint Strike Fighter and other multi-mission aircraft will

replace the A-10's singular mission of close air support while also providing other critical capabilities. Similarly, Senate sections 1044 and 1045 would place new limitations on implementation of the Army's Aviation Restructure Initiative and would damage the Army's readiness and ability to prepare and deploy forces to meet ongoing operations.

- *Modernization of Ticonderoga Class Cruisers.* The House restrictions on DOD's plan to modernize its Ticonderoga Class Cruisers would erase planned savings of \$300 million to \$400 million, result in early depletion of Ship Modernization, Operations and Sustainment Fund funds, and accelerate the retirement of the cruisers. The Department also strongly objects to the provision restricting the removal of ballistic missile defense capability from the cruisers. Maintaining this capability on cruisers will prevent scheduled combat systems upgrades, and upgrading the ballistic missile defense capability on these cruisers will increase overall modernization costs and delay the Navy's cruiser modernization.
- *Restrictions Imposed on CVN 78 Class Aircraft Carrier Program.* The Department also strongly objects to Senate section 111, which would reduce the cost limitation baseline for CVN 79 and subsequent FORD-class carriers to \$11.398 billion. A \$100 million reduction would degrade the capabilities of CVN 79 and follow-on ships or increase the risk of a breach of the cap. The current cost cap represents a significant reduction from CVN 78 and further reductions may affect the delivery of integral warfighting capability. The Department also strongly objects to Senate section 112, which would add restrictions to the construction and cost of CVN 79 by requiring Full Ship Shock Trials (FSST) on CVN 78 by September 30, 2017. Planning efforts and other post-delivery test and trial requirements prevent the Navy from executing the FSST before fiscal year (FY) 2018 at the earliest.
- *Littoral Combat Ship and Frigate.* The Department objects to the limitations on Research, Development, Test, and Evaluation (RDT&E) and Shipbuilding and Conversion, Navy funding for Littoral Combat Ships (LCS) and Frigate (FF) ships in the Senate bill. Withholding 75 percent of the RDT&E Frigate funding would prevent the Navy from completing the necessary design and integration efforts required to execute a Frigate production contract in FY 2019. A delay in this contract would result in a gap in the production lines, additional procurement costs, and extend the time necessary to meet the validated requirement for 52 small surface combatants.
- *Alternative Fuels.* The Department reiterates the strong objections in the Statement of Administration Policy to House sections 315 and 316, which would impede DOD's efforts to foster a diverse, cost-competitive energy supply that enhances energy security for both military uses and civilian aviation. A diverse approach to energy security—one that includes both conventional and new sources—would benefit the economy and enhance our military capability.
- *Defense Meteorological Satellite Program.* The Department objects to Senate section 1607, which would limit the availability of all funding for the Defense Meteorological Satellite Program (DMSP)-20 and its launch until several prerequisites are met. The Department is committed to launching its satellite by no later than 2017 and section 1607 would unnecessarily delay this launch, elevating risks to a variety of national missions and incurring hefty storage costs while these reporting requirements are satisfied. By 2017, only one DMSP satellite will be within its design life. This recently-refurbished satellite will satisfy

space-based environmental monitoring needs for which the Department is responsible and is a cost effective solution. Because weather satellite data are shared among defense, intelligence, civil, and international users, delays in launching this satellite would have broad implications, including reduced accuracy of weather prediction models and degraded efficiency of surveillance and reconnaissance platforms.

Management of Department Personnel and Infrastructure for Maximum Efficiency. To optimize the efficiency of the Department, the Secretary must have the ability to organize, structure, and manage Department personnel and infrastructure. The Department strongly objects to provisions in the bill that would limit this ability.

- *Defense Acquisition.* As outlined in recent correspondence on this issue, the Department strongly objects to Senate section 843 and related provisions, which are inconsistent with the Secretary of Defense's exercise of authority, direction, and control over all DOD programs and activities. Section 843 would significantly reduce the Secretary of Defense's ability—through the Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L))—to guard against unwarranted optimism in program planning and budget formulation, and prevent excessive risk taking during execution—all of which is essential to avoiding overruns and costly delays. Program planning, management, and execution are already Service responsibilities. The prohibition on documentation without a determination by the Deputy Chief Management Officer also would abrogate the ability of the Secretary and Under Secretary to conduct routine execution monitoring of programs, thus handcuffing their ability to intercede unless and only until notified programs are at risk of failure. DOD is committed to reducing unnecessary bureaucracy and continuing the important work of improving the performance of its defense acquisition system in close coordination with Congress, including increasing the military Service Chiefs' role. The Department strongly objects to these provisions because they would not accomplish that goal, and would significantly increase the risk of overly optimistic program planning and budgeting.
- *Prohibition on Conducting Additional BRAC Round.* Provisions in both bills which would preclude any funds being authorized for use toward an additional BRAC round would impair the ability of the Executive Branch to plan for contingencies or make other needed adjustments that would improve military effectiveness and efficiency.
- *Streamlining DOD Management and Operational Headquarters.* While the Department welcomes the support for DOD's plans to reduce headquarters personnel and spending by 20 percent in section 351 of the Senate bill, the Department strongly objects to any provision that: (1) fails to acknowledge the reductions that have already occurred; (2) directs reductions in activities other than headquarters or headquarters staff support functions or excludes activities that include headquarters and headquarters staff support functions; or (3) requires deep, across-the-board cuts that would undermine critical functions that support the warfighter. The Department's execution of then-Secretary of Defense Hagel's Department-wide 20 percent headquarters reduction plan projects savings of \$5.3 billion and the realignment of over 11,000 military and civilian billets from headquarters activities to higher Departmental priorities. This means that there will be 11,000 fewer positions in DOD headquarters and more workforce and budgetary resources available to support the operational requirements of the Department. The Department will continue to work to ensure

that only necessary resources are applied to headquarters activities while more resources are available for critical and warfighter needs. The Department urges the conferees to exclude section 351 of the Senate bill and adopt an amendment to section 905 of the House bill that addresses these concerns.

- *Operation and Maintenance and Military Personnel Reductions.* The Department objects to the billions of dollars of undistributed reductions in the House and Senate bills across the operation and maintenance and military personnel accounts. The operation and maintenance reductions would be applied to those programs which support readiness, depot maintenance, base operations support, and facilities sustainment, restoration, and modernization line items. These reductions would delay the Department's full-spectrum readiness recovery efforts and increase the backlog of maintenance at the military departments' depot facilities.
- *Revised Policy on Network Services for Military Services.* Senate section 591, which would require the Secretary of Defense to minimize and reduce, to the maximum extent practicable, the number of uniformed military personnel providing network services to military installations within the United States, would arbitrarily cut the military cyberspace workforce without sufficient regard to the impact on cyberspace operations and force readiness. In particular, the Navy and Marine Corps are maritime, forward-deployed forces that provide their own organic network services and support in the afloat and expeditionary operational environment. It would be neither fiscally nor operationally feasible for them to transition the responsibility for enterprise networks to a civilian-only model. Section 591 also would prevent cyberspace forces from fully understanding DOD information network operations, and affect the training of military members in support of military operations both within the Continental United States and to the tactical edge. The ability to attract, train, employ and retain the Department's cyberspace workforce depends in large part upon the capacity of the Services to offer professionally meaningful assignments, hands-on oversight, operation and support of information networks at the installation, post, camp and station level.
- *Annual Reports of the Chief of the National Guard Bureau.* The Department strongly objects to Senate section 1066, which would undercut the title 10, United States Code, authorities of the Secretaries of the Army and the Air Force to organize, train, and equip the active and reserve components of the Army and the Air Force by having the Chief of the National Guard Bureau report on the ability of National Guard to meet its federal missions directly to the Secretary of Defense instead of through the responsible Secretaries. In requiring the Chief of the National Guard Bureau to report on the ability of the National Guard to carry out emergency support functions of the National Response Framework independent of the Secretaries of the Army and the Air Force, the provision fails to consider the contributions available from all regular and federal reserve forces, and would not provide a comprehensive, holistic look at military capabilities available to governors since it does not include the significant capabilities available within those Reserve Components for which the Chief of the National Guard Bureau has no oversight, authority, or responsibility.

Compensation and Benefits to Attract and Retain the Force of the Future. To sustain and attract the force of the future, the Department believes it is imperative to slow the growth of personnel costs and modernize military healthcare.

- ***Military Pay Raise.*** The Department strongly opposes the automatic 2.3 percent military pay increase included in the House Bill. The Department appreciates the 1.3 percent pay increase in the Senate provision for members in pay grades O-6 and below; however, the Department opposes the continued pay freeze for military members in the grades of O-7 through O-10. The cost of increasing the FY 2016 military pay raise by the additional 1.0 percent, which would occur under the House bill, would be \$672 million in FY 2016 and approximately \$4.3 billion over the Future Years Defense Program. The Department urges support of the Senate provision to authorize a 1.3 percent military basic pay increase, modified to include all military members, consistent with the FY 2016 President's Budget request.
- ***Compensation Reform and TRICARE.*** The Department appreciates the Senate's support for certain compensation reforms. In order to mitigate a projected significant shortfall in fiscal year 2016 in health care funding, the Department urges the conferees to support the Senate provision reasonably updating TRICARE pharmacy fees and to permit sensible management authority by DOD to improve the cost-effectiveness of health care services in military hospitals and clinics, adjust military and civilian staffing, and to develop the role of the Defense Health Agency in moving toward a more integrated health system.
- ***Military Compensation and Retirement Modernization Commission Recommendations.*** The Department also encourages Congress to support the recommendations of the Military Compensation and Retirement Modernization Commission for which the Department has transmitted legislation. These changes are a key step in modernizing the Department's ability to recruit, retain and maintain the talent we require of our Future Force. In addition, the Department encourages Congress to adopt the other elements of our proposal regarding the commissaries as the primary means to offset operating costs and develop effective commissary business practices without significantly affecting patron savings. Finally, the Department renews the strong objection articulated in the Statement of Administration Policy to restrictions in Senate section 604 on Basic Allowance for Housing (BAH) for uniformed service members who are married to another member and to limits on BAH for members who choose to share housing with other members.

Ensuring Treaty Compliance and Working Effectively with Foreign Partners. The Department has serious concerns with provisions in both bills that restrict the Department's ability to meet existing treaty obligations or affect our ability to work with foreign partners.

- ***Limitation on Funds for Implementation of the New START Treaty.*** The Department strongly urges the conferees to exclude House section 1249, which would prohibit the obligation of FY 2016 funds for New START Treaty implementation activities. The prohibitive language will limit the Air Force and Navy's ability to safely, securely, and effectively implement New START by the Treaty Central Limits deadline of February 2018. The New START implementation plan balances efforts to reach New START limits while also managing and maintaining the force. Little to no margin remains in the schedule and any delays to implementation may affect force readiness and availability and would limit the Department's ability to safely, securely, and effectively meet Treaty obligations. As such, this provision would constitute a serious risk to New START compliance and would result in the United States failing to meet legally binding, international obligations. The Department urges the

conferees to eliminate the provision so as to allow implementation activities to proceed as planned.

- *Prohibition on De-alerting Intercontinental Ballistic Missiles.* The Department also urges the conferees to exclude or modify House section 1657, which prohibits the obligation or expenditure of FY 2016 funds to reduce, or prepare to reduce, the responsiveness or alert level of United States intercontinental ballistic missiles (ICBMs). The clarifying language specifically allows activities required for ICBM maintenance or sustainment and ensuring ICBM safety, security, or reliability. Unfortunately, the clarifying language fails to specifically allow New START missile non-deployments, which are a treaty compliance requirement and not accomplished for maintenance or sustainment purposes. While we understand the provision does not address New START reductions, the Department urges the conferees to either eliminate or amend the provision to specifically allow reductions in deployed intercontinental ballistic missiles to meet New START limits.
- *Counterterrorism Partnerships Fund.* The Department objects to the elimination of the Counterterrorism Partnerships Fund (CTPF) in the House bill and the reduction of \$1.1 billion in the Senate bill because it removes a flexible, partnership-focused approach to counterterrorism. While the Department is appreciative of support for the border security and capability enhancements for Jordan, military construction, and specific counter-ISIL programs, redirecting CTPF funding to these other activities precludes the Department from building on existing tools and authorities to respond to a range of terrorist threats. The Department has overcome many of the challenges associated with executing a new fund and continues to work to address specific concerns raised by Congress. The Department strongly encourages Congress to authorize the \$2.1 billion originally requested to continue support of CTPF activities in FY 2016.
- *Modification of Authority to Provide Assistance to Counter the Islamic State of Iraq and the Levant.* The Department strongly objects to House section 1223, regarding the direct arming of the Kurdish Peshmerga, Sunni Forces and other forces in Iraq, as it is inconsistent with the longstanding U.S. foreign policy of working to maintain a stable, unified Iraq and risks undermining the Government of Iraq's central authority and undercutting ongoing coalition military operations. This language also fuels the narratives in Iraq and elsewhere in the region that the U.S. intends to partition the country. This narrative directly counters U.S. and coalition efforts to demonstrate to all Iraqis that we are the partner of choice in the Middle East. Lastly, legislation focused on direct support to factions within Iraq potentially puts supporting U.S. forces at risk as a number of Shia groups have threatened publicly to attack U.S. personnel in Iraq should Congress pass legislation that facilitates Iraq's partition.
- *Open Skies Treaty.* The Department objects to House section 1244 and Senate section 1672, which would change the reporting requirement on the Open Skies Treaty to require the provision of an assessment to Congress of Russian proposals to introduce new or modified sensors or aircraft under the Treaty 90 days prior to the United States certifying the aircraft or sensors. The current reporting requirement is to provide the assessment 30 days prior to certification. The 90-days requirement is not feasible because it would not allow sufficient time for the U.S. Government to assess the Russian proposal adequately and is only 30 days after we would be informed of Russia's notification of intent to certify. The Department also

objects to House section 1265, which would limit the availability of RDT&E funds for arms control implementation in the Air Force until the Secretary of Defense reports to Congress on issues related to the Open Skies Treaty. This provision could affect the ability of the United States to modernize its observation aircraft sensors by delaying funding needed to upgrade from wet film to digital sensors.

- *Effective Peaceful Nuclear Trade.* As noted, the Administration strongly objects to House section 3119, which would limit and condition authorizations under 10 CFR Part 810 of technology transfers and assistance to countries that have a naval nuclear propulsion program, and as amended to those in which companies may reside that have violated trade sanctions. Countries with such programs include generally authorized countries such as Russia, China, India, and Brazil for which specific authorization is required. The Secretary would be prohibited from issuing authorizations with respect to such countries until the Director of National Intelligence and the Chief of Naval Operations submit an assessment to the specified committees of the risks of diversion of such nuclear technology transfer to a country's naval nuclear propulsion program, even if the technology or assistance has no relationship to or utility in naval propulsion. Halting these authorizations would have a significant negative financial impact on U.S. nuclear industry and on diplomatic relations between the United States and the impacted countries.

Ensuring Access to Space. The Department is committed to the same goals for space espoused in the House and Senate bills—assured access to space via commercially-viable, competitive, domestic launch providers using U.S.-developed launch systems for national security space. Provisions in the House and Senate bills would impede achievement of those goals.

- *Rocket Propulsion System Development Program.* The Department strongly objects to House section 1603, which would place restrictions on the funds to eliminate the Nation's use of non-allied space launch engines for national security space launches by 2019. The Department also strongly objects to moving Evolved Expendable Launch Vehicle (EELV) development funding into the more restrictive Rocket Propulsion System Development line item. The Department is committed to transitioning from the RD-180 rocket engine, but engine development is only part of the solution. While rocket engines are a major component of a launch vehicle, they are only one of many critical components. These components must be designed and developed together to meet the ultimate cost and performance goals, not only for the launch vehicle but also for the support, operations, and production infrastructure. Without a comprehensive strategy that ensures the availability of operational launch systems capable of lifting the entire national security space manifest, the government risks investing hundreds of millions of dollars without any guarantee of preserving assured access to space. For similar reasons, the Department strongly objects to the Senate section 1606; the requirement for a plan to develop and field a full-up rocket propulsion system would not, by itself, preserve the Nation's assured access to space.
- *Evolved Expendable Launch Vehicle Program Contracts.* The Department strongly objects to Senate section 1603, which would effectively eliminate the opportunity for meaningful competition during EELV Phase 2 and leave restrictions in place that could inhibit DOD's ability to maintain assured access to space for National Security Space satellites. The Department also strongly objects to Senate section 1604's restriction on the award of a future

contract or contract line item for the procurement of property or services for space launch capabilities, because procuring these capabilities from an EELV launch service provider may be required to maintain two families of launch vehicles and support the Department's mandate of having assured access to space. In the event that it is necessary for the Government to procure space launch capabilities, the Department will ensure that it does not create an unfair competitive advantage for any of the EELV launch service providers.

- *Allocation of Funding for Evolved Expendable Launch Vehicle Program.* Finally, the Department strongly objects to Senate section 1605, which does not account for the 2-3 year lead time between the procurement and launch of the system. There also is significant capability variation between single-core and three-core (heavy) launch vehicles.

Optimizing Deployment of Missile Defense Resources. While the Department appreciates the House and Senate's support of ballistic missile defense programs, the Department objects to provisions in both bills that restrict the Department's ability to manage these assets.

- *Missile Defense Capability in Europe.* The Department objects to House section 1668, which requires a concurrent anti-air warfare capability at the Aegis Ashore site in Poland and Romania by 2018. This would entail hardware and software upgrades not previously planned and would introduce additional costs and potentially delay the deployment in Poland. Installing this capability would also require amending previously negotiated agreements with the host nation as well as extensive discussions with our NATO Allies. For the same reasons, the Department objects to Senate section 1653, which would require a plan to deploy anti-air warfare capability to the Aegis Ashore sites in Poland and Romania. The Department also objects to the requirement in House section 1668 that a Terminal High Altitude Area Defense battery be available for rotational deployment to U.S. European Command's area of responsibility. This would constrain DOD's flexibility in managing these high-demand/low-density assets.
- *Continental United States Interceptor Site.* The Department objects to the House section 4601 authorization of \$30 million in FY 2016 for the planning and design of an East Coast missile field. The authorization is premature and other missile defense requirements have higher priority. The Department also objects to Senate section 1651, which would require DOD to provide a plan to accelerate by two years the fielding of a potential future Continental United States interceptor site within 30 days of the completion of the ongoing Environmental Impact Statement. Consistent with section 234 of the FY 2013 NDAA, DOD is already preparing a contingency plan and believes this added requirement is premature and inconsistent with best acquisition practices.
- *East Coast Homeport of Sea-based X-band Radar.* The Department objects to the House section 1673 requirement to homeport the Sea-based X-band (SBX) radar on the East Coast in 2020, which does not take into consideration the threat environment or cost and may constrain DOD's ability to best defend the United States. Finally, the Department objects to the Senate section 1652 requirement to deploy a long-range discrimination sensor by December 30, 2020, to defend against potential future long-range ballistic missile threats from Iran. DOD is conducting a comprehensive sensor analysis of alternatives, and mandating deployment of a missile tracking radar by 2020 is premature and unfunded.

- *Destruction of Anti-Personnel Landmines.* The Administration strongly objects to House section 1057, which would limit the availability of funds for the destruction of anti-personnel landmines. This provision would interfere with DOD's ability to implement the Administration's policy of working to eliminate anti-personnel landmine stockpiles other than those required for the defense of the Republic of Korea.