



SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-1000

DEC 12 2016

The Honorable Shaun Donovan
Director
Office of Management and Budget
Washington, DC 20530

Dear Mr. Donovan:

This letter represents the views of the Department of Defense (DoD) on enrolled Senate bill S. 2943, the National Defense Authorization Act (NDAA) for FY 2017.

As you know, I have made my substantial concerns clearly known about aspects of the previous House and Senate bills and their potentially negative impact on DoD, particularly in terms of preventing the Department from making key reforms that could save the Department billions of dollars over time, over-regulation, and micromanagement. Although the final enrolled bill removes or modifies some of the most problematic provisions that would have certainly resulted in a recommendation of a veto, I remain deeply concerned about Congress's use of the NDAA to micromanage DoD, the extensive disregard of the advice of the Department's senior civilian and uniformed leaders, and the failure to address the real and long-term fiscal needs of the Department. The extensive organizational changes proposed for the Department are also rushed, poorly understood, and come at a particularly inappropriate time as the Department undertakes a major transition between administrations, creating both a burden and a distraction for the new team when they most need to be focusing on other priorities, such as the ongoing overseas operations to defeat the Islamic State of Iraq and the Levant (ISIL) and overcoming budgetary uncertainty that Congress continues to impose on the Department.

While the enrolled bill removes the highly objectionable mechanism utilized by the House bill's approach to Overseas Contingency Operations (OCO) funding that would have left our overseas military operations without the funds needed to succeed, it nonetheless adds \$3.2 billion of OCO funds to support increased end strength. This budget approach, which hides long-term costs of Congress's authorization, imposes an unfunded cost of \$27 billion over the Future Years Defense Program and exacerbates the budgetary risk the Department is facing. This approach is fiscally irresponsible and not a sustainable long-term solution for the Department. Increasing force structure without adequate base funding support is dangerous; it will degrade, not enhance, readiness. Furthermore, Department leaders prioritize readiness, lethality, and modernization investments over end strength increases. Congress' choice to instead dedicate resources to end strength before a new Defense Strategy Review is completed and new force-sizing and planning metric is established is ill-advised.

The bill also denies authorization of reforms repeatedly requested by the Department's military and civilian leadership that would have generated significant savings for the Department, including proposals to reform our military health care system, to authorize a base

realignment and closure round, and to modernize the Navy's cruiser fleet. Taken together, the denied reforms and added costs of additional end strengths in this bill will add over \$40 billion to the Department's costs over the next five years with no clear path to offset or resource those costs. Further, the lack of reforms denies the Department the flexibility to move quicker to implement key efficiencies across the Department and, ultimately, save money. Congress has been a vocal critic of the Department for not pursuing more efficiencies but often remains the biggest obstacle to progress in this realm.

Simultaneously, the bill micromanages and restructures the Department in *ad hoc*, rushed, and poorly-studied ways. I remain deeply concerned about section 901, which directs the reorganization of the position of the Under Secretary of Defense for Acquisition, Technology and Logistics (USD AT&L) by February 2018 into two separate USDs, one for "Research and Engineering" and another for "Acquisition & Sustainment." Segregating responsibilities for the different phases of a product life cycle is a mistake that will undo years of important reforms to build the best product and innovation life cycle. Under a single, integrated AT&L organization, the Department has made great strides in improving acquisition outcomes, as well as introducing a number of measures and programs intended to improve and implement technical innovation. Supervision and oversight of acquisition programs from early stages of development through production and sustainment should be under one official. I continue to believe that implementation of this provision will be extremely difficult for an incoming Administration and for finding quality candidates to deal with the upheaval of splitting an organization that works.

Other sections, including sections 807, 808, 813, 829, and 830, micromanage the Department's acquisition activities, adding unnecessary time and administrative burdens in some cases and eliminating contracting options for procurement in other circumstances. These provisions do not make the Department more agile; instead, they impose additional bureaucracy and restrictions at a time when Congress is demanding the Department be more efficient and do more with less – particularly with less headquarters and administrative personnel.

The bill also treads dangerously close to subsuming the President's prerogative as commander in chief. While the Department appreciates Congress's support for DoD's cyber mission and forces, we strongly object to Congress statutorily requiring the establishment of a unified combatant command for cyber operations in section 923. 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 national security environment.

Additionally, section 1642 prohibits the Secretary of Defense from ending the "dual-hat arrangement" under which the Commander of U.S. Cyber Command (CYBERCOM) also serves as the Director of the National Security Agency. As written, the prohibition remains in effect until the Secretary and the Chairman of the Joint Chiefs of Staff jointly certify to Congress that ending this arrangement will not pose unacceptable risks to the military effectiveness of CYBERCOM. While the Chairman of the Joint Chiefs of Staff has a key role in assessing effectiveness, any recommendation stemming from any such assessment is most appropriately expressed as the best military advice to the Secretary and the President of the United States. The Department is concerned that mandating joint certification confuses this role and effectively

makes the Chairman a co-equal to the Secretary of Defense, a dangerous intrusion into the sanctity of the chain of command and the authority of the Secretary, as well as a challenge to the principle of civilian control of the military. Uniformed leaders, regardless of how senior, should not statutorily be given effective veto power over the lawful policy decisions of the Secretary of Defense.

In addition, the Department has concerns about the provisions in section 923 that would have CYBERCOM perform Service-like functions. Many functions required under section 923 are already performed by the Services and would add substantial costs in an already resource-constrained environment. In addition, setting up CYBERCOM in exactly the same manner as U.S. Special Operations Command may not be the best approach since there are significant differences between cyber operations and special operations. These types of reforms should not be unilaterally decided and dictated – in extreme detail – by Congress or enacted into law, but rather left to uniformed and civilian leaders in the Department to study, determine, and implement with appropriate congressional guidance and oversight.

The bill also inserts an Assistant Secretary into the administrative chain of command 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 oversight, supporting SOP-specific requirements as a distinct Joint Force. In contrast, section 922 would create a precedent of adding a civilian official other than a Secretary (i.e., of the DoD, Army, Navy, or Air Force) within any DoD chain of command and would awkwardly separate ASD/SOLIC in part from authorities of the Under Secretary of Defense for Policy, creating organizational misalignment and confusion.

This micromanagement is also illustrated throughout the numerous health care provisions the bill proscribes. Congress has dictated hours that military treatment facilities must remain open, whether or not there is a clinical need to do so. With respect to the Defense Health Agency, the bill creates new positions, assigns the employment categories, defines the roles, and establishes the employment criteria, practically dictating the position description. They also create a new directorate that is largely duplicative. Other parts of the bill require specific adherence to defined performance measures and overly prescriptive value-based payment reforms. Further, the bill creates an uneven employer health benefit by restructuring the Department's proposal and significantly reducing any savings. The enrolled bill's failure to deliver meaningful reform across a broad array of issues will exacerbate the substantial budgetary risk posed by Budget Control Act caps the Department faces. Failing to enact the Administration's reform proposals will compel DoD to make difficult reductions in other areas, such as readiness and modernization.

I am also concerned about the requirement to develop a plan for a new single-salary pay system for members of the Armed Forces on an unrealistic timeline. Such a system would represent a sea change in personnel policy and should be approached deliberately.

At the same time that this NDAA proposes sweeping changes for a new Administration to implement, it simultaneously enacts drastic cuts – not to our workforce overall – but to the

uniformed and civilian leadership who are often at the helm of implementing these changes. Although I appreciate that Congress did work with the Department to improve the Senate provision in particular, the bill still requires the reduction of 110 General Officer/Flag Officer (GO/FO) authorizations by December 31, 2022. An additional 10 percent reduction by calendar year 2022, for which the Department would be required to develop a plan, is also concerning. Combined, the GO/FO authorizations would be reduced from 962 today to 767 by the end of 2022. Such reductions would require DoD to restructure the pyramidal officer promotion plan, severely curtailing lower officer grade promotion opportunities in the short- to medium-terms. Reductions in the number of GO/FO 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 degrade the effectiveness and readiness of the force.

Similarly, I remain concerned by across-the-board cuts to the Senior Executive Service (SES) positions and the potential inclusion of certain Highly Qualified Expert (HQE) positions in the reduced count of SES authorizations. These cuts risk long-term negative effects on mission-critical DoD programs and services. The Department has reduced the size of our SES workforce by 105 since 2010. However, any further reductions to SES positions should be deliberate, following a review and analysis of the impact of such reductions on each component or agency. The Department 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. HQEs enable the Department to access talent and expertise that are not otherwise available in the Federal workforce. HQEs provide a capability that the Department needs to grow, not shrink, and therefore, I strongly urge their exclusion from SES position limitations.

In addition, the bill puts in the hands of companies to determine cost standards. For example, section 824 allows all Independent Research and Development (IR&D) costs to be charged to the government, as long as the contractor’s chief executive officer determines that the costs will advance DoD’s future technology needs. This means that the government, and thus the taxpayer, will have to pay whatever the contractor characterizes as IR&D costs without any ability to determine the costs’ reasonableness, allowability or allocability and without regard to whether DoD believes it wants or needs the technology. Similarly, the Department has concerns with the section 893, which increases the Defense Contract Audit Agency’s reliance on the private sector to perform audits on indirect costs and business systems. The language moves important oversight from the government to the private sector and pushes the boundaries of outsourcing inherently governmental work.

The bill also rejects many important reforms this Department has proposed in order to improve our enterprise. Sections 222 and 4201 eliminate the Research Development, Testing and Engineering (RDTE) funding of the Defense Innovation Unit Experimental (DIUx). This \$30 million reduction in RDTE funding will hamper DIUx’s ability to find commercial-sector solutions to some of the military’s toughest problems. The efforts of DIUx are essential to growing our defense industrial base – to include start-ups and firms who never imagined the military as a potential customer – and bring new elements of innovation to the Department by tapping in to the Nation’s best minds in technology.

I am disappointed in the bill's exclusion of common-sense military personnel management reform legislation submitted to Congress as part of the Secretary of Defense's Force of the Future initiatives. Authorities such as adjustment of officer lineal number for promotion and expansion of service credits for lateral entry would have allowed the Services greater flexibility in recruiting for and managing the modern military force. In order to attract the best and brightest, especially for our most critical career fields, the Departments must have a less rigid workforce management system.

Additionally, I remain concerned about the decision not to include a legislative provision allowing the Secretary of Defense to delegate limited authority to the Chairman of the Joint Chiefs of Staff for the worldwide reallocation of limited military assets on a short-term basis (originally included in section 922 of the Senate bill). This authority plays an important role in enabling the Department's response to transregional, multi-domain, and multi-functional challenges, especially given the potential for multiple threats in overlapping timeframes. The Department also feels that this authority to delegate specified categories and types of decisions improves management of the demands on the Secretary's time as well as the Chairman's ability to provide best military advice.

Finally, the bill continues to contain problematic provisions that use the NDAA to dictate policy, increasingly threatening the continued desirability of an annual authorization act for DoD. For example, the bill also continues the unnecessary restrictions on the transfers of detainees from the facilities at Guantanamo Naval Base, while failing to provide any way forward to ending the detention activities there. The Department has submitted to Congress a proposal to close Guantanamo, but Congress continues to fail to act to responsibly allow for the closure of the facility.

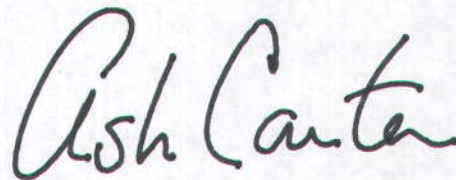
Section 1231, which appears to have been written in objection to the Intermediate-Range Nuclear Forces (INF) Treaty, makes \$10,000,000 of DoD funding in support of the Executive Office of the President (EOP) contingent upon the "meaningful development of military capabilities" to counter intermediate range ground-launched ballistic missile and cruise missile attacks, among other requirements. The programmatic efforts may take years to fully develop, and DoD's support to the EOP is entirely unrelated to the INF Treaty. Instead, DoD provides direct support to the President for transportation, communications (including Nuclear Command and Control), and emergency medical services. Limiting these funds will also have a negative impact on the ability of the EOP to manage and oversee vital national security defense policy development and implementation, and are vital to the nation's security regardless of the development of an unrelated plan. The bill also attempts to legislate on the Open Skies Treaty and limits cooperation with Cuba.

Nevertheless, the bill does include new or the continuation of authorizations deeply important to the Department, including reauthorizing Afghan special immigrant visas and fully supporting the European Defense Initiative. The Department appreciates the bill's addition of cyber-attacks to the list of situations for which Special Emergency Procurement Authority is authorized and the provision of authority to contracting officers to utilize procurement flexibilities when responding to and supporting international emergencies or major disaster relief

efforts inside the United States. The Department is also grateful for the addition of authorities to counter the threat posed to our nuclear facilities by unmanned aerial vehicles. The bill also enacts the majority of the proposed reforms to the Uniformed Code of Military Justice.

On balance, I continue to believe there are many reasons to veto this National Defense Authorization Act. Nevertheless, because of the recognition of the need for certainty during this period of transition, as well as the continued authorization for our important work, including the Department's efforts to counter the threat posed by ISIL, I recommend that you sign the bill into law. It is my hope that the next Administration will fully confront Congress regarding the excessive and often dangerous micromanagement of the Department in the annual authorization measure, the rejection of critical and well-considered budget and reform proposals made by the Department's senior civilian and uniformed leaders, and the failure to achieve budget stability. Similarly, ensuring appropriate focus on the capabilities the Department most needs to maintain conventional overmatch and ensure effective deterrence in a time of constrained budgets – including focusing on lethality, modernization and readiness – is vital.

Sincerely,

A handwritten signature in black ink that reads "Ash Carter". The signature is written in a cursive, flowing style with a large initial "A".