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

DEC 11 2012

The Honorable Carl Levin  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

As you conference the National Defense Authorization Act for FY 2013 (NDAA), I would like to call several provisions to your attention that affect the Department's ability to operate efficiently and effectively. These provisions are outlined 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. In making a recommendation to the President on whether to sign the bill, I will consider its cumulative effects. Unfortunately, the House and Senate bills include provisions that would divert \$8 billion in FY 2013 and \$74 billion over the next decade to unnecessary programs and activities, undermining our ability to execute the new defense strategy, and threatening our military readiness. If a conferenced bill is enrolled in the current form of either version of the NDAA without the modifications that we are requesting, I will join with the President's other Senior Advisors in recommending that he veto the legislation.

Despite our concerns with both bills, there are many provisions that will benefit the men and women of this Department. 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 John McCain  
Ranking Member



OSD015199-12



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

DEC 11 2012

The Honorable Howard P. "Buck" McKeon  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

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Despite our concerns with both bills, there are many provisions that will benefit the men and women of this Department. 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 Adam Smith  
Ranking Member



OSD015199-12

## **Department of Defense Concerns with H.R. 4310 and S. 3254**

The Department of Defense (DoD) urges the conferees to carefully review the Statements of Administration Policy (SAP) on H.R. 4310 and S. 3254 which lay out many issues of concern that remain for the Department. The Department must be allowed to eliminate unnecessary spending and redirect the savings to higher priority areas that will help achieve the President's defense strategy. If the Department is not allowed to make sound, responsible reductions to spending in certain areas, we would over time be forced to reduce spending on readiness and scale back investments in our defense strategy.

The Department strongly objects to provisions that would limit the Department's ability to implement the new defense strategy and ensure that scarce resources are directed to the highest priorities for the national security. The Department, therefore, objects to the provisions in the House bill that would restrict retirements of C-27J, C-23, C-130, other aircraft, and the RQ-4 Global Hawk Block 30. These provisions would force DoD to operate, sustain, and maintain aircraft that are in excess of national requirements and are not affordable in an austere budget environment. Delaying the divestment of the C-23 aircraft into FY 2016 and beyond, for example, would cost \$343.5 million for modernization and service life extension on the aircraft. By contrast, termination of the C-27J would result in \$2 billion in savings through FY 2018, termination of 31 Global Hawk Block 30 program aircraft would save \$3.8 billion through FY 2017, and retirement of C-5As would save \$2.5 billion through FY 2018.

Similarly, the Department strongly objects to Title XVII of the Senate bill, which would place limitations on funding to be used to divest, retire, or transfer units of the Air National Guard or Air Force Reserve, in addition to creating a commission to study the appropriate makeup of the Air Force. In light of the strong congressional opposition to the Air Force's original force structure changes, the Department would recommend adoption of the new plan designed by the Air Force. This plan would return 70 percent of the personnel and 30 percent of the aircraft, but still provide needed savings (\$7.8 billion of \$8.7 billion).

The Department also objects to provisions that would restrict retirements of nuclear-powered ballistic missile submarines and certain Ticonderoga Class Cruisers (CGs) and Dock Landing Ships (LSDs). The requirement to maintain a minimum of 12 ballistic missile submarines in the fleet – which is neither operationally required nor feasible during the transition between the current and future ballistic missile submarine classes – would limit the Secretary of the Navy's ability to manage Naval strategic forces to balance risk across the total Naval battle force and to ensure scarce resources are directed to the highest priorities of the Combatant Commanders. The proposed retirement of 7 CGs at a savings of \$2.3 billion through FY 2018 and 2 LSDs at a savings of at least \$0.5 billion through FY 2018 would enable the Department of Defense to carry out its new strategy while realizing significant savings.

Provisions in the House and Senate bills that would limit the Secretary's discretion in determining and executing force management efficiencies are also of significant concern. For example, Senate section 2705 would severely constrain the Department's ability to properly align the military's infrastructure with the needs of our evolving force structure. The Department strongly objects to section 403 of the House bill, which would limit active duty end-

strength reductions for the Army and Marine Corps in FYs 2014-2017 to 15,000 and 5,000 per year, respectively, and would require DoD to fund all Army and Marine Corps active duty end strength in the base budget and not through emergency, supplemental, or overseas contingency operations (OCO) funds. The timing and pace of the planned reductions to the Army and Marine Corps are tied to anticipated changes in operational demand based on the Nation's current commitments as well as the new defense strategy, which emphasizes a smaller and leaner force. Limiting the Army's budgeted end-strength reductions to 15,000 per year is estimated to increase military personnel and health care costs by over \$0.5 billion in FY 2014 and \$1.9 billion through FY 2017. At the same time, House section 1214 would require the Department to divert critical Army combat resources to perform routine security functions.

The Department continues in strong support of its requested TRICARE fee initiatives that seek to control the spiraling health care costs of the DoD while keeping retired beneficiaries' share of these costs well below the levels experienced when the TRICARE program was implemented in the mid-1990s. The Department is pleased that the bills do permit some increases in pharmaceutical co-pays, which are designed to help save money by providing incentives to use mail order and generic drugs. Especially because most of the savings come not from the pockets of the troops, but from reduced costs for mail order and generics, the Department strongly urges the conferees to accept the Administration's full proposal for pharmaceutical co-pays in order to maximize these incentives and associated savings. We also hope the conferees will reconsider and allow some further increases in TRICARE fees.

The Department appreciates the Senate's elimination of sections 313 and 2823 of the Committee bill, which would have limited DoD's ability to procure alternative fuels for military applications. Similarly, the Department urges the exclusion of sections 313 and 314 of the House bill from the final bill.

In addition, the Department continues to have strong objections to the detainee provisions in both the House and Senate bills. The SAP articulates our concerns with the various provisions. In particular, the Department strongly objects to sections 1031 and 1032 of the Senate bill, which intrude upon the Executive branch's ability to transfer detainees from the detention facility at Guantanamo Bay to foreign countries and determine where to prosecute and detain such detainees. These sections would preclude moving even convicted war criminals serving life sentences to more secure facilities in the United States that would also be more economically efficient. Since these restrictions have been on the books, they have limited the Executive's ability to manage military operations in an ongoing armed conflict, harmed our diplomatic relations with allies and counterterrorism partners, and provided no benefit whatsoever to our national security.

The Department strongly objects to several provisions related to Syria. Senate section 1235 would impede DoD's ability to effectively plan for options related to Syria, force the Department to disregard long-standing guidance on sharing planning information with Congress, and infringe upon the Executive branch's policy-making prerogatives. The Department also strongly objects to Senate section 1050, which prohibits the funding of contracts or agreements with Rosoboronexport, and House section 802, which attempts to obtain the same result by prohibiting the Department from contracting with entities that are controlled, directed or

influenced by a country that has provided weapons to Syria since 2003 or is currently a state sponsor of terrorism. Senate section 1050 would amount to a congressional de facto debarment of a named entity without regard to the administrative suspension and debarment process, a result that would undermine the ability of industry to rely on a fair and non-politicized process for being found ineligible for awards of Government contracts. While the section contains a waiver provision, the waiver provision is limited only to instances involving the capacity of the Afghan National Security Forces, which would preclude the Department from awarding other awards to Rosonboronexport, even if it would be in the national security interests of the United States to do so. With respect to House section 802, there is no mechanism in place that allows a contracting officer to identify firms barred from defense contracts by this provision beyond those already subject to U.S. sanctions. Furthermore, the Department is concerned that the House provision would adversely affect U.S. foreign and defense relations in the Western Hemisphere. If enacted, House section 802 could also complicate U.S. competitiveness in hemispheric defense markets such as Brazil and Canada by prohibiting the U.S. from partnering with leading defense companies in these countries that also do business with Cuba.

While the Department appreciates the support for its air and missile defense programs, the Department strongly objects to provisions in both bills (Senate section 236 and House section 229) that would prohibit the use of funds for the Medium Extended Air Defense System (MEADS) program. This prohibition will likely trigger a dispute with our German and Italian partners over the final year of funding agreed under the 2004 Memorandum of Understanding. Coming on the heels of a successful intercept test, this prohibition will not only jeopardize recent NATO missile defense commitments made by Germany and Italy, and the U.S.'s ability to secure a return on our investments to date, but will call into question future cooperative efforts. House section 223, which would require a missile defense site on the East Coast of the United States, is premature because the Administration has not identified a requirement for a third U.S.-based missile defense site, nor assessed the feasibility or cost in a cost-constrained environment. This section also would mandate the inclusion of a plan to deploy an appropriate missile defense interceptor for such a site in the budget request for FY 2014, an unwarranted intrusion on Executive branch decision making.

The Department would call your attention to the strong objection to the limitations on the President's ability to implement the New START Treaty and to set U.S. nuclear weapons policy (House bill sections 1053-1059), which explain in detail why these provisions could lead the President to potentially veto this important bill – an outcome that none of us desires.

The Department strongly objects to the limitations imposed by Senate section 2208 on the obligation and expenditure of United States and Government of Japan funds to implement the realignment of the U.S. Marine Corps units from Okinawa, to which the United States remains steadfastly committed. The provision would unnecessarily restrict the ability and flexibility of the President to execute our foreign and defense policies with our ally, Japan. In April 2012, the United States and Japan announced a new plan to implement the realignment of U.S. forces from Okinawa to Guam. Prohibiting the use of funds could adversely impact the United States' ability to move forward on the new plan. Additionally, the Department has serious concerns over the lack of authorization of appropriations for public infrastructure projects, as well as two military construction projects; essential upgrades to the fuel pipeline from Apra Harbor to Andersen AB,

and a parking apron at the North ramp that would provide theater-wide strategic capability. The reduction of \$233 million would impede the implementation of our new defense strategy, which calls for an increased focus on the Asia-Pacific region.

The Department urges the conferees to fully fund the Office of Security Cooperation in Iraq (OSC-I) and authorize OSC-I to conduct critical training activities for Iraqi Ministry of Defense and Counter-terrorism Service (CTS) personnel. This authority is needed to continue supporting the Government of Iraq's efforts to address Iraqi Ministry of Defense and CTS capability gaps (which was authorized through the Iraqi Security Forces Fund).

Provisions in the House and Senate bills that would limit the Secretary's discretion in determining and executing force management efficiencies are also of significant concern. The Department strongly recommends removing Senate subsection 932(a) that would set an absolute limit on Defense Human Intelligence manpower.

The Department also urges the conferees to accept section 711 of the Senate bill, which includes the rape and incest exception to the general prohibition on using appropriated funds to perform abortions under section 1093(a) of Title 10. The inclusion would make this provision consistent with other major abortion funding restrictions in Federal law.

The Department objects to the provisions in section 544 of the Senate bill, which mandates a survey scheme and records retention requirement that could violate victim privacy and severely hamper existing Departmental data and survey methodologies. As written, these two provisions would threaten the Department's ability to preserve the integrity of the Restricted Reporting option and undermine future Service members' participation in sexual assault prevention and response.