



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

October 18, 2022
(Senate)

STATEMENT OF ADMINISTRATION POLICY
S. 4543 – James M. Inhofe National Defense Authorization Act for Fiscal Year 2023
(Sen. Reed, D-RI)

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 Senate Armed Services Committee on behalf of America’s national defense.

The Administration looks forward to continuing to work with 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 will face in the future.

The Department of Defense’s (DoD’s) Fiscal Year (FY) 2023 budget request was informed by the 2022 National Defense Strategy (NDS), 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. This 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 Congress to address its concerns with S. 4543, a number of which are outlined below. The Administration also looks forward to reviewing recently introduced amendments and working with Congress toward enactment of an NDAA for FY 2023.

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 urges Congress to provide flexibility on the timing of DoD's retirement and divestiture plans.

The Administration strongly opposes multiple provisions that would limit DoD's ability to divest or retire lower-priority platforms and certain Navy littoral combat ships, amphibious ships, and expeditionary transport dock ships. Requiring the Department to maintain a minimum inventory of major platforms would limit the Secretary of Defense's ability to optimize future force structure, increase the long-term cost of sustaining the force, and further delay necessary efforts to keep pace with the challenge posed by the People's Republic of China in key warfighting areas.

The Administration particularly opposes excessive authorization levels for platforms and systems that cannot be affordably sustained or modernized in order to provide survivable, lethal, and resilient forces in the current threat environment. The President's Budget for FY 2023 was developed in a thoughtful and deliberate way to match resources to strategy and strategy to policy. The cost to sustain a platform over its lifetime is often more than double the cost to procure it; funding only the latter drives persistent and significant imbalance in the defense program which contributes to poor readiness outcomes.

Authorities for Ongoing Support to Ukraine. The Administration thanks the Committee for its continued work to support Ukraine, including the authorization of additional funding for the Ukraine Security Assistance Initiative (USAI), and the extension and modification of its use. The Department thanks the Committee for the authority to expand the groups eligible for assistance and the ability to accept returned equipment or equipment procured for transfer as DoD stocks. However, the Administration would appreciate the requested authority to waive the certification requirement in section 1250(c)(2) of the USAI.

The Administration seeks two new authorities, the Critical Munitions Acquisition Fund and the Defense Exportability Transfer Account, based on lessons learned from the ongoing efforts to provide Ukraine with additional capability as quickly as possible. This bill as currently written does not provide these authorities. Without the additional authorities requested, the defense industrial base (DIB) is likely to continue to be challenged to meet surges in demand, creating long lead-times for the delivery of critical munitions or weapon systems to allies and partners of the United States to support sustained contingency operations. Further, the Department will continue to be delayed in providing such critical munitions or weapons systems to allies and partners in this and future crises due to program protection concerns and interoperability challenges.

Lack of Full Funding for Military Construction Projects. Contrary to the Administration's fiscally-responsible policy of fully funding construction projects, the proposal to incrementally fund 21 projects effectively creates an unfunded obligation of more than \$2 billion that will need to be funded in future requests.

Creation of a New Civilian Casualty Office. The Administration shares Congress’s desire to reduce civilian harm resulting from U.S. military operations. The Department has released its Civilian Harm Mitigation and Response Action Plan (CHMR-AP), which creates a Civilian Protection Center of Excellence and designates the Secretary of the Army as DoD’s joint proponent for CHMR. The Department is undertaking a robust effort, overseen by senior DoD leaders, 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 Congress to address its concerns with respect to mitigating civilian harm and to ensure that appropriate resources are provided for the actions set forth in the CHMR-AP. The Administration does not believe a new office for Civilian Casualty Prevention, Mitigation, and Response (section 1043) should be created at this time as it would duplicate efforts already underway within the Department.

Matters in Connection with Military Justice. In 2021, this Administration partnered with Congress to enact historic reforms of the military justice system, which will come into full effect in December 2023. The Administration looks forward to working with Congress on the successful implementation of the FY 2022 NDAA reforms.

The Administration strongly supports Congress adding the offense of sexual harassment under Article 134 of the Uniform Code of Military Justice (10 United States Code (USC) 934) as an offense covered by these historic reforms, subject to the limitation that only formal sexual harassment complaints that have been substantiated after an independent investigation would be forwarded to Special Trial Counsel for disposition. Such a limitation is important to ensure that establishing sexual harassment as a covered offense does not have the unintended effect of deterring reporting by victims who do not wish to become part of the criminal investigation or prosecution processes, or of delaying action to address sexual harassment allegations made by complainants who want to pursue informal reporting options. That limitation is consistent with recommendation 1.2 of the Independent Review Commission on Sexual Assault in the Military. It is important to ensure that the Offices of Special Trial Counsel are resourced so as to avoid exacerbating delay in the prosecution of other offenses — including sexual assault and domestic violence.

The Administration appreciates section 546’s exemption of the Lead Special Trial Counsel billets from the statutory general/flag officer caps for a two-year period. The Administration believes a permanent exemption for Lead Special Trial Counsel billets from the statutory cap would reflect the continuing and critical requirement for general/flag officers to lead the Offices of Special Trial Counsel. That requirement should not be in tension with the other general/flag officer requirements of the Department. The Administration also welcomes section 547’s consolidation of the Department of the Air Force’s two Offices of Special Trial Counsel into one, which will facilitate implementation.

Modifications to Humanitarian Assistance. The Administration strongly opposes section 1208, modifying 10 USC 2561, which already authorizes DoD to provide worldwide transportation of humanitarian relief and for other humanitarian purposes. The provision would duplicate existing DoD humanitarian assistance authorities (10 USC 401, 402, 404, 407, 2557,

and 2561). The existing DoD authority should not be amended, as the Secretary of State already has broad primary authorities to do such training and to partner with foreign nations in order to achieve foreign policy goals, and existing Department of State authorities should not be replicated elsewhere. Section 1208 would result in duplicative programs and more fractured approaches to providing well-coordinated crucial U.S. Government support for humanitarian and disaster relief efforts and capacity-building.

Expansion of Accrual Funding for All Retiree Health Care. The Administration urges Congress to support the expansion of accrual financing for all military retiree health care as proposed in the President's FY 2023 Budget. The proposal builds on the trust fund infrastructure already in place to move pre-Medicare-eligible retiree health costs to the same mandatory spending category as Medicare-eligible retiree health costs and military retired pay. In addition to following best practices in reflecting the full cost of future military retiree benefit entitlements being earned by military members' current service, accrual-based budgeting creates new incentives to support cost savings initiatives and reduces the need for execution-year reprogramming actions due to unanticipated changes in health care costs within the discretionary funded Defense Health Program.

Provisions Related to Civilian Personnel. The Administration welcomes the Committee's support of effective workforce and performance management practices and looks forward to working with Congress on certain civilian personnel provisions of concern. The Administration appreciates section 1101, which would extend eligibility for DoD employees in term limited appointments to compete for permanent appointments. While the Administration supports the hiring goals under section 1101, the provision would create inequity across the government and we urge Congress to harmonize applicability to all Federal employees by providing government-wide eligibility authority. Additionally, the Administration looks forward to working with Congress further on section 1112 to ensure program and operational consistency, as well as for sections 744 and 2822 to fully address the employment status of individuals tasked with serving on the advisory committees.

Provisions Related to Military Spouses. The Administration recognizes that military spouses are the bedrock of military families. While section 1110 would extend by five years the existing authority for noncompetitive appointment of military spouses, the Administration urges Congress to further improve civilian hiring opportunities for military spouses. Instead, the Administration urges Congress to make the authority permanent given the benefits to our nation's military personnel and their families, as well as the benefit to our Federal agencies employing military spouses.

Increase in Authorized Number of Assistant and Deputy Assistant Secretaries of Defense. The Administration opposes Section 901 as currently drafted. The Department requires three Assistant Secretaries of Defense and nine Deputy Assistant Secretaries of Defense under the Office of the Under Secretary of Defense for Research and Engineering to fulfill the intent of section 133a of title 10, USC, as added by section 901(a)(1) of the FY 2017 NDAA. The Administration is committed to ensuring it has a sustained leadership focus on cyber security, including by appointing senior cybersecurity leaders in key existing positions while maintaining sufficient flexibility for the Department to meet organizational changes as requirements evolve.

Naval Force Structure. The Administration opposes sections 1022, 1023, and 1025, which would unduly constrain evolutions in joint warfighting approaches and associated capability prioritization. The Administration urges Congress not to add Advanced Procurement funding to Landing, Platform, Dock (LPD)-33. The Department remains focused on investing in the right mix of capabilities, including future amphibious platforms, to deliver the ships the Joint Force needs to campaign in the Indo-Pacific region and implement the 2022 NDS.

Nuclear Issues. 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 the 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. It would also impose operational challenges on the Navy. The Administration opposes any limitation or delay to the retirement of the B83-1 because of its diminishing utility in the current security environment.

EA-18G Transfer to Navy Reserve. The Administration opposes section 129(b), which would transfer the EA-18Gs in the expeditionary Electronic Attack squadrons to the Navy Reserve Air Forces. Transferring this mission to the Navy Reserve is un-executable because they lack the manning to fill the required aircrew and maintenance billets, which will result in decreased readiness. The cost of implementing the transfer also would be significant.

Prohibition on Delegation of Authority to Designate Foreign Partner Forces as Eligible for the Provision of Collective Self-Defense Support by United States Armed Forces. The Administration strongly opposes section 1044. The authority to defend foreign partner forces and individuals is an inherent and critical component of combined military operations. Currently, the Secretary may specifically designate which foreign forces and individuals U.S. forces are authorized to defend, and he may also delegate authority to a Combatant Commander. Prohibiting the President and the Secretary of Defense from delegating this authority to someone below the Secretary would constrain the Department's ability to provide timely support to emerging situations and operations and to critical allies and partners, and could compromise U.S. personnel, our strategic interests, and foreign partner forces.

Modifications to Ballistic Missile Defense System (BMDS) Plans. The Administration strongly opposes sections 1541 and 1544, which propose significant modifications to plans for the BMDS, which is inconsistent with both existing organizational roles and the NDS. Section 1541 would require the Missile Defense Agency (MDA) to conduct persistent cybersecurity operations across all networks supporting the BMDS, which is a significant departure from the mission of MDA. MDA serves in a supporting role once capability has been delivered to the

warfighter and has no expertise or authority to conduct cybersecurity operations on operational systems. By more than tripling the planned inventory of Next Generation Interceptors, section 1544 would be extremely costly and inconsistent with both the 2022 NDS and 2022 Missile Defense Review. The Department is exploring more cost-effective approaches to address the nuclear threat from North Korea.

Acceleration of Glide Phase Interceptor (GPI) and Homeland Cruise Missile Defense

Demos. The Administration opposes authorization of additional funding for the GPI or a homeland cruise missile defense demo, which do not align with the Department’s planned efforts. The technological maturity of GPI is currently too low to support such an acceleration, and the Department is investing heavily in other near-term counter-hypersonic capabilities, such as the SM-6 and non-traditional approaches. Additionally, the proposed MDA-led cruise missile defense demo using Navy interceptors does not align with the Department’s recent designation of the Air Force as the acquisition authority for cruise missile defense of the homeland.

Prohibition on Certain Procurements of Major Defense Acquisition Programs (MDAPs).

The Administration opposes section 803 as written. The Department is working aggressively to strengthen domestic supply chains, including increasing reliance on domestic critical items and components in MDAP products, and appreciates Congress’s ongoing support in these efforts. However, the provision as written, would create significant operational challenges. Neither the Department nor its defense industry partners can determine the original source of many items within the supply chain that are commercial or of small dollar value—for example, raw materials and many electronic sub-components. Enactment of this provision, as written, may unintentionally disrupt contract deliveries, increase the cost of MDAPs, and reduce warfighters’ mission effectiveness.

Matters Relating to Role of Nuclear Weapons Council with Respect to Budget for Nuclear Weapons Programs.

The Administration shares the goal of ensuring that the Nuclear Weapons Council has the governance structure and authorities to carry out its responsibilities, but it strongly opposes section 1511 because it purports to require the disclosure of internal Executive Branch pre-decisional deliberations. Section 1511(c)(7) would create a duplicative and burdensome process and would require the Council to notify defense committees if a House of Congress adopts a bill authorizing or appropriating funds in an amount that would result in a delay in the nuclear certification or delivery of key modernization efforts. Congressional defense committees are already informed about adequate funding levels through the President’s Budget. Additionally, 10 USC 179 already requires a substantial flow of information between the Council and the committees on nuclear weapons systems matters, including semiannual updates on Council matters, which could include how funding levels impact delivery schedules. The Administration urges Congress to rely on the existing mechanisms to notify congressional defense committees if funding bills are adopted that would result in delays to delivery systems and Nuclear Command, Control, and Communications systems.

Contract Requirements Relating to Maintenance and Modernization Availabilities for Certain Naval Vessels.

The Administration opposes section 1024(a), which would limit the Navy’s ability to contract with a private entity for fast attack submarine maintenance and modernization availabilities. Section 1024(a) would adversely affect the schedule of

maintenance, prevent the Navy from awarding Los Angeles-class submarine maintenance work, and harm the Navy's readiness and warfighter capability. The Navy relies on private industry to conduct emergent submarine repairs, but this provision would prevent the Navy from using private shipyards to execute unplanned repairs. Maintaining this flexibility is critical to ensuring support for operational commanders.

Red Hill. The Administration supports the authorization of \$1 billion for the Red Hill Recovery Fund to enable continued support of activities taken to comply with State of Hawaii Department of Health laws, or otherwise determined to be appropriate, including activities relating to improvements of infrastructure and defueling, at the Red Hill Bulk Fuel Storage Facility.

Wildland Firefighting Data Analysis Mission. The Administration is concerned that section 515 would limit the Administration's ability to transition DoD's Economy Act support of the National Interagency Fire Center to the Department of Agriculture (USDA) for the wildland firefighting early warning tool. DoD currently conducts this support as a pilot program commonly referred to as "FireGuard," but the President's FY 2023 Budget proposed that the USDA conduct this activity. Allowing the establishment of this activity, which DoD is currently undertaking on a temporary and reimbursable basis at the request of the National Interagency Fire Center in USDA would ensure the continued availability of data valuable to wildland firefighting efforts and would appropriately place the responsibility for resourcing and managing the mission in the hands of the experts that lead Federal wildland firefighting efforts. The Administration views the establishment of the wildland firefighting data analysis mission in USDA as an opportunity to increase the efficiency, stability, and capability of this mission, while also increasing the availability of DoD resources for NDS priorities.

Space National Guard. The Administration appreciates the exclusion of a provision in S. 4543 to create 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 who support the space mission. The Space Component also would allow part-time service within the Space Force, including by those currently performing space missions in the Air National Guard, 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 and should be migrated to the Space Component over time. The Administration looks forward to working with Congress to enact the Space Force's new military construct.

Afghanistan Special Immigrant Visas (SIVs). The Administration remains steadfast in its commitment to resettle Afghans who have supported our mission in Afghanistan for the past two decades. Since Congress passed the Afghan Allies Protection Act in 2009, the U.S. Government has used the Afghan SIV Program to resettle an estimated 90,000 Afghans and their family members in the United States. In bipartisan support of this effort, Congress has continued to increase the Afghan SIV cap annually. However, despite the Administration's request to increase the SIV cap in FY 2023 by 4,000, the Committee-reported NDAA bill does not provide for such an increase. The Administration strongly urges Congress to continue to demonstrate a

commitment to our Afghan partners and increase the Afghan SIV cap in the final FY 2023 NDAA. The Administration is disappointed that the NDAA does not include the authority to ensure that Afghan parolees have a pathway to citizenship and will continue to work with Congress to secure that authority.

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.

Modifications to the Defense Research and Development Rapid Innovation Program. The Administration appreciates the inclusion of section 861 and its recognition that maintaining our advantage in innovation requires public-private partnerships to develop and scale technologies critical to our nation’s defense. However, without capital assistance authorities, section 861 would not be sufficient to address our nation’s critical technology gaps. The Administration looks forward to working with Congress to provide authorities that would increase U.S. competitiveness and address acquisition and technology transfers by countries that are adversaries of the United States.

Significant Foreign Assistance Provisions. The Administration is concerned that sections 1203, 1209, 1210, 1245, 1246, 1248, 1542, and 1611 do not include a requirement for Secretary of State concurrence and so would provide insufficient means for the Secretary of State to provide input to ensure foreign assistance is carried out in a manner consistent with foreign policy priorities.

Progress Payment Incentive Pilot. The Administration appreciates the intent of section 827 to enhance contractor responsiveness to the Department’s goals for acquisition effectiveness, efficiency, and increased small business participation through the creation of a pilot program to make increased progress payment rates contingent on satisfaction of specified criteria. However, as currently written, it presents significant implementation challenges and could negatively impact the DIB, particularly given supply chain constraints, workforce shortages, and inflation. The Administration looks forward to working with Congress to tailor the scope of the pilot, progress payment rates, and criteria to ensure they are manageable and avoid unintended consequences while still achieving the goals of the program.

Constitutional Concerns. Certain provisions in this bill raise constitutional concerns. The Administration looks forward to working with the Congress to address these and other concerns as this legislation advances.
