

Co-Chair  
Governor Asa Hutchinson  
Arkansas



Co-Chair  
Governor David Ige  
Hawaii

APPOINTED BY THE PRESIDENT OF THE UNITED STATES

March 6, 2019

The Honorable Mick Mulvaney  
Director  
Office of Management and Budget  
725 17th St. N.W.  
Washington, D.C. 20503

Dear Director Mulvaney:

We write to you on behalf of the Presidentially appointed Council of Governors (Council) regarding legislative proposals on Department of Defense (DOD) Duty Status Reform.

As you may know, in the Fiscal Year 2018 National Defense Authorization Act, Congress mandated the Secretary of Defense provide legislative proposals to reduce statutory authorities to order reserve component members to duty to Congress no later than April 30, 2019.

During our most recent Council of Governors plenary meeting on February 22, the DOD briefed Council governors on the current proposals to accomplish this Congressional mandate. The Department noted to us that it submitted its legislative proposals on Duty Status Reform to the Office of Management and Budget, and that the proposed language includes changes to the Insurrection Act, 10 USC § 331–35. We look forward to reviewing and discussing any DOD proposed code revisions to the current language in the Insurrection Act, especially with regards to those revisions that will reduce governors' authority over their National Guard.

Governors are supportive of changes in law that provide parity amongst components, ensures minimal disruption to compensation and benefits and eases transition for our service members, especially our respective National Guards. However, these positive changes should not come at the expense of a governor's command and control as commanders-in-chief of their Guard.

It is our understanding that the current proposed language will amend the Insurrection Act to allow the President of the United States sole discretion regarding the number of troops deployed in a state, while also removing the statutory requirement under Title 32 of United States Code requiring the president or the secretary of defense obtain a governor's permission before ordering a member of their state militia to full-time duty.

This is not the first time the Department has attempted to dilute gubernatorial authority. The Fiscal Year 2007 National Defense Authorization Act widened the President's ability to deploy troops within the United States.

Governors, adjutants general and members of Congress successfully repealed this language the following year in their entirety. As was the case then, so is true now. Any action on the part of the federal government that strips governor authority as commanders-in-chief of our respective National Guard is unacceptable and contrary to the principles of federalism and the constitution.

Likewise, involuntary mobilizations — without the consent of the individual or the governor — dramatically impact the well-being and morale of our guardsmen and women and their families, create uncertainty and diminish our states ability to plan for and execute emergency and disaster response operations.

Governors should be able to make the decision of how and when our guardsmen and women are called to serve, should they so choose. Governors take their responsibilities seriously, and the well-being of our national guard is a paramount concern.

We ask you and OMB to modify and remove any language within the DOD's legislative proposals on Duty Status Reform that would change governor authorities of command and control of their National Guard.

Sincerely,



Governor Asa Hutchinson  
Co-Chair  
Council of Governors



Governor David Ige  
Co-Chair  
Council of Governors

CC:  
Department of Defense  
Senate Armed Services Committee  
House Armed Services Committee  
National Governors Association