



SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-1000

JUL 13 2016

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

Dear Mr. Chairman:

As you begin the conference on the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, I write to identify my significant concerns with a number of the provisions that appear in the House or Senate-passed bills and would impact the Department's ability to operate efficiently and effectively in this time of constrained resources and ongoing conflict.

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 provisions in your bill that further these vital objectives. However, an ever-escalating number of provisions – many of which overlap or ignore recently-instituted reforms that we have jointly collaborated on – are creating a sense of whiplash in the Department and have the potential to setback progress that we have made to date.

I am surprised and disappointed about the extent to which provisions in the bills could adversely affect our enterprise, to include discarding well-reasoned, necessary force management and budgetary decisions of the Department's senior, expert civilian and uniformed leaders. Individually and cumulatively, both bills intrude into organization, deliberation, and decision-making processes of the Department and attempt to dictate precisely key aspects of the structure, operations, and day-to-day management of the Department. As they are currently drafted, the bills threaten the Department's ability to effectively and efficiently fulfill its obligations, and threaten the proper balance of the constitutional separation of powers of the federal government. I urge you to address the following concerns during your conference.

My first and most urgent concern is that the House bill fails to provide our troops with the resources they need to fight our enemies around the world and keep our nation safe. Instead of fully funding wartime operations such as INHERENT RESOLVE to defeat the Islamic State of Iraq and the Levant (ISIL), the bill would redirect \$18 billion of Overseas Contingency Operations (OCO) funds toward base budget programs that the Department of Defense (DoD) did not request, cutting off critical funding for wartime operations after April 30, 2017. The bill would buy excess manpower and equipment without the money to sustain them, driving us towards the creation of hollow force structure, undermining DoD's efforts to restore readiness,

and crowding out critical modernization investments needed to deter adversaries who are themselves rapidly modernizing.

Particularly troubling, the House bill's funding approach also threatens to unravel the stability provided by the Bipartisan Budget Act of 2015, and, in so doing, risks jeopardizing the conditions needed to reverse over \$100 billion of looming sequestration cuts to DoD. The return of these sequestration cuts represents by far the biggest risk to the Department over the Future Years Defense Program (FYDP). By gambling with warfighting funds, the bill risks the safety of our men and women fighting to keep America safe, undercuts stable planning and efficient use of taxpayer dollars, dispirits troops and their families, baffles our allies, and emboldens our enemies. In short, it is an approach that is objectionable on its face.

My next most serious concern is the effect of numerous provisions that direct the Department in excessive fashion and pull the Department further away from our shared goal of a more agile, innovative, and efficient organization that can best serve our national security interests. The Department welcomes rigorous oversight and congressional direction, including that which is aimed at improving the Department's efficiency and effectiveness. However, when taken in total, the many intrusive provisions found in the House and Senate bills are not routine-and-vigorous oversight but instead excessive micromanagement. For example, the requirement that the Department provide Congress with restricted, sensitive, and confidential planning documents raises concerns regarding the ability of the Department to carry out confidential, candid, pre-decisional activities. Similarly, the Senate bill includes overly-prescriptive organizational and process requirements that will have unforeseen and negative consequences, adding bureaucracy rather than reducing it. For example, 131 acquisition policy provisions, 120 military personnel policy provisions, and 69 health care provisions in the House and Senate bills will require extensive implementation efforts by headquarters elements in the Office of the Secretary of Defense and the military services. At the same time, the two bills would not only reduce the number of senior leaders and the size of the responsible headquarters elements, but also direct that they be significantly restructured. This is not a formula for the successful management of a large enterprise.

The Senate bill also restructures key DoD functions in a haphazard manner by dividing responsibilities for policy and oversight of common acquisition, technology, and logistics functions into separate stovepipes managed by different Under Secretaries. It establishes a new Assistant Secretary that creates bureaucratic overlap with the Principal Advisors for Space and Cyber, both positions being established only recently. It mandates the use of cross-functional teams in an overly-prescriptive and heavily-bureaucratic fashion – requiring the issuance of numerous directives, charters, metrics and plans, and ignoring the effective manner in which the Department uses cross-functional teams today. And in some areas it appears to assign extensive duties to lower-level officers who exceed the assigned responsibilities of the senior officials to whom they report.

Moreover, all of this restructuring is supposed to go on with another round of across-the-board headquarters reductions on top of ongoing efforts by the Department to right size our management staffs. Once the current round of congressionally-mandated headquarters reductions is complete, DoD management headquarters will comprise 1.6 percent of Total Force

manning, compared to 1.2 percent on average in the private sector. This slightly larger size is easily explained by the scope of the Department's mission and the unique tasks that no commercial company is required to perform, such as exercising civilian control of the military, managing interagency deliberations and collaboration, and responding to congressional inquiries and oversight.

Accordingly, at a time when the Department is actively working to implement last year's 25 percent headquarters reduction, yet another round of "peanut butter spread" cuts – including reductions in the number of Senior Executive Service employees, General and Flag officers, and headquarters contractors – will damage the enterprise's ability to oversee global operations, support the warfighter and military families, and ensure the best stewardship of taxpayer dollars. Furthermore, these cuts are inconsistent with other provisions that would necessitate *increased* headquarters staff. For example, the Senate bill has a requirement to transfer responsibility for personnel background and security investigations of DoD personnel from the Office of Personnel Management to the Defense Security Service. This provision would increase costs, require the creation of duplicative management structures in DoD, place a mission on DoD that is already being consolidated in another part of the U.S. Government, and undermine the Department's ability to reduce headquarters staff. Instead of such proposed additions, we need to continue to implement the careful plan that we have developed to reduce headquarters elements in accordance with last year's requirements, while studying where additional targeted reductions make sense.

My third big concern is that many of the actions taken by Congress appear completely disconnected from the budgetary environment. In the face of increasingly restricted resources and steady, if not mounting, global mission challenges, the Department's leadership has been forced to make tough decisions to prioritize the use of resources, provide for an expanded focus on lethality and readiness, and modernize military personnel and benefit programs. Congress, on the other hand, appears to be carrying on business as usual, pursuing provisions that reject important budgetary decisions of the Department's senior uniformed and civilian leaders that block needed critical savings and force posture updates, without fully considering how all of these decisions align with the defense strategy and combine to make a cohesive defense program. For example, Congress continues its rejection of the Department's request for a needed Base Realignment and Closure round, which would free up significant resources to fund high priority program requirements. Another example is the refusal to support the Department's plan to reduce the number of Littoral Combat Ships in order to apply the resources necessary to help improve the U.S. Navy's ability to fight and win a war at sea against a high-end opponent. These and other rejections or modifications to our difficult, but carefully considered, programmatic initiatives are unaffordable at a time of budgetary scarcity, and weaken the combat capability of the Joint Force.

In a related vein, a key focus of the Department over the past two years has been to build a strong foundation for the Force of the Future, ensuring that the Total Joint Force will continue to attract and retain the very best and brightest young men and women our nation has to offer. While the Department appreciates the added personnel flexibilities authorized in the Senate and House bills, we have serious concerns with provisions that modify housing allowances, travel per diems, and footwear requirements in an inequitable manner that will impose excessive costs on

the Department and reduce benefits for our service members and their families. The Department also believes that proposals to reform the military medical system, while well-intended, would impose sudden and dramatic change that the Department will find difficult to absorb and implement, and risk sapping the morale of our medical professionals and undermining their readiness to continue to provide the best medical care in the world to our forward-deployed forces.

Another concern is that some of the provisions being considered by Congress will make it difficult for the Department to meet existing treaty obligations or damage its ability to work effectively with foreign partners. The House bill would further hamper the United States' ability to counter ISIL by requiring direct support to Kurdish forces, in direct contradiction of the stated U.S. policy of countering ISIL "by, with, and through" the Government of Iraq. A unified multi-sectarian Iraq is in the country's strategic and national security interest. The House bill also attempts to prevent the Department from fulfilling the United States' obligations under the Open Skies Treaty and attempts to prevent the United States from exercising an existing right under the New START Treaty, which was ratified by the President with the advice and consent of the Senate in 2010.

The House and Senate bills also continue and troublingly expand unwarranted restrictions regarding detainees at Guantanamo Bay, impeding the closure of the facility, and limiting our engagement with Cuba. The Administration presented a plan to Congress to close the detention facility at Guantanamo Bay and remains committed to working with Congress to achieve closure, which is in the national security interests of the country.

The Department is engaged in multiple overseas conflicts, including in the ongoing fight against ISIL, and is about to experience a transition to a new presidential administration. With this backdrop, the first rule for the NDAA must be: do no harm. The scope, specificity, and pace of the prescribed major reforms and policy changes in the Senate bill, in particular do not meet this standard. Looking to the Goldwater-Nichols reforms, which is the last time Congress sought organizational changes near the scope of those proposed this year, particularly in the Senate bill, it is also critical to remember that those changes were made following years of study and debate, and at a time when there were clearly major *operational* failures in the Department. Those conditions are not present today. And the same level of study, review, and thought that went into the Goldwater-Nichols changes has not been undertaken for the newly proposed changes this year. The Committees would be well served, as many experts have noted and recently testified, to further study many of the proposed changes, perhaps by impaneling a new bipartisan "Packard Commission" specifically focused on analyzing Departmental organization impediments, and recommending appropriate remedies. So doing would ensure an understanding of potential serious second and third order effects, provide for more responsible timing and timelines to carry out major changes, ensure understanding of how the reforms would nest with other recently passed congressional reforms, and ensure the reforms represent improvements, rather than potentially undermining progress being made by the Department.

Finally, the bills include a number of provisions that appear to be rooted in ideological differences with the Administration. The provisions are objectionable to the Department and unnecessary. They threaten the viability of the NDAA, as they are likely to generate

recommendations from senior advisors to the President to veto the legislation. For example, both bills put forward troubling provisions limiting the Department's implementation of Executive Order 13673 ("Fair Pay and Safe Workplaces"), removing critical safeguards to identify contractors with serious labor law violations and fully assess their record of integrity. Other problematic provisions include limitations on the Department's implementation of additional Executive Orders related to labor and nondiscrimination, as well as several lands and environmental provisions in the House bill, including an attempt, to once again undermine the Endangered Species Act. The House bill also interferes with DoD's authority to use its facilities in ways that meet national needs consistent with military readiness. I urge the committees to exclude these types of policy riders from the legislation.

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 address the Department's concerns during your conference negotiations.

The NDAA has historically been important legislation for our national security. While this letter principally focuses on the Department's major objections to these bills, I remain grateful for the many positive provisions in the legislation, including many that effectively and fully support Department programs, priorities, and personnel. The most significant objections the Department has with provisions in the House bill and Senate bill are detailed in the attachment to this letter, all of which are vitally important for the Congress to consider. Furthermore, we will 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. The Department appreciates your consideration of the attached views and looks forward to working with you to resolve these issues.

Sincerely,

A handwritten signature in black ink that reads "Ash Carter". The signature is fluid and cursive, with the first name "Ash" and last name "Carter" clearly legible.

cc:
The Honorable Adam Smith
Ranking Member

**DEPARTMENT OF DEFENSE CONCERNS WITH H.R. 4909 AS PASSED BY HOUSE AND S. 2943 AS
PASSED BY SENATE**

The Department of Defense (DoD) urges the Conferees to carefully review the Statements of Administration Policy (SAP) on H.R. 4909 and S. 2943, which lay out many issues of concern that remain for the Department.

Providing the Resources Needed to Keep the Nation Safe. The Department continues to strongly object to the House bill's proposal to substitute \$18 billion of the Department's Overseas Contingency Operations (OCO) request with \$18 billion of unsustainable base budget programs that do not reflect the Department's highest joint priorities. This approach risks creating a hollow force structure, jeopardizing critical modernization efforts in the future, and the loss of funding for critical overseas contingency operations in the middle of ongoing operations next spring. For instance, the provision to add military end strength in the manner proposed in the bill would impose an unfunded bill of about \$30 billion over five years to retain force structure not needed to carry out our defense strategy. Such a large bill for the Department is unaffordable, thereby constraining DoD's ability to balance military capability, capacity, and readiness. This gimmick is also inconsistent with the Bipartisan Budget Act, which provided equal increases for defense and non-defense spending as well as the stability and certainty vitally needed to prosecute the campaign against the Islamic State of the Iraq and the Levant (ISIL), protect readiness recovery, modernize the force for future conflicts, and keep faith with service members and their families. Provisions in the bill that would cause OCO funds in military personnel, operation and maintenance, defense health program, and working capital funds accounts to expire on April 30, 2017, are unacceptable. Shortchanging wartime operations by \$18 billion and cutting off funding in the middle of the year introduces a dangerous level of uncertainty for our men and women in uniform carrying out missions in Afghanistan, Iraq, Syria, and elsewhere. Our troops need and deserve guaranteed, predictable support as they execute their missions year round, particularly in light of the dangers they face in executing the country's ongoing overseas contingency operations.

Micromanagement of Department Personnel and Infrastructure. The Secretary must have the ability to organize, structure, and manage Department personnel and infrastructure in a manner that will not only optimize the efficiency of the Department, but will be effective in maintaining the security of our nation. Reorganization is not the same as compelling different policy outcomes or mitigating policy differences. The Department strongly objects to provisions in the bills that would limit this ability and that unnecessarily micromanage the functions of the Department, recognizing that both the Department and Congress share in the desire to achieve greater efficiencies and agility.

- **Provisions on the Organization and Management of the Department of Defense.** The Department continues to strongly object to various provisions in the House and Senate bills that would make sweeping changes to the organization and management of the Department through additional management layers, inefficient and ineffective management arrangements, duplication of management processes and proponentcy, wasteful and ineffective bureaucracy, and convoluted reporting requirements. The Department urges exclusion of sections 721, 894, 901, 903, 906, 941, and 942 of the Senate bill and sections 702 and 703 of the House

bill. These provisions would hinder the effective, efficient, and economical management of the Department by realigning critical functions away from the appropriate senior-level proponents; create confusing and ineffective chains of authority; and require countless man-years of effort to justify and support flawed organizational alignments. These provisions would break critical programs and capabilities across the Department, and would undo the achievement of successful reforms, such as significant reductions to unit costs. However, in an effort to ensure the due diligence required of all significant organizational and management changes, the Department would welcome collaboration with Congress to address the underlying administrative issues and develop comprehensive and implementable solutions.

- **Requirement to Establish Cross-Functional Teams.** The Department embraces the use and utility of cross-functional teams, and has used them widely and effectively across the defense enterprise, both in standing and ad hoc forms. However, the requirement to create six new cross-functional teams by law and burdening them with excessive bureaucratic requirements, as well as with a structure that would undermine their support in the Department, is counterproductive and dysfunctional. The new requirement would confuse lines of responsibility on priority issues facing the Department. Mandating that these teams have unchecked directive and resourcing authority would undermine the Department's senior leadership and create confusion regarding lines of responsibility, a particularly dangerous scenario in an institution where the chain of command is a central element, where the stakes related to national security decision making are extraordinarily high, and where accountability for actions is meted out by Congress and the American people. Placing new bureaucratic requirements on the defense enterprise -- such as requiring an "Organizational Strategy," a "Directive on Teams," a "Directive on Purposes Values and Principles," a "Directive on Collaborative Behavior," a "Directive on Other Action on Collaboration," and a "Biannual Report on Assessments" -- as well as team-specific requirements for individual charters, strategies, metrics, performance review criteria, and performance incentives, is overly prescriptive and risks weighing down the enterprise in paper and requirements before a team could undertake any meaningful work. It would also significantly burden new senior Department leadership at a time when it will need the flexibility and time to organize itself while continuing to manage ongoing overseas military operations. Enacting these requirements would also weaken a critical tool that senior leadership utilizes on a regular basis to make effective policy decisions by separating cross-functional teams from the leadership structure and positioning them to purposely create conflict, rather than solutions, for the defense enterprise. This provision would also discourage the initiation of cross functional teams more appropriately suited to current conditions. However, the Department welcomes Congress' interest in cross-functional teams and is anxious to both educate Congress on how cross-functional teams are currently utilized within the Department and engage in a dialogue on how to improve these processes.
- **Reforms of Defense Acquisition.** The elimination of the position of Under Secretary of Defense for Acquisition, Technology, and Logistics and subsequent reassignment of its duties to multiple, disparate officials has no basis of analysis to justify any benefit to the taxpayer or warfighter. Such a move would fracture well-established and effective lines of authority across multiple dimensions of product development, production, and sustainment.

Moreover, Senate section 901 would terminate the authority of the new Under Secretary for Research and Engineering to direct the military departments and DoD components, undermining the ability of the Secretary of Defense to provide guidance and direction on assigned areas of responsibility, to include management of strategic risk in the industrial base, program acquisition, contracting, engineering, technology development, and life-cycle sustainment and logistics. The assignment of logistics oversight functions to both a new Deputy Assistant Secretary of Defense for Logistics and Sustainment (under the new Assistant Secretary for Acquisition Policy and Oversight) and a new Under Secretary of Defense for Business Management would fracture and misalign logistics authorities, management, and execution and ignore the key logistics authorities and policies related to deploying, sustaining, and retrograding forces in contingency operations. Taken together, these changes would roll back the acquisition reforms of the last two decades and risk returning the Department to a laissez-faire era of overly-optimistic cost estimates, poor systems engineering, and inappropriate and ill-timed commitment to immature technologies. In particular, this provision would undermine key elements of the Weapon Systems Acquisition Reform Act of 2009 (WSARA) at a time when compelling evidence from multiple analyses of decades of acquisition performance data clearly shows that the performance of the Department's acquisition system has improved markedly over the last several years in the aftermath of WSARA. This evidence also highlights the value of allowing consistent reforms and acquisition policy initiatives to take hold without inducing year-to-year "whiplash." Taken together, the changes proposed in section 901 would imperil the hard-won gains that have been realized over the last several years. This provision, in conjunction with other related provisions of the Senate bill, would result in ineffective contractor management, higher costs, blurred lines of accountability, and reduced industry incentives to make leap ahead technological innovations. The Department is prepared to work with Congress to address shared concerns, such as enabling the Under Secretary to elevate the research and engineering enterprise and reforms that would reduce the complexity of the acquisition process, but is deeply concerned that the overly-prescriptive, haphazard reorganization currently outlined in the Senate bill will have significant negative repercussions on the Department.

- **Requirements to Provide Confidential Planning Guidance.** The Department strongly objects to provisions of House section 904, which would direct the Department to submit to the congressional defense committees copies and detailed summaries of classified aspects of defense planning guidance, force employment guidance, and contingency planning guidance. These documents provide the President's and Secretary's upfront, confidential direction to Secretaries of the military departments and Service Chiefs in developing their budgets and Combatant Commanders in developing their employment guidance and contingency plans. Release of this information would interfere with the prerogative of the President and the Secretary of Defense to communicate direction to subordinate military commanders containing sensitive national security information that is protected by executive privilege. In addition, the required inclusion in the guidance of "any additional or alternative views of the Chairman of the Joint Chiefs of Staff, including any military assessment of risks associated with the defense strategy," risks impairment of the Department's programs by compromising the candor and confidentiality of pre-decisional advice given to the Secretary of Defense and the President. Finally, as these documents do not reflect final decisions, congressional

oversight of these documents would be premature. Instead, the defense planning guidance informs internal force planning, resourcing, and acquisition processes guidance, which collectively support the annual development and submission of the President's Budget to Congress. Regarding the request for contingency planning documents, information about potential future military operations used in the preparation of contingency plans is tightly restricted and limited even within the Department to those individuals having a mission-critical role in the production, review, or execution of those plans or operations to preserve the options of the President of the United States, minimize the risk to mission, and protect the safety and security of U.S. service members at home and abroad.

- **Prohibition on Conducting Additional Base Realignment and Closure (BRAC) Round.** The Department strongly objects to provisions in the House and Senate bills which do not authorize an additional BRAC round. Maintaining excess infrastructure is costly and wasteful, and it deprives the Department of the ability to reallocate scarce resources to address readiness, modernization, and other national security requirements. The Department recently conducted a DoD-wide parametric capacity analysis which demonstrates that the Department has 22 percent excess capacity. While criticizing that the Department for being inefficient and unable to make hard decisions to move the enterprise forward, it is Congress that has continued to fail to remove the most readily evident excess in our enterprise: excess infrastructure and the support functions that go with it. To ignore the costs the Department is forced to shoulder in sustaining excess infrastructure while criticizing DoD for wasteful spending or decrying the lack of resources available for modernization of equipment, among many other Department priorities, is not only misguided, but also a disservice to America's taxpayers.
- **Reduction in General Officer and Flag Officer Grades and Positions.** While both the House and Senate bills include language on General Officer/Flag Officers (GO/FO), the House provision affects only grade distribution, while the Senate cuts the number of GO/FOs by 25 percent. Although the Department strongly objects to both provisions, we would prefer the House version over the Senate version. Since 2010, the number of GO/FOs has been reduced from 981 to 906 (as of April 1, 2016) -- a reduction of 75 GO/FOs. A further reduction of 25 percent would require the elimination of 226 more GO/FO positions. In addition, such reductions would require DoD to restructure the pyramidal officer promotion plan, demoralizing the military force when promotion opportunities in the short- to medium-terms are severely curtailed. Reductions to the number of general and flag officer positions should be deliberate, undertaken only after reviewing the role of each position and analyzing the impact of the reduction on the force. Mandated across-the-board reductions would degrade the effectiveness and readiness of the force.
- **Limitation on Number of Senior Executive Service (SES) Employees.** The Department strongly objects to Senate section 1112 because it would arbitrarily cut additional SES positions across-the-board and lead to long-term negative effects on mission-critical DoD programs and services. The Department supports the elimination of unnecessary and excessive executive positions, and has reduced the size of our SES workforce by 105 since 2010. However, any further reductions to SES positions should be made in a deliberate manner following a review and analysis of the impact of such reductions on each component

or agency. DoD operates with a constrained number of SES members in comparison to the entire Federal civilian workforce. DoD's SES population is 0.17 percent of the DoD workforce (one SES member to every 586 non-SES employees), compared to the average of 0.89 percent SES members to the overall civilian workforce of the other Cabinet-level agencies, a factor of five difference. Arbitrarily reducing this already low factor even further would have widespread negative consequences. The proposed reductions would demoralize the civilian workforce when opportunities for promotion to SES in the short- to medium-terms are severely curtailed or eliminated. Recognizing the need to recruit and retain a highly professional workforce with the skills needed to keep our nation's military the best in the world, the Secretary of Defense has embarked upon a broad reform initiative, the Force of the Future, which is intended in part to encourage highly capable people to serve our nation. With no justification, this provision completely undercuts the Secretary's initiative to improve and sustain the workforce.

- **Headquarters Workforce Limitations.** The Department strongly objects to Senate sections 904 and 905, which would impose new restrictions on the size of the civilian and contracted services workforces for DoD headquarters. In accordance with the requirements of section 346 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016, DoD has re-baselined its major headquarters activities and put in place a comprehensive plan to achieve a 25 percent reduction in the size of headquarters by FY 2020. The Department believes that the imposition of additional limitations on subcategories of headquarters and the revival of old and inconsistent headquarters definitions would add unnecessary bureaucratic requirements, further complicate the already-in-progress mission of reducing headquarters, and reduce the Department's capacity to respond to emergent mission changes and requirements. With the ongoing, congressionally mandated reductions, as well as the many other reform efforts the Department has undertaken since 2008, we believe the Department's headquarters will be right-sized given the tremendous breadth and depth of the Department's mission. Future cuts must be targeted, designed to reduce specific identified redundancies or inefficiencies, or come with commensurate reductions in the Department's mission.
- **F-35 Joint Strike Fighter Program.** The Department strongly objects to Senate section 1086, which would disband the F-35 Joint Program Office (JPO) following the F-35 full-rate production decision (expected in April 2019), and 1087. The contention that the F-35A, F-35B, and F-35C are essentially three distinct aircraft with significantly different missions and capability requirements is patently untrue and fails to take into account the essential joint and multi-national role that the F-35 Joint Program Office plays in the program. The JPO is also necessitated by the international nature of the program and the role that international partners must play in the continuation of the most complex cooperative weapons program DoD has ever undertaken. The follow-on modernization effort and the challenging transition from development to global sustainment and life-cycle support all require continued management of many aspects of the enterprise from a central joint program office. Without some degree of centralized management through a Joint Program Office, all the efficiencies associated with the program concept would be at risk. The Department is prepared to work with Congress to consider less centralized structures, but complete elimination of the JPO is not a viable option.

- Combatant Command (COCOM) Joint Task Force Pilot Program.** The Department strongly objects to Senate section 924, which prescribes a structure that would isolate the implementing COCOM from other vital COCOMs, the Joint Staff, and Service command and control nodes. U.S. Southern Command's (USSOUTHCOM) experience establishing Joint Task Force-Haiti in response to the 2010 Haiti earthquake clearly demonstrated that complex defense networks, planning, logistics, and processes must be carefully considered in any restructuring. The pilot program, as prescribed, would inhibit the COCOM's ability to fight by legislating a transformation without first understanding and addressing challenges associated with accomplishing the task. This program would likely increase the size of a combatant command by creating duplicative, less effective structures under each blended Joint Task Force. The Service components efficiently provide vital links in organizing, training, and equipping forces in both steady state and surge situations. Additionally, the timeline to create and implement a Joint Task Force pilot program is unrealistic given other prescribed changes to the Department, our current global tempo, and the complexity of combatant commands missions. Current personnel authorities and structures would not support such a largescale restructure within a single year. Ultimately, the Department feels that a collaboration-based approach is best. The Department would be open to exploring an alternative COCOM structure and keeping Congress informed based on identified criteria, but this should be done in a manner that preserves the COCOM's ability to fight and accomplish its mission.
- Establishment of Unified Combatant Command for Cyber Operations and an Assistant Secretary of Defense for Information.** The Department appreciates the House's support for DoD's cyber mission and forces, but strongly objects to statutorily requiring the establishment of a unified combatant command for cyber operations in House section 911. The Secretary of Defense and Chairman of the Joint Chiefs of Staff should retain the flexibility to recommend to the President changes to the unified command plan that they believe would most effectively organize the military to address an ever-evolving threat environment. The Department also strongly objects to Senate section 903, which would establish an Assistant Secretary of Defense for Information whose responsibilities would duplicate those of the already established Principal Cyber Advisor to the Secretary of Defense as well as the Principal Space Advisor. While this provision would combine oversight of cyber policy and information technology, it would complicate, rather than improve, the oversight of U.S. Cyber Command and cyber operations, or U.S. Strategic Command (USSTRATCOM) and space operations, and governance of resources, acquisition, and cyber workforce policy would remain fragmented. It also would create a new structure complicating and confusing the distribution of responsibility and authority in DoD and intelligence space management between the Under Secretary of Defense for Intelligence and the new Assistant Secretary, and potentially distract from the current Chief Information Officer's position and responsibilities.
- Placing the First-ever Assistant Secretary into the Administrative Chain of Command for Management of Special Operations Forces and Special Operations.** The Department strongly objects to Senate section 923, which would insert an Assistant Secretary into the administrative chain of command for the management of Special Operations Forces (SOF) and Special Operations for the first time since the enactment of the National Security Act of

1947. The Department is taking internal steps to enhance the ability of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict (ASD/SOLIC) to complete the existing Major Force Program-11 (MFP-11) oversight, supporting SOF-specific requirements as a distinct Joint Force. In contrast, section 973 would create a precedent of adding a civilian official other than a Secretary (i.e., of the Department of Defense, Army, Navy, or Air Force) within any DoD chain of command and would separate ASD SOLIC in part from authorities of the Under Secretary of Defense for Policy. In addition, it would misalign the Office of the Secretary of Defense's policy oversight of countering the proliferation of weapons of mass destruction (CWMD) from ASD Homeland Defense and Global Security to ASD SOLIC. The Department and President are currently studying a CWMD mission realignment from USSTRATCOM to U.S. Special Operations Command. However, without a respective mission change within the Unified Command Plan, this provision would intrude on and impede the authority and prerogative of the Under Secretary of Defense for Policy to manage effectively the organization to provide the best support and advice to the Secretary and the President.

- **Penalty for Use of Cost-Type Contracts/Preference for Fixed-Price Contracts.** The Department strongly objects to Senate sections 826 and 827. Each section would significantly limit DoD's flexibility to select the most appropriate contract type for an acquisition. Section 826 would unnecessarily constrain the Department's flexibility to tailor the most appropriate contract type to each requirement while simultaneously creating a complex and burdensome financial transaction process to implement a usage "penalty" when using cost-type contracts. Section 827, which would require senior leadership approval for the use of other than fixed-price contracts, is unnecessary and would likely result in the Department utilizing a fixed-price contract where a cost-type contract would be most appropriate. There is extensive history, including the disastrous A-12 program and many others from the late 1980s when there was a fixed-price development "fad", that demonstrated conclusively that fixed-price development is not in the Department's or industry's best interest in many circumstances. DoD's Annual Acquisition Reports include other examples of poor applications of fixed-price contracts. Contracting officers should have the full range of contract types available to structure business arrangements that achieve the proper balance of risk and reward in the best interest of the taxpayer and warfighter.
- **Defense Technology Innovation Reduction.** The Department strongly objects to the House's reduction of \$30 million for Defense Innovation Unit Experimental (DIUx). Reducing or eliminating this program -- and similar efforts such as the Strategic Capabilities Office and newly-formed partnerships with In-Q-Tel -- would severely affect the Department's ability to keep our technological edge. As Congress presses for the Department to innovate and explore disruptive means to procure advanced technology more rapidly, challenge our existing enterprises, and pursue new models of development, it is incongruous to cut the very places where the Department is carrying out such exploration. DIUx was chartered to broaden DoD's access to innovative commercial companies and technologies that will enable the development of leading-edge, asymmetric capabilities and help spur development of new ways to keep the United States on par with or ahead of the nation's most advanced adversaries even as they actively modernize and innovate.

- Management of Defense Clandestine Human Intelligence Collection.** The Department strongly objects to Senate section 945, which calls for the execution of a pilot program to assess whether the Defense Clandestine Service (DCS) should be consolidated within the Directorate of Operations of the Central Intelligence Agency. Enactment of this provision would immediately affect the Department's intelligence collection priorities and enabling capabilities and would sever the unique and inherently military relationship between DCS, DoD, and the COCOMs. If separated from an intelligence combat support agency, even for the duration of the pilot, there will be no certain means for DoD and the COCOMs to ensure DCS clandestine human intelligence (HUMINT) collection activities continue to satisfy DoD collection requirements and priorities and to facilitate appropriate operational transparency and coordination to protect and promote DoD equities. Section 945, if enacted, would also interrupt the ongoing integration of DCS with the Defense Intelligence Agency Intelligence Integration Centers, the Defense Attaché Service, and each of the military services. The Department believes that the proposed pilot would severely disrupt current, and potentially deny future, defense HUMINT efforts, creating unacceptable operational risks and unnecessarily jeopardize the progress made by DCS over the last three years in supporting defense intelligence requirements. The Department will provide additional classified concerns regarding this provision separately.
- Enhanced Security Programs for DoD Personnel and Innovation Initiatives.** The Department strongly objects to Senate section 973(a), which would transfer responsibility for personnel background and security investigations of DoD personnel from the Office of Personnel Management (OPM) to the Defense Security Service (DSS). This provision would create significant operational, financial, and IT issues for the Department by increasing costs; splintering the investigation process; duplicating investigation infrastructures; straining government resources; and compromising the security, effectiveness, and efficiency of DoD background and security investigations. An in depth review informed the decision to create the newly-formed National Background Investigations Bureau (NBIB), which is housed at OPM. The NBIB is intended to consolidate to the fullest extent practicable the national security and information technology (IT) resources of the Executive Branch, a consolidation that is fully supported by and in the interests of the Department. Within the NBIB, DoD will assume responsibility for establishing the cyber security backbone to support the NBIB, an appropriate role that the Department embraces and is suited to carry out. By maintaining a consolidated investigation entity, processes are more easily standardized, better enabling reciprocity or movement of personnel across government, in support of the government-wide mission. On the other hand, section 973(a) would require DoD to establish a large bureaucracy at the same time the Department is under congressional pressure to cut personnel and gain efficiencies; this is virtually certain to generate inefficiencies and redundancies that increase costs and inhibit effective management of security clearances rather than achieving improvements. The provision's direction to transfer personnel and resources from OPM to DoD does not account for the increases in one-time and recurring costs associated with such a move. The Department's resources, already stretched to the limits of acceptable risk, would have to accommodate the hiring of a significant number of Federal and contract investigators, case controllers, quality review personnel, other support personnel, and provide overseas and U.S.-based field offices to support the investigators. The Department would need to replicate the supporting functions resident at NBIB such as

legal, human resources, training, interface and data sharing agreements, and most importantly, a large contracting staff, all of which would be a duplication of resources. Finally, given the management, manning, infrastructure, IT, training, and contracting actions associated with the transfer of investigation responsibility to DoD, the Department sees no practical way to meet the deadline imposed by section 973(a). The Department looks forward to working with Congress to restore government and public confidence in the effectiveness, reliability, efficiency, and security of the entire federal personnel security system.

- **Joint Intelligence Analysis Complex (JIAC).** The Department strongly objects to the House's omission from section 2301(b) of an authorization for expending funds associated with the \$53.1 million needed to complete construction and consolidation of the JIAC at Royal Air Force Base Croughton, United Kingdom. Given the security situation in Europe and Africa, this project's replacement of inadequate facilities allowing for the consolidation of intelligence operations and mission support is critically important for U.S. European Command, U.S. Africa Command, and the North Atlantic Treaty Organization. The Department has recently certified to Congress that Croughton remains the optimal location to locate the JIAC and has carried out a series of reviews, each of which have validated this conclusion. Congress has already authorized and appropriated the first two phases of the project and should act promptly to allow completion of the project. The Department also strongly objects to House section 1623, which would restrict the Department's ability to increase the capability and capacity of intelligence support in Europe at a time when the Russian threat to the United States and our European allies is increasing. The Department will provide additional classified concerns regarding this provision separately.
- **Limitation of DoD's Application of Executive Orders (EO).** The Department strongly objects to Senate section 829I and House section 1095, which would limit DoD's application of EO 13673 ("Fair Pay and Safe Workplaces") and remove safeguards intended to ensure that taxpayer dollars are not utilized to reward those entities that break labor laws or offer lower contract bids based on savings from skirting those laws. The Department's ability to identify contractors with records of non-compliance with labor laws would be affected by both provisions. Without these safeguards, our contracting officers would not be able to fully assess a contractor's record of integrity nor motivate contractors with significant labor violations to improve their labor law compliance. Narrowing the scope of the EO to those contractors that have already been suspended or debarred would limit contracting officers' ability to identify contractors with records of non-compliance. Senate section 862 would weaken a number of additional EOs and other actions taken by the President to protect taxpayer money and the integrity of the acquisition process and to improve the economy and efficiency of Federal contracting. For the reasons articulated more fully in the Administration's SAP, the Department strongly objects to Senate section 862, and it should be struck as it would decrease the economy and efficiency of the Federal procurement system. Likewise, the Department strongly objects to House section 1094, which would undermine important protections to ensure that Federal contractors and subcontractors do not engage in discriminatory employment practices.

- **Military Specialty Standards and Qualifications within the Armed Forces.** The Department strongly objects to Senate section 531. This provision would vest in the Chiefs of Staff of the Armed Forces the responsibility for establishing, approving, and modifying the criteria, standards, and qualifications for military specialty codes within that Chief of Staff's Armed Force. This would bypass the respective authorities and responsibilities accorded by the Goldwater-Nichols Act to the Secretaries of each military department and undermine the core precept of civilian control over the military.
- **Requirement to Use Firm Fixed-Price Contracts for Foreign Military Sales (FMS).** Senate section 828 would effectively constrain DoD's ability to deliver "best value" to the FMS customer and would, in many cases, eliminate opportunities to achieve efficiencies on shared contracting vehicles. The Department's current policy is to use the same type of contract for FMS sales as the Department uses for its own purchases, unless the FMS customer strongly prefers or insists on a firm fixed-price contract. FMS customers utilize the FMS system in part because they can rely on DoD to obtain contracts at a reasonable price. This change would reduce the Department's ability to provide this assurance and would complicate FMS contracting processes.
- **Prohibition on Carrying out Certain Authorities Relating to Climate.** The Department strongly objects to House section 315. This section would prohibit the Department from investing in energy security, energy conservation, sustainability, and climate change adaptation. Prohibiting the Department from investing funds in sustainability and energy resilience jeopardizes DoD's energy security while also limiting DoD's capacity to predictably and reliably supply power to the national grid. DoD's renewable energy projects have also served as critical assets during natural disasters. Energy investments directly contribute to the readiness of our Armed Forces, and these limitations would undermine DoD's ability to execute its mission.

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.

- **Increase in Military End Strength.** The Department strongly objects to the addition by the House of \$2.2 billion to increase military end strength. The addition of 54,000 service members over the number requested in the FY 2017 President's Budget would create a potential bill of \$30 billion over the Future Years Defense Program (FYDP) if end strength is maintained at the House-passed level for FY 2017. Most troubling is that it would create the unacceptable risk of a future hollow force, in which force structure exists, but lacks the resources to make and keep it ready. As the Department has made clear, the principal strategic issue the Department is seeking to address in FY 2017 is not force structure, it is readiness. As the Chief of Staff of the Army noted, "To sustain current operations and to mitigate the risks of deploying an unready force into the future, the Army will continue to prioritize and fully fund readiness over end strength, modernization and infrastructure." The Department seeks full support of its plan, which reflects sound strategy and responsible choices among capacity, capabilities, and current and future readiness.

- **Littoral Combat Ships (LCS).** The Department strongly objects to the House bill's proposal to increase the purchase of LCS in FY 2017 from two to three, as noted in the table supporting House section 4103, Shipbuilding and Conversion line number 11. The Department truncated the LCS program explicitly to increase the nation's warfighting posture against more capable threats by reinvesting the \$8 billion in FYDP savings into advanced capabilities that improve the lethality of our surface and undersea forces and increase the capability and capacity of our naval aviation. We applaud the Senate bill for recognizing the need to make this choice and supporting the Department's acquisition strategy. Truncating the total LCS buy at 40 will still result in a more modern and capable small surface combatant fleet than the legacy mine sweepers, frigates, and coastal patrol craft the LCS and Future Frigate will replace. In contrast, the House bill pays for an additional LCS in FY 2017 by cutting essential funds for ongoing operations. The Department's plan to acquire two LCS in FY 2017 positions both current shipyards leading up to the competition to select the shipyard that will continue the program and produce a more capable frigate derivative.
- **Reduction in the Number of Navy Carrier Air Wings.** The Department strongly objects to the restoration of a tenth Carrier Air Wing in House section 4303. The elimination of a Carrier Air Wing proposed in the FY 2017 President's Budget optimizes Carrier Air Wing force structure to how the Navy deploys its carriers in order to better sustain the health of Naval Aviation. Instead, the Department has reinvested the \$926 million in FYDP savings, for instance, helping afford the additional F/A-18s and F-35s proposed in the President's Budget. If forced to retain the tenth Carrier Air Wing, the Navy would require an additional \$48 million in FY 2017 for military personnel and an additional increase of 1,167 in end strength above the objectionable end strength increase already in the bill. The additional costs associated with this unnecessary force structure would crowd out critical investments needed elsewhere in modernization and readiness.
- **Availability of Funds for Retirement or Inactivation of Ticonderoga-Class Cruisers or Dock Landing Ships.** The Department strongly objects to House section 1024, which would prohibit obligation of FY 2017 funds to retire, prepare to retire, or inactivate a cruiser or dock landing ship; or to place in a modernization status more than six cruisers and one dock landing ship. Denying the Department the ability to manage the cruiser fleet in this manner would impose additional costs of \$3.2 billion over the FYDP to fund manpower, maintenance, modernization, and operations. The Department can ill-afford these additional costs which would further limit the Department's ability to make critical investments in other areas of lethality, modernization, and readiness.
- **B-21 (Long Range Strike Bomber).** The Department strongly objects to Senate section 844, which would establish a critical cost threshold for the B-21 program below the acquisition program baseline (APB) that was based on two fully independent cost estimates (ICE). This section represents an unprecedented and extremely damaging reversal of the approved acquisition strategy for the B-21 program and directly undermines some of the most effective and prominent reforms under WSARA establishing the ICE process. To enforce a different performance standard after the execution of the acquisition strategy has begun would result in the established business plan becoming subject to reporting delays and

redundant breach certifications. The Department also strongly objects to the \$302.3 million FY 2017 funding reduction. There are no excess funds in the program in FY 2017 and the reduction would result in a significant delay in moving forward with the development program. Furthermore, the Department believes that the requirement to transfer funds to the Rapid Prototyping Fund could jeopardize the program through increased risk to the availability of funds, and the additional reporting requirements would be unnecessarily burdensome, would add schedule risk, and would detract from overall program management at a critical phase of the program.

- **Launch System Investment.** The Department strongly objects to House section 1601 and Senate section 1611, which would place restrictions on the funds necessary to eliminate the Nation's use of Russian RD-180 engines for national security space launches. The House's approach emphasizes one component of a launch vehicle and, in doing so, risks the successful and timely fielding of new domestic launch service capabilities. The Department is committed to the use of non-Russian American-made propulsion systems as part of the launch service capabilities the Department will utilize, but arbitrary funding allocations that impede efficient acquisition are not the right approach to achieving this goal. The Senate approach would redirect half of appropriated funds away from the development of modern, cost-effective, domestic launch capabilities that will eliminate the use of non-allied components. The combined effect of these two provisions would be inhibit DOD's ability to maintain assured access to space and delay the on-ramp of new domestic launch capabilities and services.
- **Space-based Intercept and Defeat Layer and Test Bed.** The Department strongly objects to House section 1656 and Senate section 1663, which would require the initiation of concept definition, design, research, development, and engineering evaluation and test for a space-based intercept and defeat layer and space test bed. Currently, there is no requirement for a space-based intercept capability, and there are concerns about the technical feasibility, policy implications, and long-term affordability of interceptors in space. The Department is conducting an evaluation on a space-based missile defense layer, as required by section 1685 of the FY 2016 NDAA. The results of that evaluation will inform a future determination of operational requirements as well as the technical feasibility of developing such a capability.
- **Constellation.** The Department strongly objects to House section 216 and reduced authorized funding in House sections 4201 and 4301, which would prohibit DoD's efforts in FY 2017 to conduct research, development, and prototyping of the CWMD situational awareness information system known as "Constellation." DoD is developing and fielding a CWMD situational awareness system in response to requirements articulated by all combatant commands and validated by the Joint Requirements Oversight Council. This capability is critical to anticipating weapons of mass destruction threats from nation-state and non-state actors and sharing information between DoD and its U.S. interagency and international partners.

Compensation and Benefits to Attract and Retain the Best Force. To sustain our current force 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 urges the adoption of the Senate position on the military pay raise and strongly objects to the House language in section 601 that would remove the alternate pay-setting authority provided to the President in permanent law. A 1.6 percent pay raise represents the best judgment of our military and civilian leaders on how to balance responsible compensation increases with our readiness and modernization needs.
- **Reform of Health Care Plans under the TRICARE Program.** Both the House and Senate bills include changes to TRICARE benefits. The Department strongly objects to the House provision because it delays modernization of the TRICARE health benefit, introduces unnecessary complexity and confusion for beneficiaries, fails to achieve needed program savings, and unfairly burdens Active Duty families by significantly increasing their out-of-pocket costs. TRICARE Prime, Standard, and Extra would continue as they presently exist, employing extant fee and cost share structures, for many years to come, putting TRICARE even further behind the current best civilian health plan. While the House provision would also initiate a new TRICARE program for newly-acceded service members that reflects some changes in the health care market, this new program would impact only a small portion of the beneficiary population and would take 50 years to implement fully, all the while requiring the Department to maintain the grandfathered system. Additionally, the Administration requested pharmacy copay increases. The House provision denied pharmacy copay increases altogether; however, the Senate provision adopted the Administration's proposal without change, including cost sharing for prescriptions filled in retail or mail order pharmacies. The Department supports the pharmacy co-pay adjustments proposed by the Senate and believes it is both reasonable for our beneficiaries and financially sound. Under the House provision, only about 10 percent of the 10-year savings associated with the Administration's proposal would be realized. The Senate's provisions, while modifying the Administration's proposal somewhat, implement benefit changes immediately and retain over 70 percent of the savings.
- **Military Treatment Facility Management (MTF).** Both House section 702 and Senate section 721 would substantially realign the administration and management of Service MTFs as part of a broader effort to restructure the military health system (MHS). The Department agrees that standardization of common clinical and business processes will lead to more effective and efficient care and commits to substantially accelerating a common, enterprise approach consistent with the Services' operational readiness requirements. Furthermore, the Department appreciates many of the provisions in both bills that will strengthen the MHS. However, the Department is strongly opposed to any construct that separates the Service medical departments from their force generation responsibilities, to include command and control over the MTFs, the Department's most effective medical force generation platforms. The Department is equally concerned with many of the aggressive timelines proposed in various sections of both the House and Senate provisions that would collectively lead to an inability to execute critical programs and ultimately system failure. However, the Department prefers aspects of House section 702, with modifications, to ensure that the Defense Health Agency has the authorities needed to manage the delivery of the health benefit within the MTFs, while ensuring that the Services maintain the ability to generate and maintain medical support of operational forces. The Department looks forward to working with Congress to ensure that the MHS provides state-of-the-art, quality care to all it serves,

on and off the battlefield, while maintaining critical readiness capability to support the military mission.

- **Restructure of Basic Allowance for Housing (BAH).** The Department maintains its strong objection to Senate section 604. This provision undermines the current BAH structure by basing the allowance solely on grade and location (disregarding dependency status). It would reinstate previously failed policies and require the imposition of a burdensome and inefficient administrative process. Furthermore, it would disproportionately affect female service members and those military families in which both military members have chosen to serve their country. Both members of a dual-military couple would be provided a lesser compensation package than other members of equal grade, sending a message that their service is not as highly valued. It would similarly penalize members who choose to share housing with other members and thus would inhibit the ability of junior service members to obtain suitable housing in tight rental markets, which is a recurring concern. Finally, this provision would have a negative impact on the recruitment and retention of the high-quality service members, and families, required for our all-volunteer force.
- **Parental and Adoption Leave.** The Department strongly objects to Senate section 532 and generally supports House sections 522 and 529, with amendments to make them more consistent with the Department's own proposal. The House provisions would provide 36 days of non-chargeable leave to be shared between two members of a dual-military couple for a qualifying adoption. They would also expand parental leave from 10 to 14 days. The Department supports the proposal to expand parental leave from 10 to 14 days but does not support the provision to provide 36 days of non-chargeable leave to be shared between two members of a dual military couple for a qualifying adoption. The sharing of leave between the two military members provided in the House provision would grant a benefit not provided to non-dual military couples since a member with a civilian spouse would be limited to 21 days of adoption leave and would have no additional leave to "borrow" from the civilian spouse. The Senate provision would provide six weeks of parental leave beyond convalescent leave and three weeks for adoption, but would not allow the Department to make further changes to its leave program without congressional approval, which not only constrains the Secretary's discretion with regard to this leave issue, but as to all types of leave going forward. Such a limitation to the Department's discretionary authority would create significant problems in managing our force readiness. In addition, the provision appears to be designed to address only dual-military couples. In the case of a military member married to a non-military spouse, the military member will always be the primary caregiver, whether or not he or she actually serves in that role, and thus always will qualify for the greater benefit. The Department continues to believe its proposal, which expands parental leave from 10 to 14 days and extends adoption leave for dual-military couples to allow whichever parent does not avail themselves of the current 21-day benefit to a new 14-day parental leave benefit, strikes the right balance.
- **Spouse and Dependent Relocation under Service Member Permanent Change of Station (PCS).** The Department strongly objects to Senate section 622, which would allow a service member undergoing a PCS to elect that the member's spouse relocate during the "covered relocation period," defined as 180 days before and up to 180 days after the member's PCS

date. We recognize the demands placed on the All-Volunteer Force and their families and remain committed to supporting their needs and to improving the quality-of-life of military members and their families, especially with regard to the challenges of deployments and the mobile military life. However, the Department already has the necessary flexibility to accommodate service members' and their families' specific needs regarding their PCS moves. This provision, on the other hand, mandates an overly broad housing entitlement that is cost prohibitive and does not address how the military services would pay for the additional benefits. The Department believes this policy would actually incentivize family separation instead of stability, as an increasing number of families seek to take advantage of this additional entitlement.

- **Providing Footwear to Recruits at Initial Entry Training.** Both the House and Senate bills would require the Army, Navy, Air Force, and Marine Corps to provide athletic footwear directly to recruits upon their entry into the Armed Forces instead of providing a cash allowance for recruits to purchase the footwear of their choice that fits best. Mandating that a specific article of clothing be provided to new recruits is unprecedented and, in the case of athletic shoes, runs counter to research that indicates a strong correlation between a wide variety of athletic shoes available to ensure individual fit and comfort, and the reduction in lower extremity injury rates. Forcing all the military services into a limited selection of athletic footwear may contribute to a higher incidence of injury among new recruits during one of the most critical times in a member's military training. The Department places the health of service members above all other considerations. Furthermore, because only one manufacturer is currently producing a shoe that arguably meets the standards established by these provisions, they appear to provide a preferential, sole-source arrangement for a particular company.
- **Institution of Higher Education Access to DoD Installations.** The Department strongly objects to Senate section 563, which would require us to grant access to all DoD installations to any institution of higher education that has a Voluntary Education Partnership Memorandum of Understanding with the Department, for the purposes of providing student advising and support services. To require the Secretary of Defense to grant access removes the discretion of commanders on the ground to deny access on the basis of impingement on and interference with mission, security, and safety concerns, and conflicts with existing contracts. The Department has received numerous complaints from service members, installation education advisers, and interested parties that installation access for the purpose of counseling and supporting existing students quickly devolves into the recruitment of new students. Unauthorized banners, signage, collection of contact information, and same-day signups are all prohibited activities routinely reported. Legislation is not required to accomplish the goal of providing timely face-to-face advice and related support services to enrolled students. Over 6,500 institutional visits took place on military installations in 2015, resulting in tens of thousands of face-to-face counseling sessions. Further, no military student raised a complaint about his or her ability to access institutional counseling in 2015, despite the fact that over 280,000 service members enrolled in college courses in that same year. In attempting to accomplish something that is already being achieved, this provision strips away service member protections, interferes with a commanders' exercise of lawful authority and discretion, and could cause inequities among providers.

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

- **Counter-ISIL Efforts.** The Department strongly objects to the House bill's proposal to cut OCO funding for U.S. efforts to counter ISIL and to prevent the availability of critical counter-ISIL funds after April 2017. Reducing funding for train and equip activities in Iraq and Syria and cutting off funding mid-year would inhibit the U.S. military's ability to work with the Government of Iraq (GoI), the Syrian opposition, and other local forces to combat ISIL; interrupt ongoing U.S. support for forces on the ground in the middle of the year; and call into question the reliability of the U.S. commitment to support its partners. The Department also strongly objects to provisions in House sections 1221 and 1222, which would further hamper the United States' ability to counter ISIL. A unified Iraq led by a multi-sectarian government is a U.S. national security interest, but the bill's approach for directly supporting the Kurdish forces contradicts stated U.S. policy of countering ISIL "by, with, and through" the GoI. Current policy has not inhibited U.S. support to Kurdish or Sunni forces that, with the Iraqi Army, have reclaimed territory from ISIL control. In addition, the prohibition on obligating or expending more than 75 percent of the authorized funds under section 1222 until the Secretaries of Defense and State submit a plan to the congressional committees to retake and hold Mosul ignores the fact that such a plan, and its execution, is the ultimate responsibility of the GoI and limits the U.S. ability to respond to evolving needs of Iraqi forces and facts on the ground as necessary to successfully support their campaign against ISIL. Finally, the expansion of a Secretary of Defense reprogramming certification requirement in section 1221 would add unnecessary bureaucracy, hamper the Department's ability to support the warfighter in a timely and flexible manner, and risk jeopardizing acceleration and effectiveness of the counter-ISIL campaign in Syria.

The Department supports the language in Senate sections 1221, 1222, and 4302 which fully fund both the Iraq Train and Equip and Syria Train and Equip initiatives through the creation of a single counter-ISIL fund that gives the Department the flexibility to fight a unified enemy that moves across borders with a unified fund, while removing the burdensome requirement for a prior approval reprogramming to conduct these operational counter-terrorism activities. In addition, the Department fully supports the Senate's proposed three-year authority to ensure our warfighters are assured of the long-term congressional support to defeat ISIL. The Senate proposal's notice and review period for obligation of funds will better balance congressional oversight with the stability, accessibility, and flexibility in funding needed by our operational commanders to carry out an agile and aggressive counter ISIL campaign.

- **Counterterrorism Partnerships Fund (CTPF).** The Department strongly objects to the elimination of CTPF in Senate section 4502 and the \$250 million reduction in CTPF in House section 1510. These provisions would remove a valuable tool for partnership-focused approaches to counterterrorism or, at a minimum, preclude DoD from continuing important

security assistance programs begun in FY 2016. The Department strongly encourages Congress to authorize the \$1 billion originally requested to continue support for CTPF activities in FY 2017.

- **Open Skies Treaty.** The Department strongly objects to House section 1231, which would effectively prohibit the expenditure of funds pertaining to the Open Skies Treaty. This would preclude U.S. participation in certification of Russian infra-red (IR) and synthetic aperture radar (SAR) sensors, which in turn would prevent the United States from objecting to the certification of these aircraft and sensors. Meanwhile, other State Parties could certify a Russian aircraft equipped with IR and SAR sensors for observation flights over all States Parties, including the United States. Section 1231 also would prohibit the expenditure of funds to accept an initial Russian observation flight equipped with IR and SAR sensors, preventing the United States from fulfilling its obligations under the Treaty. Also, the 14-day notification requirement imposed by section 1231 would be impossible to meet because treaty procedures allow 15 days for data processing to verify treaty compliance, and the Department would need additional time to transport and analyze the data.
- **New START (Strategic Arms Reduction Treaty).** The Department strongly objects to House section 1645, which would make the obligation and expenditure of DoD funds to extend the New START Treaty dependent upon the submission of onerous and duplicative reporting on arms control and military balance issues. This provision would impede the United States from exercising an existing right under the Treaty, which was ratified by the President with the advice and consent of the Senate in 2010. With implementation of the Treaty well underway, a decision to extend the Treaty in order to constrain Russia's strategic nuclear forces for an additional five years rests with the President's executive power. In addition, section 1645 would require the Chairman of the Joint Chiefs of Staff to report to Congress on the Treaty's national security value to the United States, a determination that should take into account the views of the entire Executive Branch, including the Intelligence Community (IC). Similarly, this provision assigns to the Director of National Intelligence the sole responsibility to report on Russia's compliance with its arms control obligations. Section 403 of the Arms Control and Disarmament Act, as amended (22 U.S.C. 2593a), already requires a report by the President on Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments. By Executive Order, the State Department produces and submits to Congress this report, in coordination with the Departments of Defense and Energy, as well as the IC.

U.S.-Cuba Military Engagement: The Department strongly objects to the additional restrictions in Senate section 1204 that would be placed on U.S.-Cuban military-to-military interactions. The proposed restriction would hamper pragmatic, expert-level coordination between the United States and Cuba on issues that benefit the United States. For example, the Commanding Officer of U.S. Naval Station Guantanamo Bay and his Cuban counterpart meet monthly to share information about activities on both sides of the fence to reduce the risk of accidental escalation. While section 1204 carves out an exception for exercises and operations related to humanitarian assistance and disaster relief, it does not provide an exception or waiver for counter-narcotics. In addition, section 1204 limits the ability of the Secretary of Defense to invite, assist, or assure the participation of the Government of Cuba in security conferences, where much of the multilateral

preparatory work on humanitarian assistance, disaster relief, and counter-narcotics takes place. It is in the U.S. national security interest to maintain flexibility in U.S. military-to-military engagement with Cuba due to Cuba's proximity and the many shared challenges faced by the United States and Cuba.

Responsibly Closing the Detention Center at Guantanamo Bay. The time has come to work together to responsibly close the detention facility at Guantanamo Bay, Cuba, as the Administration proposed in submitting a plan for closure to Congress earlier this year, while making clear its desire to work with Congress to achieve this important goal for our national security. The SAPs articulate our concerns with the various provisions in the House and Senate bills that impede that goal.

- **New Restrictions on Foreign Transfers.** The addition of onerous new restrictions on foreign transfers -- such as those in House sections 1034 and Senate sections 1027, 1028, and 1029 -- 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 continue to prohibit the use of and, in some cases, reprogramming 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 authorize additional flexibility in some circumstances, the bill also introduces additional problematic restrictions that would impede closure of the facility. Provisions that would require us to disclose sensitive national security information and diplomatic communications with foreign governments would have a chilling effect on the foreign governments' willingness to cooperate on detainee transfers.