

**Priority Department of Defense Language Appeal
FY 2023 National Defense Authorization Bill**

Subject: Unidentified Aerial Phenomena Reporting Procedures

Appeal Citation: H.R. 7900, sec. 1663

Language/Provision: House section 1663 would require the Department of Defense (DoD) to establish a secure system for receiving reports of any event relating to Unidentified Aerial Phenomena (UAP) as well as any government or government contractor activity or program related to UAP at all classification levels. The secure system would be administered by “designated and widely known, easily accessible and appropriately cleared” employees or contractors assigned to the All-domain Anomaly Resolution Office (AARO), and information about the secure system, including clear public guidance for accessing and using the system, would be made available to the public on a DoD website.

Additionally, the heads of all departments and agencies of the Federal Government that have supported UAP investigations, including the Secretary of Defense, would be required to conduct comprehensive searches all records relating to non-disclosure agreements (NDAs), orders, or other obligations relating to UAP and make them accessible to the congressional intelligence committees, congressional defense committees, and congressional leadership.

Finally, the proposal would enable personnel to report through the secure system any information which might otherwise have implicated a written or oral NDA, order, or other instrument that could be interpreted as a legal constraint. The Senate Armed Services Committee included no similar provision in its version of the National Defense Authorization Act, but the Senate Select Committee on Intelligence included a similar provision in its mark of the Intelligence Authorization Act for Fiscal Year 2023, S. 4503, section 704.

DoD Position/Impact: The Department objects to the House provision because, as written, it could intrude on the President’s constitutional authority to manage classified information, information security, and information security systems. The requirements would also present unnecessary national security and counterintelligence risks by requiring the establishment of a publicly acknowledged system, with clear guidance to the public on how to access and use it, that is meant to provide for the sharing of classified and potentially compartmented information. The Department is concerned that establishing and managing such a system would be a resource-intensive undertaking that would detract critical personnel and financial resources from other important functions of the recently established AARO.

The Department shares the goal of establishing a secure mechanism to encourage and protect individuals who provide potentially classified information regarding UAP or UAP-related programs to authorized personnel in the AARO with the requisite need to know. However, the Department has existing authorities and mechanisms to enable such reporting that would fulfill the intent of the House provision without its associated concerns. For example, the Secretary of Defense may already authorize Department personnel to receive information, regardless of classification, in a protected manner consistent with Executive Order 13526, Executive Order 12968, and corresponding DoD and Office of the Director of National Intelligence directives.

The Department is also concerned that the requirement for the system to be administered by “widely known” and “easily accessible” DoD and Intelligence Community employees assigned to the AARO may present privacy, security, and personal safety risks to such personnel given the potentially polarizing nature of the UAP subject. To ensure the identities and contact information of such personnel are not inappropriately disclosed, the Department would object to the inclusion of the words “widely known” and “easily accessible” in subsection (b)(3) of the proposed provision.

Moreover, the language in subsection (c)(1) of the proposed provision assumes that the Department has the resources and capability to search for, retrieve, and provide all records relating to nondisclosure orders or agreements or other obligations—some of which may be decades old and implicate the Privacy Act—that will satisfy an unspecified congressional purpose. Indeed, any statutory requirement to establish a new system outside of existing and established mechanisms would require the expenditure of personnel and financial resources that would be better served elsewhere. As such, DoD is willing to work with Congress to achieve our common goals and objectives related to UAP reporting within existing frameworks.

The Department urges exclusion of the House provision and, alternatively, is eager to work with the conferees to revise the provision to address the above concerns.

Internal Control Notes:

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Submitting Component: (b)(6) (USA), I&S, (b)(6), (b)(6)

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Reviewing OGC Attorney: (b)(6), OGC-I, (b)(6)

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