



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

June 11, 2013
(House Rules)

STATEMENT OF ADMINISTRATION POLICY

H.R. 1960 – National Defense Authorization Act for FY 2014

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

The Administration appreciates the House Armed Services Committee's continued support of our national defense and supports a number of the provisions in H.R. 1960, the National Defense Authorization Act for Fiscal Year 2014. In particular, the Administration appreciates the support of the Committee for authorities that assist the warfighter in operating in unconventional and irregular warfare and countering unconventional threats, support capacity building efforts with foreign military forces, support contingency or stability operations, remove restrictions on the use of U.S. and Japanese funding for the activities related to the realignment of Marines to the Asia-Pacific region, as well its support for programs that would improve the health and well-being of the force. The Administration appreciates the support of the Congress in working to eliminate the threat that sexual assault in the military presents to our Service members and our national security. The Administration will continue to work with Congress to identify actions that can be taken to address this urgent priority that is essential to the health and readiness of our Armed Forces.

While there are a number of areas of agreement with the Committee, the Administration has serious concerns with certain provisions. Several provisions would constrain the ability of the Armed Forces to align military capabilities and force structure with the President's strategy, impede the ability of the Secretary of Defense to reduce overhead and make programs more efficient, and constrain efforts to implement the U.S. strategy for Afghanistan. In this time of fiscal pressure, we must ensure that scarce resources are directed to the highest priorities for national security. Moreover, H.R. 1960 assumes adoption of the House Budget Resolution framework, which would hurt our economy and require draconian cuts to middle-class priorities. These cuts could result in hundreds of thousands of low-income children losing access to Head Start programs, tens of thousands of children with disabilities losing Federal funding for their special education teachers and aides, thousands of Federal agents who can't enforce drug laws, combat violent crime or apprehend fugitives, and thousands of scientists without medical grants, which would slow research that could lead to new treatments and cures for diseases like cancer and Alzheimer's, and hurt America's economic competitiveness. As the Administration indicated previously, the President's senior advisors would recommend vetoing any appropriations legislation that implements the House Republican Budget framework.

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. The Administration also looks forward to reviewing a classified annex and working with the Congress to address any concerns on classified programs. However, if the bill is presented to the President for approval in its current form, the President's senior advisers would recommend that the President veto the bill.

Detainee Matters: The Administration strongly objects to sections 1032, 1033, 1034, and 1035, which unwisely and inappropriately interfere with the Executive Branch's ability to manage

detainees in a time of armed conflict. The President has repeatedly objected to the inclusion of these and similar provisions in prior versions of this law and has reiterated his call on Congress to lift the restrictions, most recently in his address to the Nation at the National Defense University.

Sections 1032, 1033, and 1034 are substantially similar to provisions found in the National Defense Authorization Act for Fiscal Year 2013 and to provisions found in previous years' defense appropriations bill and other legislation. They would continue unwise funding restrictions that would prohibit the construction or modification of a detention facility in the United States to house Guantanamo detainees, and would constrain our ability to transfer Guantanamo detainees, including those who have already been designated for transfer to other countries. Operating the facility at Guantanamo weakens our national security by wasting resources, damaging our relationships with key allies, and reinforcing propaganda used by al-Qaeda to attack the United States and our values. Prohibiting the transfer of detainees to the United States and restricting the transfer of detainees to the custody or effective control of foreign countries or entities in the context of an ongoing armed conflict may interfere with the Executive Branch's ability to determine the appropriate disposition of detainees and to make important foreign policy and national security determinations regarding whether and under what circumstances such transfers should occur. In addition, the restrictions in sections 1033 and 1034 would, in certain circumstances, violate constitutional separation of powers principles. They are also completely unnecessary. Even in the absence of these restrictions, the Administration has worked – and in the future would work – to ensure that any country receiving a detainee would take appropriate security and treatment measures if any detainee is transferred.

Section 1035 purports to require the Secretary of Defense to publicly release unclassified summaries containing information about detainees at Parwan determined to represent an enduring security threat to the United States no later than 120 days after the bill's enactment. This provision would intrude on the President's constitutional authority to maintain the confidentiality of sensitive national security information. The Administration urges that the provision be deleted or revised to make clear that public disclosure of this information is encouraged, but not mandatory.

New START Treaty Implementation Reductions and Nuclear Employment Strategy: The Administration strongly objects to sections 1052 and 1054(a)(2) and (b), section 1053's requirement that U.S. aircraft basing reductions be contingent on similar Russian reductions, and the reduction in authorization of funds associated with New START Treaty activities in sections 4101 and 4301. All of these provisions would impinge on the President's ability to implement the New START Treaty and to set U.S. nuclear weapons policy. In particular, section 1054(a)(2) would purport to restrict the President's constitutional authority to negotiate international agreements, including sole executive agreements for arms reduction, and section 1054(b) would impinge on the President's authority to determine the number of strategic delivery vehicles needed to meet national security requirements and implement changes in those forces as appropriate. Sections 1052 and 1053 would limit the President's authority to determine appropriate force structure to meet nuclear deterrence requirements and to set nuclear employment policy – authority exercised by every president in the nuclear age.

Missile Defense: The Administration strongly objects to sections 232 and 233. Section 232, which would require the Missile Defense Agency to construct and make operational an additional homeland defense site, ignores possible alternatives, ignores fiscal constraints, presumes a validated military requirement for a third U.S.-based missile defense site when none exists, and is at odds with Congressional direction to complete the evaluation and environmental impact assessment required by section 227 of the National Defense Authorization Act for Fiscal Year 2013. Section

233, which would limit the President's authority to determine military requirements in East Asia and around the globe and to deploy U.S. forces accordingly, precludes the best military advice of the Joint Chiefs of Staff, ignores the high-demand/low-density nature of our inventory of missile defense assets, especially given the current budget environment and resulting force levels, and undermines the ability to utilize flexible, adaptable, and relocatable capabilities that can be surged to defend U.S. interests and allies in other regions in times of crisis or conflict.

The Administration also strongly objects to sections 238 and 1253. Section 238 would require the President to use the North Atlantic Treaty Organization (NATO) Military Common-Funded Resource process to seek to fund the U.S. national contribution to NATO missile defense, which is contrary to NATO Alliance processes, contrary to longstanding NATO Alliance principles, and contrary to bilateral U.S. missile defense agreements with the Governments of Turkey, Romania, and Poland. Section 1253 would prohibit funds made available for FY 2014 or thereafter from being used to implement any executive agreement relating to the missile defense capabilities of the United States with a country unless the United States and that country have a treaty of alliance, a security guarantee, or a specific treaty or legislation for such activities. This restriction would impinge on the President's authority to conduct foreign policy and implement agreements that do not otherwise limit U.S. missile defense capabilities.

Overseas Contingency Operations (OCO): The Administration strongly objects to the provision of over \$5 billion in unrequested OCO funding in the bill. The President's Budget for FY 2014 fully funds OCO requirements.

TRICARE Fees and Co-Payments: The Administration believes that military retirees deserve an excellent, sustainable health care benefit. For this reason, the Administration strongly supports its requested TRICARE fee initiative that seeks to control the spiraling health care costs of the Department of Defense (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 projected FY 2014 TRICARE savings of \$902 million and \$9.3 billion through FY 2018 are essential for DOD to successfully address rising personnel costs. DOD needs these savings to balance and maintain investments for key defense priorities, especially amidst significant fiscal challenges posed by statutory spending caps. The Administration strongly urges the Congress to support the proposed TRICARE fee initiative.

Military Pay: The Administration strongly urges the Congress to include the Administration's proposal to slow the military pay raise growth to 1 percent in FY 2014. Consistent with the views of the uniformed military leadership, the Budget requests a 1.0 percent increase to basic pay, a 4.2 percent increase in the Basic Allowance for Housing, and a 3.4 percent increase in Basic Allowance for Subsistence. This total compensation level recognizes the sacrifices made by the men and women in our Armed Forces, while adhering to the current budget constraints faced by DOD. The higher pay raise provided by this bill would cost an additional \$0.6 billion in FY 2014 and \$3.5 billion from FY 2014 to FY 2018. As these costs are not offset, deeper reductions to troop levels as well as readiness and modernization accounts would be needed at a time when statutory spending caps require defense reductions.

Permanent Active Duty Minimum End Strength Level for the Army: The Administration strongly recommends deletion of section 402, which would establish a new minimum active duty Army end strength of 520,000 as of September 30, 2014. This new minimum level restricts the Army from adjusting end strength to maintain a deliberate and synchronized drawdown plan that maintains

operational readiness and accounts for the impact of sequestration across all programs, not just military personnel.

Expansion and Implementation of Protection of Rights of Conscience of Members of the Armed Forces and Chaplains of Such Members: The Administration strongly objects to section 530, which would require the Armed Forces to accommodate, except in cases of military necessity, "actions and speech" reflecting the "conscience, moral principles, or religious beliefs of the member." By limiting the discretion of commanders to address potentially problematic speech and actions within their units, this provision would have a significant adverse effect on good order, discipline, morale, and mission accomplishment.

Base Realignment and Closure (BRAC): The Administration strongly objects to section 2711, which would prohibit DOD from spending any funds to "propose, plan for, or execute" an additional BRAC round. This impinges on Executive Branch prerogatives to plan for contingencies or make other needed adjustments that would improve military effectiveness and efficiency. The Administration urges the Congress to provide the BRAC authorization as requested, which would allow DOD to rightsize its infrastructure as required to meet the fiscal limitation of statutory spending caps, while providing important assistance to affected communities. Without authorization for a new round of BRAC, DOD may not properly align the military's infrastructure with the needs of our evolving force structure, which is critical to ensuring that limited resources are available for the highest priorities of the warfighter and national security.

Limitation on Availability of Funds for Certain Authorities for Afghanistan: The Administration strongly objects to section 1224, which would prohibit the use of the majority of security and civilian assistance funds for Afghanistan until the Secretary of Defense certifies that a bilateral security agreement with Afghanistan has been signed and meets conditions stipulated in section 1224. This provision would hamper the President's ability to enter into an executive agreement with a foreign country, by decreasing U.S. negotiating leverage with the Afghan Government, and sends a counter-productive message to our allies and the Afghan people.

Limitations on Retirement of Weapon Systems: The Administration objects to section 132, which would prohibit the cancellation or modification of the C-130 Avionics Modernization Program (AMP), and to the authorization of \$47 million for Low Rate Initial Production kit procurement for the C-130 AMP. Retaining AMP would cost \$1.6 billion within the Future Years Defense Program (FYDP) and an additional \$1.1 billion after the FYDP to complete. DOD plans to cancel the C-130 AMP in part because there is a less expensive solution. DOD is conducting an independent cost benefit analysis, pursuant to section 143 of the National Defense Authorization Act for FY 2013, and it would be premature to reinstate AMP before the study is complete. Also, the Administration objects to section 1022, which restricts DoD from obligating or expending any FY 2014 funds for the retirement, preparation of retirement, inactivation, or storage of a cruiser or dock landing ship. Although the Congress has provided some near-term funding to operate and modernize these ships, such a restriction is unaffordable over the long term.

Weapon Systems Development: The Administration strongly objects to section 218, which would require the Secretary of the Air Force to develop a follow-on air-launched cruise missile to the AGM-86 that achieves initial operating capability for both conventional and nuclear missions by 2030. There is currently no requirement or funding in the Long Range Standoff Weapon program, to develop and field a conventional variant. The Administration also strongly objects to section 3121, which would require the evaluation of three separate life extension program (LEP) options

during the W78/88-1 Phase 6.2/2A Feasibility and Cost Study. The current study scope will inform a cost/risk/benefit decision on a warhead with an interoperable nuclear explosive package that can be used on multiple platforms. Changing the study scope to include separate, full scope LEP options for both the W78 and W88 would significantly delay completion of the feasibility study and increase LEP costs.

Modifications to Annual Reports Regarding the Condition of the Nuclear Weapons Stockpile: The Administration strongly objects to section 3132(b), which would direct "appropriate officials" (e.g., national lab directors or the Commander, U.S. Strategic Command) to submit annual assessment letters regarding the condition of the nuclear weapons stockpile directly to the defense committees if the Administration does not submit the assessments by the deadline established by statute. The Administration strongly believes that the subordinate officials should not submit the assessment letters directly to the Congress.

Alternative Fuels: The Administration strongly objects to sections 316, 318, and 319, which would impede DOD's use of alternative fuels. Sections 318 and 319 would inhibit development of a diverse, cost-competitive energy supply that enhances American energy security. A diverse approach to energy security—one that includes both conventional and new sources—will provide an enduring benefit for our economy and military capabilities. Section 316, which would exempt DOD from section 526 of the Energy Independence and Security Act of 2007, undercuts a law passed with strong bipartisan support that provides an environmentally sound framework for the development of future alternative fuels.

Nuclear Treaty Matters: The Administration strongly objects to section 1254, which would prohibit the obligation or expenditure of FY 2014 funds for Threat Reduction Engagement activities until the President certifies to the Congress that no state party to the Comprehensive Nuclear Test Ban Treaty has undertaken nuclear weapons test activities in FY 2013 that are inconsistent with the United States interpretations regarding obligations under such Treaty. The Administration also objects to section 1055, which would require the President to consult with the Congress and submit a plan for engaging foreign countries that are found to be not in compliance with their treaty obligations. Both provisions would hamper the President's ability to execute foreign policy.

Extension of Authority for Task Force for Business and Stability Operations in Afghanistan: The Administration requests that the House include the Task Force for Business and Stability Operations (TFBSO) in Afghanistan proposal, which would reauthorize the continuation of key projects in Afghanistan that bolster its economic stability. Because many of these projects are conducted in direct coordination and partnership with Afghan ministries, the abrupt cessation of TFBSO would erode trust the U.S. Government has built with the Government of Afghanistan.

Office of Security Cooperation in Iraq (OSC-I): The Administration appreciates the Committee's continued support for the OSC-I. However, section 1214 does not include the Administration's requested language to authorize the OSC-I to conduct non-operational training activities in support of the Iraqi Counter Terrorism Service (CTS) personnel. This authority is needed to continue supporting the Government of Iraq's efforts to address Iraqi CTS capability gaps.

Joint Urgent Operational Needs Fund (JUONF): The Administration objects to the elimination of funding request for JUONF. This funding is critical to DOD's ability to quickly respond to urgent operational needs of Combatant Commanders. Elimination of funding may delay fielding of important capabilities that help accomplish critical missions.

Building Capacity of Foreign Military Forces: The Administration appreciates the continued support of the Congress in section 1201 for building partnership capacity in foreign military and security forces, but has concerns regarding provisions addressing theater security priorities and advanced project formulation. Section 1201 could undermine the speed and flexibility of section 1206 authority. We look forward to working with the Congress to integrate authorities with the implementation of the recent Presidential policy on security sector assistance.

Iraqi and Afghan Special Immigrant Visas (SIV): The Administration appreciates the inclusion of section 1216, relating to authority for SIVs for certain Iraqi and Afghan allies. The Administration supports extension of these programs, but notes its concern that the periods of extension provided for under section 1216 are not sufficient to meet projected program demand for either Iraq or Afghanistan. Further, the much reduced number of visas for the Afghan SIV program – just 435 per year – falls well short of expected demand, as evidenced by the volume of applications in FY 2013 to date. We look forward to working with the Congress on these and other appropriate modifications to section 1216 to ensure Iraqi and Afghan allies who have aided U.S. efforts in these countries through their work, and who are experiencing an ongoing serious threat as a result, are able to apply for these visas.

Defense Clandestine Service (DCS): The Administration strongly objects to section 923, which would restrict the implementation of the DCS. The Administration remains committed to working with the Congress to resolve its need for additional information on DCS but should not be limited to defense priorities in the implementation of this important intelligence collection program.

National Intelligence Program Consolidation: The Administration strongly objects to section 924 because the provision's prohibitions would impinge on the President's prerogatives to seek efficient budget structures and unduly constrain the President in future budget decisions.

Transportation of Supplies for the United States by Aircraft Operated by United States Air Carriers: The Administration strongly objects to section 1082, which would require Federal agencies, except DOD, to ship 50 percent of air cargo using aircraft that are owned by U.S. carriers and registered in the Civil Reserve Air Fleet (CRAF). This provision would not provide meaningful benefit for CRAF participants but would reduce operational flexibility and increase costs for Defense and non-Defense agencies. The Fly America Act already requires agencies to show preference for U.S.-flag carriers when soliciting contracts and to use those carriers where appropriate. The provision would increase costs to the taxpayer while decreasing the effectiveness and reach of U.S. programs worldwide.

Unrequested Funding: In this fiscally constrained environment, the Administration objects to the addition of unnecessary funding, for example \$168 million of unrequested increased authorization for the M-1 Abrams tank, and to the authorization of \$135.1 million of unrequested funding to procure and to field additional Light Utility Helicopters. The requirement for U.S. tanks will be fulfilled in December 2014, and the Army will not need to begin recapitalization of the Abrams tank fleet until the 2019 time frame.

Purple Hearts for Fort Hood and Little Rock Victims: The Administration objects to section 585, which would require the award of the Purple Heart to the service members killed or wounded in the attacks that occurred at Fort Hood, Texas, on November 5, 2009, and Little Rock, Arkansas on June 1, 2009. This provision is inconsistent with the award criteria for the Purple Heart.

Governance of Nuclear Security Enterprise: The Administration strongly objects to sections 3122 and 3202. These sections are premature with the ongoing work of the congressional governance advisory panel. The provisions to further expand the Kansas City Plant pilot could result in the unacceptable reduction of protection to workers, the public and security interests. The Administration is concerned that piece-meal exemptions for nuclear operations and possibly for other high-risk operations would serve to exacerbate inconsistencies and confusion, and add governance, management, and oversight uncertainty across the enterprise. Section 3202 severely hampers the ability of the Defense Nuclear Facilities Safety Board to provide external, independent oversight of DOE's defense nuclear facilities. The provision to respond to a Secretarial request to perform a cost-benefit analysis of a Board recommendation is inconsistent with the underlying precepts of adequate protection of public health and safety. These provisions inappropriately diminish the Secretary's role as operator and regulator of DOE's defense nuclear facilities and compromise the Defense Nuclear Facilities Safety Board's core mission to protect workers and the public.

Science, Technology, Engineering and Mathematic (STEM) programs: The Administration objects to restoring funding for the STARBASE program and the National Defense Education PK-12 program in section 4201 and 4301. This would perpetuate the Federal Government's fragmented approach to STEM education (more than 220 programs across 13 agencies) and is inconsistent with the Administration's proposed reorganization of STEM programs, which would improve STEM education quality and outcomes across the Federal Government.

Requirement to Withhold DOD Assistance to Afghanistan Equivalent to Taxes Assessed by Afghanistan: While the Administration agrees there is a significant opportunity to improve tax collection in Afghanistan, section 1217 could be counterproductive. This provision would also impose an unreasonable administrative burden on agencies and could inadvertently undermine capacity building efforts in Afghanistan.

Foreign Commercial Satellite Services: The Administration objects to the language in section 1605 that would prevent DOD from entering into contracts for satellite services that involve certain covered foreign countries, except when the Secretary of Defense, in consultation with the Director of National Intelligence, provides a waiver. Such a constraint would limit DOD's flexibility to provide timely support to the warfighter, who frequently requires expeditious access to satellite communications in areas with austere to non-existent communications infrastructure.

Government-wide Limitation on Allowable Cost for Contractor Compensation: The Administration appreciates the intent of section 813 to reform the cap establishing the reimbursement limit on compensation for contractor employees. However, the Administration urges adoption of its proposal that would tie the cap to the President's salary; this approach is more cost-effective and would achieve a better result for taxpayers than the proposed approach of retaining a high cap based on a flawed formula for most employees while allowing no reimbursement for the contractor's highest paid executives. The Administration looks forward to working with the Congress on adoption of a fiscally responsible cap that ends excessive contractor payments in a fair and effective manner.

Constitutional Concerns: 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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