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OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 29, 2012
(Senate)

STATEMENT OF ADMINISTRATION POLICY

S. 3254 – National Defense Authorization Act for FY 2013

(Sen. Levin, D-MI)

The Administration appreciates the Senate Armed Services Committee's continued support for our national defense and supports a large number of the provisions in S. 3254, the National Defense Authorization Act for FY 2013, such as its support for both the base budget and for overseas contingency operations; the Administration's initiative to modernize the military retirement system; and authorities that enhance the Department of Defense's (DOD's) ability to operate in unconventional and irregular warfare, counter unconventional threats, or support contingency or stability operations. However, while there are numerous areas of agreement with the Committee, the Administration has serious concerns with provisions that: (1) depart from the President's FY 2013 Budget request; (2) constrain the ability of the Armed Forces to carry out their missions consistent with the new defense strategy; and (3) limit key authorities of the Executive. If the bill is presented to the President for approval in its current form, the President's senior advisers would recommend that the President veto the bill. The Administration strongly supports the overall goals of this legislation and looks forward to working with the Congress to address these and other concerns, a number of which are outlined in more detail below, and eventually signing this important legislation.

Detainee Matters: The Administration strongly objects to section 1031's restrictions on the use of funds to transfer detainees from the detention facility at Guantanamo Bay to foreign countries. When he signed past versions of this legislation, the President objected to the restrictions carried forward by section 1031, promised to work towards their repeal, and warned the Congress that the restrictions on transferring detainees from Guantanamo Bay to foreign countries would in certain circumstances interfere with constitutional responsibilities committed to the Executive Branch. Since these restrictions have been on the books, they have limited the Executive's ability to manage military operations in an ongoing armed conflict, harmed the country's diplomatic relations with allies and counterterrorism partners, and provided no benefit whatsoever to our national security. The Administration continues to believe that restricting the transfer of detainees to the custody of foreign countries in the context of an ongoing armed conflict interferes with the Executive's ability to make important foreign policy and national security determinations, and would in certain circumstances violate constitutional separation of powers principles. The Administration also continues to oppose the prohibition on funding to construct, acquire or modify a detention facility in the United States to house any individual detained at Guantanamo, which shortsightedly constrains the options available to military and counterterrorism professionals to address evolving threats. The restrictions carried forward by section 1031 were misguided when they were enacted and should not be renewed.

TRICARE Fees and Co-Payments: The Administration strongly encourages the Senate to adopt its requested TRICARE fee initiatives that seek to control the spiraling DOD health care costs while keeping retired beneficiaries' share of these costs well below the levels experienced when the

TRICARE program was implemented in the mid-1990s. The projected TRICARE savings of \$1.8 billion in FY 2013 and \$12.9 billion through FY 2017 are essential for DOD to successfully address rising personnel costs. DOD needs these savings to balance and maintain investments for key defense priorities.

Structure of the Air Force: The Administration strongly objects to Title XVII, which would place limitations on funding to be used to divest, retire, or transfer units of the Air National Guard or Air Force Reserve, in addition to creating a commission to study the appropriate makeup of the Air Force. These provisions would force DOD to operate, sustain, and maintain aircraft that are in excess to national security requirements, as defined by the new defense strategy, and are not affordable in an austere budget environment. They also would impair the ability of the Secretary to manage the Department and, by retaining large numbers of under-resourced aircraft in the fleet in today's fiscally constrained environment, could contribute to a hollow force.

Reductions in Civilian and Contractor Workforce: The Administration objects to section 341, which would reduce funding for the civilian and contractor workforce by a rate that is at least equal to the percentage of funding saved from the planned reductions in military personnel end strength. This would require savings in the civilian and service contractor workforces in excess of \$5 billion over planned savings through FY 2017. The Administration believes the size of the civilian workforce should be determined based on workload and funding, not on arbitrary comparisons to the military. To comply with this legislation, the Department would need to significantly divest workload and impose workforce caps.

Alternative Fuels: The Administration strongly objects to sections 313 and 2823, which would limit DOD's ability to procure alternative fuels for military applications. Section 313 is overly broad and has the potential to restrict investments by making price the sole factor in determining if DOD could use an alternative fuel, without any consideration of military capability, mission, or circumstances contributing to long-term energy security. Section 2823 would limit DOD's ability to contribute to the development of a domestic capability to produce cost-competitive advanced drop-in biofuels at a commercial scale. Such a capability, pursued in collaboration with the Departments of Agriculture and Energy, would help insulate the Nation, as well as the military, against potential supply disruptions.

Medium Extended Air Defense System (MEADS): The Administration strongly objects to section 236, which would prohibit the use of funds for the MEADS program. If the Congress does not appropriate FY 2013 funding, there is a high likelihood that this action would be perceived by our partners, Italy and Germany, as breaking our commitment under the Memorandum of Understanding. This could harm our relationship with our allies on a much broader basis, including future multinational cooperative projects. It also could prevent the completion of the agreed Proof of Concept activities, which would provide data archiving, analysis of testing, and software development necessary to harvest technology from U.S. and partner investments in MEADS.

Missile Defense: The Administration appreciates the support for DOD's air and missile defense programs as well as support for the Government of Israel's Iron Dome rocket system.

Replacement Project for Chemistry and Metallurgy Research Building: The Administration strongly objects to section 3111, which would require construction of the Chemistry and Metallurgy Research Replacement (CMRR) facility to begin in 2013. The Departments of Defense and Energy agree that, in light of today's fiscal environment, CMRR can be deferred for at least five years, and

funds reallocated to support higher priority nuclear weapons goals. An interim strategy will be implemented to provide adequate support to plutonium pit manufacturing and storage needs until a long-term solution can be implemented. Further, S. 3254 would require funding for the CMRR in FY 2013 to be taken from other National Nuclear Security Administration priorities, creating undue risks for other parts of the program, including delays to critical infrastructure modernization, underfunding operations of the nuclear complex, and curtailing science, engineering, and key nonproliferation initiatives. Finally, section 3111 specifies an operational date but caps total funding at the low end of the agency estimate, which may not be achievable.

Limitation on Reimbursement of the Government of Pakistan: The Administration strongly objects to the certification requirements in section 1216. These certification requirements – some of which require the Secretary of Defense to certify Pakistani cooperation on issues outside of his purview – are proposed at a particularly sensitive time and would severely constrict DOD's ability to respond to emergent war-time coalition support requirements, putting at risk the success of our campaign in Afghanistan.

Cybersecurity: The Administration objects to sections 925 and 929. The provisions significantly limit the Administration's flexibility by specifying technical choices that do not allow the National Security Agency to most effectively execute its mission and take advantage of the economic and technological advantages of cloud and next generation technologies. In particular, section 929 would, in effect, deny the use of an open source project for DOD and establish a dangerous precedent for the use of open source in general.

Unrequested Authorizations: The Administration objects to the unrequested authorizations for the advance procurement of additional F/A-18E/F Navy fighter aircraft and for unneeded upgrades to the M-1 Abrams tank. Funding these items in this fiscally-constrained environment would divert scarce resources away from more important defense programs.

Office of Security Cooperation in Iraq (OSC-I): The Administration appreciates the Committee's full funding for the OSC-I. However, section 1212 does not include the Administration's requested language that authorizes the OSC-I to conduct critical training and assisting activities for Iraqi Ministry of Defense and Counter-terrorism Service (CTS) personnel. This authority is needed to continue supporting the Government of Iraq's efforts to address Iraqi Ministry of Defense and CTS capability gaps, which was authorized through the Iraqi Security Forces Fund.

Requirements and Limitations for Suspensions and Debarment Officials: The Administration objects to section 881, which would impose an identical organizational structure and set of duties for each of the suspension and debarment programs operated by the Army, Navy, Air Force, and Defense Logistics Agency (DLA). The proposed restrictions would unnecessarily force DOD to make disruptive and costly changes to its existing programs – especially at the Army and DLA – that already are among the most active and effective in the Federal government in protecting taxpayers from fraud, waste, and abuse. DOD should be allowed to retain the discretion to appropriately tailor its suspension and debarment programs so that they may operate in the most efficient and effective manner possible.

Military Construction Funding for Guam: The Administration strongly objects to the limitations imposed by section 2208 on the obligation and expenditure of United States and Government of Japan funds to implement the realignment of the U.S. Marine Corps units from Okinawa, to which the United States remains steadfastly committed. The provision would unnecessarily restrict the

ability and flexibility of the President to execute our foreign and defense policies with our ally, Japan. In April 2012, the United States and Japan announced a new plan to implement the realignment of U.S. forces from Okinawa to Guam. Prohibiting the use of funds could adversely impact the United States' ability to move forward on the new plan. Additionally and separate from the section 2208 restrictions, the Administration has serious concerns over the lack of authorization of appropriations for essential upgrades to the fuel pipeline from Apra Harbor to Andersen AB, theater-wide strategic capability. The reduction of \$233 million would impede the implementation of our new defense strategy, which calls for an increased focus on the Asia-Pacific region.

Electro-Optical Imagery: The Administration objects to section 930, which would require the Administration to sustain the commercial imagery program through FY 2013 at a funding level that is significantly above the President's request. The plan reflected in the President's Budget results in an approximately 50 percent cost reduction while keeping about 75 percent of the planned capacity growth. This option represents the best value for the government.

Incremental Funding: The Administration strongly objects to the use of incremental funding for the Space-Based Infrared System satellites and the VIRGINIA class attack submarine because incremental funding undermines program stability and cost discipline. Although the Administration supports the underlying programs, the requested full funding and advance appropriations is preferred.

Military Personnel: The Administration appreciates the inclusion of the requested 1.7 percent military pay raise and the Military Compensation and Retirement Modernization Commission. However, congressional support for the Administration's force management proposals is also critical. Maintaining readiness, while responsibly reducing our force structure, will be a major challenge in the years ahead. Enacting the force management proposals, which will provide a key tool in achieving the necessary force drawdown, will give DOD flexibility to create a more agile force, ensure DOD retains the right skills, and preserves the morale of the all-volunteer force.

National Language Service Corps: The Administration has concerns with section 941 and looks forward to working with the Congress to address those concerns.

Military Access to Reproductive Care and Health: The Administration supports section 711, which would include the rape and incest exception to the general prohibition on using appropriated funds to perform abortions under section 1093(a) of Title 10. The inclusion would make this provision consistent with other major abortion funding restrictions in Federal law. In addition, the Administration supports the restoration of policy to ensure that servicewomen and military dependents – including servicewomen stationed overseas – have the ability to obtain abortion services using their own, private funds.

A number of the bill's provisions raise additional constitutional concerns, including separation of powers. The Administration also looks forward to working with the Congress to address these and other concerns.

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