



MARK SANFORD

Serving South Carolina's Lowcountry

Eliminating a De Facto Earmark from the National Defense Authorization Act:

Outside Support:

Heritage Action for America, National Taxpayers Union, FreedomWorks, Americans for Prosperity

Cosponsors:

Rep. Dave Brat, Rep. Mick Mulvaney, Rep. Tim Huelskamp

Background:

Under existing law, if the military purchases clothing and other like items, including shoes, it must buy items that are 100% American-made (including component parts) under the “Berry Amendment.” However, the military also has the option of giving troops a cash allowance in lieu of providing clothing—importantly here, shoes. The Berry Amendment does not apply to the Department’s decision to give a cash allowance or not. It also does not apply to what brand enlisted personnel choose to purchase with those allowances. The relevant section of the Code that explicitly authorizes DOD to use a cash allowance (37 USC § 418) reads:

(a) The Secretary of Defense and the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, may prescribe the quantity and kind of clothing to be furnished annually to an enlisted member of the armed forces or the National Guard, *and may prescribe the amount of a cash allowance to be paid to such a member if clothing is not so furnished to him.*

(Emphasis added.) The current language of this year’s National Defense Authorization Act (HR 4909) has this provision, which modifies the above:

SEC. 808. COMPLIANCE WITH DOMESTIC SOURCE REQUIREMENTS FOR FOOTWEAR FURNISHED TO ENLISTED MEMBERS OF THE ARMED FORCES UPON THEIR INITIAL ENTRY INTO THE ARMED FORCES.

Section 418 of title 37, United States Code, is amended by adding at the end the following new subsection:

“(d) (1) In the case of athletic footwear needed by members of the Army, Navy, Air Force, or Marine Corps upon their initial entry into the armed forces, the Secretary of Defense **shall furnish such footwear directly to the members instead of providing a cash allowance to the members** for the purchase of such footwear.

“(2) In procuring athletic footwear to comply with paragraph (1), the Secretary of Defense shall comply with the requirements of section 2533a of title 10, without regard to the applicability of any simplified acquisition threshold under chapter 137 of title 10 (or any other provision of law)...

(Emphasis added.) This section of the NDAA would change existing law to prohibit the DOD from providing a cash allowance for shoes to enlisted recruits. It is not accurate to describe this provision as “solely enforcing the law that’s on the books.” Section 808 would in fact change and add to the law a requirement that the DOD treat a single category of clothing (running shoes) differently than others. Depending on the branch of service, the DOD currently provides a cash allowance to purchase running shoes, socks, handbags, pumps, female undergarments, ball caps, shoes, hooded sweatshirts, shorts and other articles. The DOD strongly opposes the inclusion of Section 808 in the NDAA.

Summary:

Rep. Sanford’s amendment would strike section 808.

A Better Policy:

At this time, depending on the branch of service, recruits have access to as many as 13 different shoe types, manufactured by three different brands: Asics, Brooks, and New Balance. None, however, of the New Balance shoes in use now are Berry-compliant. If Section 808 became law, only two types of one model of New Balance running shoes would be available to new enlisted recruits. Therefore, this section will have the effect of significantly restricting the choices available to recruits in running shoes. This is an important issue for a number of reasons, but in particular force readiness.

A study conducted by the Army for the Department concluded that recruits should begin initial entry training with new running shoes (stability, cushioned, motion control) that are comfortable and fit properly. It showed a strong correlation between injury rates and fit, and comfort and variety of athletic shoes available. Additionally, according to a DOD review of available literature, military recruit injuries are the “single most significant medical impediment to military readiness,” and a “reasonable estimate for DOD’s annual cost related to recruit musculoskeletal injuries is \$100 million.”

Section 808 may not, in a technical sense, fall under House rules as an earmark. In a *de facto* sense, it operates in a highly similar fashion. There is only a single corporation, New Balance, that has a Berry-amendment-compliant running shoe that is production ready. New Balance's shoes also only fulfill two of the DOD's three required types (motion control, stability, and cushioning). New Balance's Berry-compliant "stability" type failed DOD quality testing.

Additionally, New Balance has been engaged with the process to get the Model 950v (i.e., Berry-compliant) shoe approved for seven years. While Wolverine Worldwide (manufacturers of the Saucony brand of running shoe) has indicated its interest in competing for the shoe contract, there will be a significant period of time before the company can acquire approval of its product and compete. Blake Krueger, Chief Executive Officer of Wolverine Worldwide, said in a letter dated April 25, 2016, that his company was "investing in an advanced manufacturing line for 100% [sic] Berry-compliant Saucony running shoes in this facility and are looking forward to building American-made athletic shoes for our American troops." "Looking forward to building" and "investing in," are not synonymous with "prepared to compete for the contract." In the interim, New Balance would be the sole supplier of running shoes for recruits to the DOD. Given the constrained geographical concentration of the benefits of this provision, along with the single beneficiary of the provision, it is fair to describe Section 808 as a *de facto* earmark.

The DOD has estimated that, in order to provide the same level of variety and choice to recruits with Berry-compliant shoes as it does now, it would cost \$333 million per year. According to DOD, the current annual expenditure on the shoe allowance is \$17 million per year.