



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

July 12, 2022  
(House Rules)

## STATEMENT OF ADMINISTRATION POLICY

### H.R. 7900 – National Defense Authorization Act for Fiscal Year 2023

(Rep. Smith, D-WA)

The Administration strongly supports enactment of a National Defense Authorization Act (NDAA) for a 62nd consecutive year and is grateful for the strong, bipartisan work of the House Armed Services Committee on behalf of America’s national defense.

The Administration looks forward to continuing to work with the Congress to set appropriate and responsible levels of defense and non-defense spending to support the security of the Nation. Alongside a strategically sound defense budget, a strong economy and investments in diplomacy, development, and economic statecraft are critical to ensuring that the Nation is positioned to respond to the myriad of national security challenges we face today and in the future.

The Department of Defense’s (DoD) Fiscal Year (FY) 2023 budget request was informed by the National Defense Strategy, which calls on DoD to advance four key priorities: defend the homeland, deter strategic attacks, deter aggression while being prepared to prevail in conflict when necessary, and build a resilient Joint Force and defense ecosystem.

Taking care of the All-Volunteer force, their families, and DoD civilian employees and contractors is vital to ensuring a resilient military today and in the future. It is an Administration priority, and President Biden appreciates support for the pay raise for military service members.

In a time of rapidly evolving military activities and capabilities by our competitors – accelerated by emerging technologies and intensified by the potential for new threats to strategic stability – America’s network of allies and partners continues to act as a force multiplier in support of U.S. national defense. Investments authorized in the NDAA in support of the Pacific Deterrence Initiative and the European Deterrence Initiative will help address the changing global landscape and prepare the country for future challenges and threats.

The Administration looks forward to working with the Congress to address its concerns, a number of which are outlined below.

**Optimizing Program Investments and Modernization.** As the threat environment changes, it is critical that the United States optimize the Joint Force and invest in technologies and capabilities that ensure U.S. warfighters maintain enduring advantages into the future. The Department is committed to investing in platforms and systems that are survivable, lethal, and resilient, and that make responsible use of taxpayer dollars. The Administration appreciates the authority provided in

section 121 to reduce the number of A-10s, consistent with the President's Budget request. The Administration urges the Congress to provide flexibility on the timing of the Department's retirement and divestiture plans.

The Administration strongly opposes multiple provisions that would limit DoD's ability to divest or retire lower priority platforms, including the F-22, E-3, Navy littoral combat ships, and Navy amphibious ships. Requiring the Department to maintain a minimum inventory of major platforms limits the Secretary's ability to optimize future force structure, increases the long-term cost of sustaining the force, and further delays necessary efforts to keep pace with the People's Republic of China's challenge in key warfighting areas.

The Administration particularly opposes excessive authorization levels for platforms and systems that cannot be affordably modernized in order to provide survivable, lethal, and resilient forces in the current threat environment. The President's Budget request for FY 2023 was developed in a thoughtful and deliberate way to match resources to strategy and strategy to policy. Any funding increase should be oriented to ensure the right balance of forces essential to advancing modernization while sustaining readiness.

**Authorities for Ongoing Support to Ukraine.** The Administration thanks the committee for its continued work to support Ukraine with the extension of the Ukraine Security Assistance Initiative authorities and the harmonization of those authorities with funds appropriated in the DoD Appropriations Act, 2022 and the Additional Ukraine Supplemental Appropriations Act, 2022. These changes will increase the Department's ability to assist Ukraine as it repels Russian aggression. The Administration encourages the Congress to further amend the authority to permanently adopt the remaining flexibilities initially included in the DoD Appropriations Act, 2022.

The Administration seeks two new authorities, the Critical Munitions Acquisition Fund and Defense Exportability Transfer Account, based on lessons learned from the ongoing efforts to provide Ukraine with additional capability as quickly as possible. The Administration appreciates preliminary steps taken towards the creation of a Critical Munitions Acquisition Fund in section 1706. However, this section does not provide the complete authority to establish a revolving fund to maintain continuous orders of munitions that the Administration considers critical. This section as currently drafted would still require DoD to use presidential drawdown authority of existing Department munitions stock to support partner operations. Furthermore, without the complete authority requested, the Defense Industrial Base is likely to be challenged to meet surges in demand, creating long lead-times for the delivery of critical munitions or weapon systems early in crises.

The Administration also seeks a Defense Exportability Transfer Account to transfer critical warfighting capabilities to allies and partners rapidly while protecting sensitive technology. This authority would create an account that DoD could use to develop protection strategies for DoD systems identified for possible future export; to design and incorporate exportability features into such systems during research and development; and to integrate design features to enhance interoperability of such systems with those of friendly foreign countries.

**Operation and Maintenance, Defense-Wide Funding.** The Administration opposes the magnitude of the unspecified reductions (e.g., ‘Program decrease’ and ‘Unjustified growth’) in the Operation and Maintenance, Defense-Wide account. These reductions would necessitate the use of a Reduction in Force in certain Defense Agencies and Field Activities, to include the Office of the Secretary of Defense and the Joint Chiefs of Staff. In addition, the account was subject to an undistributed mark against foreign currency fluctuations, which is not a program that resides in the Operation and Maintenance, Defense-wide account.

**Reprioritization of Military Construction Funding to Unrequested Projects.** Contrary to the Administration’s fiscally responsible policy to fully fund projects, the bill proposes to fund 10 military construction projects incrementally, effectively creating an unfunded obligation of almost \$775 million needed to fully fund these projects over time.

**Provisions Related to Civilian Harm Mitigation.** The Administration shares the Congress’s desire to reduce civilian harm resulting from U.S. military operations. The Secretary of Defense has directed the Department to develop a Civilian Harm Mitigation and Response Action Plan (CHMR-AP), which is currently in the final stages of review, and establish a Center of Excellence for Civilian Protection, the purpose of which should align with the purpose of the Department of Defense Center for Excellence in Civilian Harm Mitigation, described in section 1085. The Department anticipates a robust effort to implement the CHMR-AP and to develop significant new policies, procedures, and practices, related to civilian harm mitigation and response. The Administration looks forward to working with the Congress to address its concerns with respect to civilian harm and ensure that appropriate resources are provided for the actions set forth in the CHMR-AP. Also, the Administration notes that providing support to commissions that are Legislative Branch entities, including those established in sections 559 and 1094, is challenging due to the lack of necessary statutory authorities to fully support those commissions. The Administration looks forward to working with the Congress to address these concerns.

**Provisions Related to Compensation of Military and Civilian Personnel.** The Administration welcomes a provision in the NDAA, aligned with its FY 2023 President’s Budget request, which provides a 4.6 percent pay raise to Service members. The Administration strongly opposes the limited inflation bonus that would apply only to Department of Defense civilian employees for calendar year 2023. This provision would create significant pay inequities among Federal civilian employees and creates other problems, including for the Calendar Year 2024 pay adjustment, as currently drafted. The Administration urges the Congress to support the robust government-wide civilian pay increase of 4.6 percent included in the FY 2023 Budget request. The Administration also opposes proposed special duty pay, including for Arctic-duty and for ships undergoing nuclear refueling or complex overhauls. The Administration opposes these proposed pays because they are unnecessary, as current law provides sufficient authority for special duty pays. The Administration appreciates the Committee’s concern for members assigned to difficult assignments and is committed to working with the Congress to ensure members have access to appropriate living arrangements during these extended periods in the shipyard.

**Military Justice Measures.** In 2021, this Administration partnered with Congress to enact historic reforms of the military justice system. The Administration is committed to a successful transition to the reformed system, and strongly supports the inclusion of sexual harassment as a covered offense

under the purview of the Office of Special Trial Counsel, with the following clarifications. In order to ensure that section 531 does not have the unintended effect of delaying swift action to address sexual harassment for a complainant who wants to pursue informal reporting options, or deter reporting by those victims who do not wish to become part of criminal investigation or prosecution processes, section 531 should apply only to sexual harassment allegations which have been the subject of a formal complaint and substantiated after an independent investigation. This clarification will reflect an important nuance included in recommendation 1.2 of the Independent Review Commission on Sexual Assault in the Military (IRC): under the IRC's approach only substantiated findings of sexual harassment would be referred to a special trial counsel for a disposition decision. Without that important caveat, the volume of cases referred would likely be far greater than the IRC intended. The Administration appreciates the inclusion of an exemption for the Lead Special Trial Counsel billets from the statutory general/flag officer caps and the consolidation of the Department of the Air Force's two Offices of Special Trial Counsel into one, which will facilitate implementation.

**Naval Force Structure and Shipbuilding.** The Administration opposes establishing in statute a minimum number of Navy amphibious ships, or other numeric force structure provisions, as they unduly constrain evolutions in joint warfighting approaches and associated capability prioritization. Further, the Administration strongly opposes incrementally funding a third Arleigh Burke class destroyer in FY 2023.

**Nuclear-armed Sea-launched Cruise Missile.** The Administration strongly opposes continued funding for the nuclear sea-launched cruise missile (SLCM-N) and its associated warhead. The President's Nuclear Posture Review concluded that SLCM-N, which would not be delivered before the 2030s, is unnecessary and potentially detrimental to other priorities. The United States has sufficient current and planned capabilities for deterring an adversary's limited nuclear use. DoD's conventional and strategic nuclear capabilities include 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 updated B61-12 nuclear gravity bombs. Further investment in developing SLCM-N would divert resources and focus from higher modernization priorities for the U.S. nuclear enterprise and infrastructure, which is already stretched to capacity after decades of deferred investments.

**Nuclear Forces Provisions.** The Administration shares the goal of making certain the Nuclear Weapons Council and other bodies ensure that the Secretary of Defense and Deputy Secretary of Defense have the governance forums needed to oversee nuclear forces, but it opposes section 1631(a) because processes to provide such governance are already in place through existing bodies such as the Deputy's Management Action Group (DMAG). Similarly, the Administration opposes section 1632, as it would create a duplicative portfolio management framework for nuclear forces that is separate from the existing DMAG, which already assesses and manages risk across the Department's programmatic activities for nuclear forces.

**Integration of Civil and Military Advice to Department Leadership.** While the Administration appreciates the concerns related to the prioritization of the use of service members against existing military personnel requirements, the Administration strongly opposes section 506, which directs a burdensome validation of every military staff billet assigned to the Office of the Secretary of

Defense and the Joint Staff, including the Chairman's Controlled Activities. The military members within the senior DoD headquarters staffs are critical to the integrated and informed advice provided to the Secretary of Defense and the Chairman of the Joint Chiefs of Staff.

**Missile Defense Programs.** The Administration opposes section 1648(b) and (c), which would require the Secretary of Defense, acting through the Director of the Missile Defense Agency, to rapidly procure and field up to three vertical launching systems that can be operated by the Navy by December 31, 2023, as well as the subsequent waiver authority. The planned defense of Guam architecture has undergone a risk mitigation assessment with the intent to expedite capability delivery in a phased approach. Long lead items for a vertical launch system will be procured in FY 2022 and the mobile launcher design modifications will be conducted in parallel.

**Provisions Related to Per- and Polyfluoroalkyl Substances (PFAS).** The Administration remains committed to responsibly addressing PFAS on and from military bases across the country and shares the Congress's concern for the potential health impacts. The Administration is concerned that section 342, which would prohibit DoD from procuring a wide range of items that may contain PFAS, and would significantly increase the number of PFAS to which the existing prohibition would apply (from two PFAS to hundreds of PFAS currently in commerce), would cause operational strains. DoD is collaborating with others across the Administration to implement President Biden's Executive Order on Catalyzing Clean Energy Industries and Jobs through Federal Sustainability, including efforts to avoid procurement of products containing PFAS while ensuring we meet the needs of service members. The Administration is interested in working with Congress to ensure that Federal agencies are using appropriate cleanup levels as the Administration continues its work to accelerate the clean-up of PFAS.

**Space National Guard.** While the Administration supports the operational requirements for part-time service within the Space Force, we continue to strongly oppose the creation of a Space National Guard. The Space Force's proposed military talent management approach, the Space Component legislative proposal, would efficiently and effectively combine existing Regular and Air Force Reserve units and people that support the space mission, and allow part-time service within the Space Force without requiring the additional overhead of a separate component. This construct would ensure uninterrupted access to crucial operational surge capacity and combat depth, and serve as a valuable retention and recruiting tool for both existing and prospective military members. In addition, DoD's space missions currently performed by members of the National Guard are solely Federal missions. The Administration looks forward to working with the Congress to enact the Space Force's new military construct and urges the Congress not to create a new, potential costly bureaucracy with far-reaching and enduring implications.

**Afghanistan Special Immigrant Visas (SIV).** The Administration remains steadfast in its commitment to resettle vulnerable Afghans who have supported our mission in Afghanistan for the past 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 90,000 Afghans and their family members in the United States. 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 2023, the Committee-reported NDAA bill does not provide for such an increase. The Administration strongly urges the Congress to continue to demonstrate a commitment

to our Afghan partners and increase the Afghan SIV cap in the final FY 2023 NDAA. In addition, the Administration supports the policy purpose of section 5801 to make SIVs available to Afghans whose employment by or on behalf of the U.S. Government fell short of one year due to an incapacitating injury or wound, but the Administration is concerned that lack of access to reliable evidence of such circumstances likely would significantly frustrate SIV applicants seeking to benefit from that provision. The Administration hopes to work with the Congress on further reforms to facilitate issuing SIVs Afghans who were injured before they could fulfill the one-year minimum time working for or in support of the U.S. Government.

**Fallon Range Training Complex (FRTC) Modernization.** The Administration looks forward to continuing to work with Congress on DoD's request to expand the FRTC to provide the area needed to fully accommodate modern military training requirements while upholding Tribal trust responsibilities and responsible management of public lands and the livelihoods of local communities.

**Prohibition on Sale of Certain Goods in Commissary Stores and Military Exchanges.** The Administration strongly opposes section 631, which bans the sale of certain products in military exchanges and commissaries. This would affect more than 70 percent of products sold in military exchanges, a similar percentage to private sector businesses, and place a heavy financial burden on service members.

**Modification to Prohibition on Operation or Procurement of Foreign Made Unmanned Aircraft Systems (UAS).** The Administration opposes section 819 because section 848 of the FY 2020 NDAA already imposes limits on a list of critical electronic components as well as the UAS as a whole. While the Department shares concerns regarding the security of UAS components, extending these restrictions would not be practicable given the complexity of UAS systems, some of which may contain thousands of individual parts.

**Notification to Next of Kin upon the Death of a Member of the Armed Forces.** The Administration opposes section 521, which would require the Secretary of the Military Department concerned to "notify the next of kin or other appropriate person not later than four hours after such death." Reducing the timeline to four hours (from the current 12 hours) could jeopardize providing validated factual information to the next of kin.

**Provision Related to Certain National Guard Duty.** The Administration opposes section 516 because it would permit non-Federal officials to disapprove use of National Guard personnel carrying out DoD operations and missions in a certain title 32 duty status, even when those personnel are performing their duty on Federal lands and at Federal facilities. Section 502(f) of title 32, United States Code, is used to permit National Guard personnel, under the command and control of their respective governors, to carry out DoD missions, including DoD support to other Federal departments or agencies.

**Temporary Requirement for Contraception Coverage Parity under the TRICARE Program.** The Administration strongly supports section 705, which waives cost-sharing for contraceptives and contraceptive care provided through the TRICARE program for one year. Evidence from previous studies has shown that reducing copays increases contraception use, which

reduces unintended pregnancies. Ensuring access to contraception is a crucial element of preventative health care. Lowering barriers to reproductive health care will have a readiness benefit for the Department.

**Security Clearances.** The Administration supports the shared objective of timely mobility of cleared workers but is concerned that, as written, section 1042 would require continuation or restoration of a clearance principally based on the characterization of the service discharge without allowing for the proper consideration of other disqualifying factors. In addition, by directing the Secretary of Defense to establish unique procedures for DoD military and civilian populations, section 1042 would undercut Executive Orders 12968 and 13467, wherein the President named the Director of National Intelligence as the Security Executive Agent. Section 864 would pilot the ability of certain organizations seeking to perform classified contract work for the Department to be granted sponsored personnel security clearances prior to the completion of a facility clearance, altering the long-standing sequencing of access to classified information. The Administration would welcome working with the Congress to address concerns with both provisions.

**Establishment of Army and Air Force Safety Commands.** The Administration places a high priority on safety and has multiple ongoing efforts to improve DoD wide governance of safety incidents. The Administration opposes section 386 because such a reorganization would hinder these ongoing efforts, including the establishment and chartering of the Joint Safety Council as directed in the FY 2022 NDAA, implementing the 25 recommendations of the National Commission on Military Aviation Safety, reinvigorating the Defense Safety Oversight Council, and codifying Department-wide safety business processes and data standards to support a proactive enterprise risk management approach.

**Extension of Small Business Innovation Research/Small Business Technology Transfer Programs.** The Administration strongly supports the extension of Small Business Innovation Programs to enable continued support of small businesses across America that provide the Federal government with valuable innovation and technology products.

**Annual Recruitment and Retention Bonus for Federal Wildland Firefighters.** The Administration appreciates the focus on improving pay for Federal Wildland Firefighters through creating a permanent annual recruitment and retention bonus (minimum \$1,000) for Federal Wildland Firefighters. However, instead of enacting this provision as included in the Committee-reported bill, we urge the Congress to work with the Administration on a more comprehensive and strategic long-term pay solution to take effect in FY 2024. Section 40803 of the Bipartisan Infrastructure Law authorized sizable payments equal to \$20,000 or 50 percent of the firefighter's annual rate of basic pay to address recruitment and retention problems that will apply while a longer-term pay solution for Federal Wildland Firefighters is developed.