FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225–2927
Minority (202) 225–3641

November 15, 2012

The Honorable Carl Levin
Chairman
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, D.C. 20510

The Honorable John McCain
Ranking Member
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Howard P. "Buck" McKeon
Chairman
House Committee on Armed Services
2120 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Adam Smith
Ranking Member
House Committee on Armed Services
2120 Rayburn House Office Building
Washington, D.C. 20515

Dear Sirs:

We write to express our strong opposition to certain provisions relating to the Department of Energy's nuclear defense and related programs in the House-passed national defense authorization bill. We believe these provisions, if enacted into law, would decrease accountability to the President, through the Secretary of Energy, for the safety, security, and management of the nuclear weapons complex, and would reduce essential oversight of these facilities. The provisions would undermine Cabinet-level management of the operations and the safety and security of the nuclear weapons complex and related nuclear programs that are an integral part of the Department of Energy.

A key tenet of U.S. national security policy has been to maintain civilian control of nuclear weapons and related research, development, and stockpile stewardship through a Cabinet-level agency. Stemming from its origins in the Manhattan Project and the development of nuclear weapons, the Department of Energy's (DOE) nuclear defense programs, run by its National Nuclear Security Administration (NNSA), provide this critical civilian control for the nation.

This DOE national security mission is threatened by provisions in Title 31 of H.R. 4310, the House-passed defense authorization bill. The provisions make sweeping changes to restrict the

Secretary's ability to ensure the safe, secure, and efficient operations of the nuclear weapons complex and related nuclear programs and activities of NNSA that are entwined with DOE. For example, Section 3133 would severely limit Secretarial authority, direction, and control over NNSA by prohibiting the Secretary from disapproving any action, policy, regulation or rule of the NNSA Administrator except in limited circumstances where the Secretary submits a justification for the disapproval to congressional defense committees and a period of 15 days has elapsed. Section 3133 further provides that except in such circumstances, "the Administrator shall have complete authority to establish and conduct oversight of policies, activities, and procedures of the [NNSA] without direction or oversight by the Secretary of Energy." This would significantly hinder oversight of nuclear facilities by DOE's Health, Safety, and Security Office. In light of the repeated safety and security incidents at NNSA nuclear sites, including recently at the Y-12 National Security Complex, it is inappropriate to reduce oversight of the nuclear weapons complex.

Section 3133 would also transfer existing authorities and responsibilities currently vested by statute in the Secretary of Energy to the NNSA Administrator, including responsibilities relating to stockpile stewardship and reporting; stockpile management; nuclear test ban readiness; manufacturing infrastructure; nuclear materials protection, control, and accounting; research and development; and other matters, effectively breaking the chain of accountability to the Cabinet. The section would separate the NNSA budget from the DOE budget, effectively preventing the Secretary of Energy from overseeing what is currently over 40 percent of the Department's budget.

Sections 3113, 3114, and 3115 address contractor accountability policy; create Secretarial obligations with respect to a new contractor advisory council; and revise safety, health and security standard-setting. The implications of section 3132(b) for the identification of functions performed by NNSA are unclear. These sections directly impact the Secretary's management and Cabinet-level responsibilities to ensure safe and secure nuclear-related operations. The implications of these provisions have not been fully examined by the House, including by the Committee on Energy and Commerce, which has primary jurisdiction over DOE management. We have serious concerns about the impact of these provisions on the management of the nuclear weapons complex.

These above referenced provisions in Title 31 would effectively block the Secretary's staff office from independently examining NNSA contractors' adherence to DOE safety and security policy. The Secretary of Energy must have his own independent assessment capability to conduct oversight of safety performance and security, independent of line management, and to ensure that DOE health, safety, and security policies are integrated across the Department, including the NNSA. The recent security breakdown at the Y-12 National Security Complex and ongoing safety and security challenges at NNSA facilities underscore the need for NNSA to remain fully accountable to the Secretary.

The nuclear weapons complex requires strong oversight. Every two years, the Government Accountability Office (GAO) provides Congress with an update on its High-Risk Programs, highlighting major programs at risk of waste, fraud, abuse, mismanagement or in need of broad reform. GAO has designated contract management for NNSA nuclear activities as a "high-risk" area since GAO began providing these reports in 1990.

During the past 15 years, the Committee on Energy and Commerce has held over 20 hearings to address issues or concerns relating to nuclear issues and the national laboratories. These hearings uncovered or highlighted serious safety and security issues within the nuclear complex. As recently as this past August, several individuals, including an 82-year-old nun, were able to gain access to a secure area next to a sensitive nuclear facility at Y-12, in part because NNSA took a hands-off approach to contractor oversight. This long-standing history of problems within the complex suggests that strong oversight of Federal contractors and NNSA officials is needed. Accordingly, any effort to reduce by statute the oversight and accountability of NNSA and its contractors to the Secretary is exactly the wrong approach.

Further, cleaving NNSA from DOE Secretarial oversight and policymaking, as envisioned in Title 31, would also create additional regulatory uncertainty. The House version of the bill gives NNSA authority to promulgate safety and security standards, separate from DOE's standard setting. A regime of duplicative or contradictory rules and regulations from DOE and NNSA would undermine the clear and consistent safety and security regulations necessary to ensure safe and secure operations across DOE facilities.

Finally, weakening Secretarial oversight of safety, security, and taxpayer spending on nuclear weapons and related activities will not address specific management problems at NNSA and will not enhance the important national security mission of DOE. These provisions will isolate NNSA management from accountability to the Secretary and the President. These provisions will weaken the execution of DOE's national security mission.

In light of the serious risks to sound management of the Department, and the safety and security of DOE's nuclear weapons and related operations, we oppose including the above-referenced sections of Title 31 in conference.

Sincerely,

Fred Upton
Chairman

Henry A. Waxman
Ranking Member