



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
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(Senate)

## FOLLOW-ON TO STATEMENT OF ADMINISTRATION POLICY

### S. 2226 – National Defense Authorization Act for Fiscal Year 2024 (Sen. Reed, D-RI)

The Administration is grateful for and commends the strong, bipartisan work of the Senate Armed Services Committee (Committee) on behalf of America’s national defense. The annual National Defense Authorization Act (NDAA) is an essential step in securing the Nation, and the Administration supports ultimate passage of an NDAA for the 63rd consecutive year.

The Administration provides the Congress with additional views regarding the National Defense Authorization Act for Fiscal Year (FY) 2024, outlined below.

**Reestablishment of Position of Chief Management Officer (CMO).** The Administration strongly opposes section 902, which would reestablish the CMO; align to the CMO authority, direction, and control over the Defense Agencies and Department of Defense (DoD) Field Activities providing shared business services; and grant the CMO the authority to direct the Secretaries of the military departments and the heads of all other DoD Components. The reestablished position would structurally result in the same outcomes as the CMO position that the Congress eliminated. That elimination followed an independent outside review of the CMO, directed by the Congress, which concluded that the CMO had been ineffective in implementing its statutory duties and encouraged its disestablishment. Moreover, the realignment of Defense Agencies and DoD Field Activities away from their senior proponents in the Office of the Secretary of Defense would create gaps and ineffectiveness in the overall management and oversight of DoD. Finally, as the Government Accountability Office (GAO) has warned in the past, reorganization would only detract from needed focus on meeting key business process and financial management goals. Of note, since the disestablishment of the CMO, GAO has increased its rating on DoD’s leadership in these areas.

**Enabling Future Capability Transition.** The 2022 National Defense Strategy requires the United States to optimize the Joint Force and invest in capabilities that ensure U.S. warfighters maintain enduring advantages. DoD is committed to investing in equipment that is survivable, lethal, and resilient, and that makes responsible use of taxpayer dollars. This requires DoD to transition from capabilities that would not be survivable, lethal, and resilient in a future fight.

- **Nuclear-Armed Sea Launched Cruise Missile (SLCM-N).** The Administration strongly opposes section 1518, which continues funding for the SLCM-N and its associated warhead. The President’s 2022 Nuclear Posture Review concluded that SLCM-N, which would not be delivered before the 2030s, has marginal utility and would impede investment in other priorities. Further, deploying SLCM-N on Navy attack submarines or surface combatants would reduce capacity for conventional strike munitions, create additional burdens on naval training, maintenance, and operations, and could create additional risks to the Navy’s ability to operate in key regions in support of our deterrence and warfighting objectives. The U.S. has sufficient current and planned capabilities for deterring an adversary’s limited nuclear use through conventional and nuclear armaments, including the W76-2 low-yield submarine-launched ballistic missile warhead, the current Air-launched Cruise Missile, its successor (the Long-range Standoff weapon), and F-35A dual-capable aircraft that can be equipped with B61-12 nuclear gravity bombs. Further investment in SLCM-N would divert resources and focus from higher modernization priorities for the U.S. nuclear enterprise and infrastructure.
- **Limitation on Retirement of B83-1 Nuclear Gravity Bombs.** The Administration opposes section 1522, which would limit availability of funds for retirement of B83-1 nuclear gravity bombs. This would constrain DoD’s ability to adequately retire the program. It would also require additional funding to sustain and maintain the program, which would inhibit the Administration’s ability to resource other modernization programs, including follow-on, modern capabilities that may be better suited for defeating an adversary’s hard and deeply buried strategic targets.
- **Prohibition on Retirement of Certain Naval Vessels.** The Administration strongly opposes section 1023, which would limit the Department’s flexibility in exercising authority to decommission ships, including those that are not yet beyond the expected service life. Divesting ships on a case-by-case basis, as current law permits, allows the Department to prioritize investments.

**Amphibious Warship Force Availability.** The Administration strongly opposes section 1022, which would require adjusting scheduled maintenance and repair actions to maintain a minimum of 24 amphibious warfare ships available for worldwide deployment at any given time. Readiness levels for specific force elements are directed annually through the Joint Staff’s Directed Readiness Tables, which are operationally informed and adhered to by Services. Maintenance and repair actions must be scheduled to ensure the correct balance of near-term readiness and overall capability to support future readiness. Maintaining more than 77 percent of a 31-ship amphibious force for potential operational availability would require delaying other necessary maintenance, modernization, and repair activities, resulting in fewer and less capable ships ready for operational tasking and severely limiting options to maintain and improve the force.

**Diversity, Equity, and Inclusion Provisions.** The Administration strongly opposes provisions (sections 535, 537, 583, and 928) that would eliminate DoD’s longstanding efforts to ensure equal opportunity for all Service members and civilian employees. To remain the strongest fighting force in the world and effectively compete in today’s job market, DoD must recruit, retain, and develop top talent from all of America. DoD’s strategic advantage in a complex global security environment is the diverse and dynamic talent pool from which we draw. We rely on a broad range of perspectives, experiences, and skillsets to remain a global leader, deter war, and keep our Nation secure. When our Service members face discrimination in their military careers because of who

they are, it threatens our force readiness. Moreover, DoD remains committed to developing and maintaining a dignified, respectful, and safe workplace, in line with our mission to take care of our people in recognition of the sacrifices they and their families make. With recruiting and retention challenges shaped by a competitive labor market and decreasing propensity to serve, it is more important than ever to attract and retain a wide range of skilled candidates.

**Service Member Medical Malpractice Claims.** The Administration appreciates the Committee's interest in ensuring a fair and transparent system for adjudicating Service member medical malpractice claims. However, the Administration strongly opposes section 714 for the reasons articulated below. Instead, DoD requests the opportunity to complete the report requested in the committee report and make appropriate adjustments internally to what is a new process.

- **Hearings and Appeals by a Board Established Jointly by the Chief Judge of the Court of Appeals for the Armed Forces and the Secretary of Defense.** Involving the Chief Judge of the Court of Appeals for the Armed Forces in a third-party review board to handle the claims appeal process would risk interfering with the court's appearance of independence, which has been crucial to its successful operation. In addition, requiring adversarial hearings runs counter to the entire premise of the original statute.
- **Physician Reports.** Broadly requiring DoD to obtain an opinion from a third-party board-certified physician is not the best way to obtain the necessary expertise to evaluate all claims (e.g., claims involving nurses). Additionally, requiring disclosure of an expert's identity directly conflicts with section 722, which appropriately protects the identity of experts used in the claims process, and could make it even more difficult to locate providers willing to conduct reviews for the claims process.
- **Non-Economic Damages.** Codifying a specific method of calculation of the cap on non-economic damages would preclude DoD from using a method that could result in a higher cap without seeking legislative change. Moreover, the inclusion of Virginia in section 714 as one of the states to use in the average is problematic in that Virginia does not have a specific cap on non-economic damages. Instead, Va. Code Ann. § 8.01-581.15 uses one cap for *all* damages, both economic and non-economic. Including Virginia among the four states to be used in the average, therefore, could result in a lower damages cap than DoD otherwise would use.

**Integrated Air and Missile Defense Architecture for the Indo-Pacific Region.** The Administration has concerns with section 1537(d), which would limit the repurposing of Homeland Defense Radar – Hawaii (HDR-H) hardware until the submission of the first report to Congress, no later than March 2024. Section 1537 is inconsistent with section 1665(b)(4) of the FY 2022 NDAA, which requires the Missile Defense Agency (MDA) to “leverage existing programs of record to expedite the development and deployment of the architecture during the five-year period beginning on the date of the enactment of the Act.” DoD postponed HDR-H in 2019, and no funds have been appropriated for the program since FY 2022. MDA is currently utilizing the HDR-H hardware on a rent free, non-interference basis to facilitate the earliest possible Defense of Guam deployment schedule. Section 1537(d) would prevent MDA from continuing to use HDR-H hardware to reduce production lead time for equivalent hardware to support the Defense of Guam architecture and would result in an additional hardware cost of \$148 million and a minimum of 48-month schedule impact, delaying delivery of this critical Integrated Air and Missile Defense capability to the Commander of the United States Indo-Pacific Command for defense of Guam.

**Program of Standard and Requirements for Microelectronics.** The Administration strongly opposes the redirection of execution called for in section 216 that would severely disrupt existing programs that are the cornerstone of DoD's access to assured microelectronics. This section could impact DoD's ability to leverage commercial microelectronics fabrication capabilities for leading-edge microelectronics for weapons systems. Redirecting execution of these programs may also result in a significant increase in cost to the Microelectronics Commons that could have a detrimental impact on DoD's support for the CHIPS and Science Act. Furthermore, while the National Security Agency (NSA) has unique expertise in microelectronics and will continue to partner with DoD on related efforts, NSA does not have the acquisition and technical expertise required to support the full breadth of DoD microelectronic requirements (e.g., electronic warfare, radar signal processing, and acoustics). DoD remains focused on developing and transitioning the tools, techniques, and technologies necessary to acquire assured microelectronics for future capabilities and weapon systems.

**Overseas Cost-of-Living Allowance (OCOLA) Adjustments.** The Administration strongly opposes the provision in section 608 that would limit the amount of an OCOLA decrease based upon changes in relative retail prices to no more than 10 percent of the amount paid to the Service member, potentially imposing an artificial floor under a member's OCOLA. The allowance is intentionally designed to adjust based upon changes in relative prices of goods and services to ensure that, in overseas locations, a member's purchasing power remains on par with that of members assigned within the continental United States. If a member were to be permanently reassigned and lose an artificially inflated OCOLA, the member would experience hardship from a more severe allowance readjustment.

**Prohibition on Requiring Defense Contractors to Provide Information Relating to Greenhouse Gas Emissions.** The Administration strongly opposes section 820, which would prohibit DoD from requiring submission of certain emissions and climate data from defense contractors for two years and from non-traditional defense contractors indefinitely. Many non-traditional defense contractors are large entities; they cumulatively receive more than \$100 billion in revenues from Federal contracts in FY 2022. The provision would prevent DoD from exercising due diligence in assessing risks to potential contract awardees, counter to the interests of U.S. taxpayers, existing legislative requirements, and international agreements.

**Modification of Foreign Military Sales Processing.** The Administration strongly opposes section 1299K, which would require the Secretary of Defense to seek to ensure responses to a Letter of Request (LOR) for Pricing and Availability (P&A) or a LOR for Letter of Offer and Acceptance (LOA) are made within a specified time period from receipt. This would shift the focus to reporting and divert attention from case development and case execution for critical foreign military sales. In the case of P&A requests, the 45-day timeline does not take into consideration any required technology security foreign disclosure releases and reviews that may be required, nor the time necessary to obtain estimates from industry, which could lead to negative responses or the provision of inaccurate planning information. Requests for LOAs may require additional time to define requirements, obtain pricing information, coordinate release determinations, and develop the final

response; mandating waivers and reporting would only further delay processing. In addition, LOAs vary widely in complexity and priority. Mandating P&A/LOA turnaround times as proposed does not account for these variables and would significantly decrease DoD's ability to prioritize.

**Assistance to Israel for Aerial Refueling.** The Administration strongly opposes section 1212, which would direct the Air Force to conduct specific actions in executing a KC-46 foreign military sales case with Israel. Section 1212 would require the Air Force to implement training and exchange programs within a timeframe that is not technically executable. The Air Force is actively planning KC-46 training and exchange programs with the Government of Israel and will execute such programs on a timeline, and in a manner, that is mutually agreeable to the U.S. and Israeli Air Forces.

**Guantanamo Bay Detention Facility (GTMO) Prohibitions.** The Administration strongly opposes sections 1031, 1032, 1033, and 1034, which respectively would extend the prohibitions on the use of funds to: close or relinquish control of the GTMO detention facility; transfer GTMO detainees to the United States; construct or modify facilities in the United States to house transferred GTMO detainees; and transfer GTMO detainees to certain countries. These provisions would interfere with the President's ability to determine the appropriate disposition of GTMO detainees and to make important foreign policy and national security determinations regarding whether and under what circumstances to transfer detainees to the custody or effective control of foreign countries.

**User Activity Monitoring (UAM) for Cleared Personnel and Operational and Information Technology Administrators and Other Privileged Users.** The Administration strongly opposes section 1621, which would limit DoD's agility to adapt UAM policy to accommodate emerging technologies, new mission requirements, and resource limitations by codifying a series of explicit requirements. As DoD and the Intelligence Community (IC) collaborate on improving security and countering insider threats in response to recent unauthorized disclosures, it is critical to maintain the flexibility to incorporate the lessons learned from ongoing reviews to implement the best practices and procedures for all security measures, to include UAM.

**Unfavorable Security Clearance Eligibility Determinations and Appeals.** The Administration opposes section 1043, which would undermine both the Secretary's authority to determine the most effective means for providing security clearance due process and appeals and the authority of the Director of National Intelligence with respect to IC elements within the DoD. As of April 6, 2023, after extensive research, coordination, and analysis of options, DoD is reforming due process and appeals for DoD by requiring all DoD components with the authority to adjudicate security clearance eligibility to implement certain reforms to simplify and standardize their processes. DoD is continuing assessment of additional reforms. By requiring the consolidation of due process and appeals, section 1043 would disregard years of thorough analysis and undermine existing fair and efficient processes employed by IC elements within DoD.

**Reprioritization of Military Construction Funding to Unrequested Projects.** The Administration opposes the bill's realignment of military construction funding from priority projects to other projects. Contrary to the Administration's fiscally responsible policy to fully fund executable projects, the bill proposes to fund 22 military construction projects incrementally. This

would effectively create an unfunded obligation of almost \$2.5 billion needed to successfully execute these projects over time, would divert those funds to projects that either are not executable in FY 2024 or were not higher priorities than the requested projects, and would make that amount unavailable for other defense requirements by encumbering it in future fiscal year topline.

**Provisions on Assignments of Responsibilities and Organizational Structure.** The Administration opposes the level of prescription to DoD in sections 904, 922, and 1605. These provisions would assign roles, oversight, and structure within the Secretary of Defense's staff that are overly prescriptive and introduce unintended issues. In particular, the Administration strongly opposes section 922 because it would transition oversight responsibility for the Defense Technology Security Administration (DTSA) from the Under Secretary of Defense for Policy (USD(P)) to the Assistant Secretary of Defense for Industrial Base Policy. This would be unprecedented and would directly conflict with existing law, which vests authority over export control matters in the USD(P). In addition, section 1605 specifically directs the Chief Digital and Artificial Intelligence Officer to designate or establish one or more executive agents for specific responsibilities; however, typically executive agents are established by law or designated by the Secretary of Defense.

**Use of Middle Tier Acquisition Authority for Space Development Agency (SDA) Acquisition Program.** The Administration opposes section 1505, which would require the Director of SDA to use middle-tier acquisition authority for rapid fielding of satellites and associated systems for Tranches 1-3 of the proliferated warfighter space architecture of the SDA. DoD policy requires reviewing each acquisition program to determine which acquisition pathway best balances risk with development and delivery of capability to the warfighter. Tranche 1 transport and tracking layers already have been approved for the middle tier of acquisition pathway. A different acquisition pathway may be most appropriate to achieve capability for other tranches or elements of the proliferated warfighter space architecture.

**Pantex Explosives Production Capability.** The Administration opposes section 3114, which would direct the National Nuclear Security Administration (NNSA) to establish a conventional high explosive (CHE) manufacturing capability at the Pantex Plant to support the W87-1 Modification Program. The Nuclear Weapons Council has approved the use of insensitive high explosives (IHE), rather than CHE, to meet the needs of the W87-1. NNSA has sufficient access to CHE through DoD and the Holston Army Ammunition Plant in Tennessee, and a CHE production capability cannot be established at the Pantex Plant in time to support the W87-1 schedule.

**Bioassurance.** The Administration opposes section 3115, which would prevent NNSA from establishing an enduring bioassurance program. While the Administration agrees that the NNSA Bioassurance program must remain narrowly focused, NNSA has a unique capacity to leverage its technical capabilities and threat reduction expertise to support monitoring, early detection and warning, and attribution of strategic biothreats that can aid in closing existing gaps.

**Irregular Warfare.** The Administration opposes section 1071, which would affirm the authority of the Secretary of Defense to conduct irregular warfare and require DOD to define irregular warfare for the purposes of joint doctrine, because it is unnecessary. The Administration is prepared to work with Congress to ensure appropriate executive and legislative branch oversight of irregular warfare activities.

**Significant Foreign Assistance and Policy Provisions.** The Administration is concerned that sections such as 1011, 1201, 1241, 1243, 1251, 1292, and 1293 do not include a requirement for Secretary of State concurrence and so would provide insufficient means for the Secretary of State to provide input to ensure foreign assistance or engagement is carried out in a manner consistent with foreign policy priorities.

**Afghanistan Special Immigrant Visas (SIV).** The Administration remains steadfast in its commitment to resettle Afghans who have supported our mission in Afghanistan for more than two decades. Since the Congress passed the Afghan Allies Protection Act in 2009, the U.S. Government has used the Afghan SIV Program to resettle over 115,000 Afghans and their family members in the U.S. In bipartisan support of this effort, the Congress has continued to increase the Afghan SIV cap annually. However, despite the Administration’s request to further increase the SIV cap in FY 2024 by 20,000 and to extend the SIV program beyond December 31, 2024, the Committee-reported NDAA bill does not provide for such an increase or extension. The Administration strongly urges the Congress to continue to demonstrate our commitment to our Afghan partners by extending the program beyond 2024 and by increasing the Afghan SIV cap in the final FY 2024 NDAA to ensure sufficient visas are available as processing throughput increases.

**Military Justice Matters.** The Administration appreciates the Committee’s continued work to advance military justice reform, and strongly supports section 542 (c), which would give the military services’ Offices of Special Trial Counsel the discretion to consider cases for certain covered offenses involving incidents alleged to have taken place before December 27, 2023. The Administration also strongly supports the Committee’s efforts to strengthen protections for victims of domestic violence and stalking, and welcomes section 542(d), which clarifies the application of Articles 128b and 130 to dating partners. This critical provision codifies the recommendation to do so from the Independent Review Commission on Sexual Assault in the Military.

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