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OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 19, 2004
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 4200 - National Defense Authorization Act for Fiscal Year 2005

(Reps. Hunter (R) CA and Skelton (D) MO)

The Administration commends the House Armed Services Committee for its continued support of our national defense and for including in its bill a number of authorities consistent with the President's request, including a military pay raise and other benefits critical to sustaining the high quality and morale of America's armed forces. We look forward to working with the Congress to address our concerns as the bill moves through the legislative process.

The Administration's most significant concerns are described below.

Base Realignment and Closure (BRAC). The Administration strongly opposes any provision to weaken, delay, or repeal the BRAC authority passed by Congress three years ago. If the President is presented a bill that weakens, delays, or repeals the BRAC authority, the Secretary of Defense, joining with other senior advisors, will recommend that the President veto the bill.

The Administration would strongly support an amendment to preserve current law by deleting a provision currently in the bill that delays BRAC authority for two years.

Competitive Sourcing. The Administration strongly opposes sections 323, 324, and 326, which significantly limit DOD's flexibility on competitive sourcing, such as by mandating that the Department's employees compete for a certain percentage of work currently performed by contractors. Arbitrary quotas concerning commercial work to be performed by Federal employees would undermine the Department's ability to redirect its manpower to military activities, likely require the redeployment of uniformed personnel from critical in-theatre operations to non-core support activities, increase operating costs, and sacrifice billions of dollars in potential cost savings. If the final version of the bill contains such provisions, the President's senior advisors will recommend that he veto the bill.

Export Controls. The Administration strongly opposes the changes to defense trade and export control regulations contained in section 1214 and in Title XIV of the bill. These sections include provisions that would bar exemptions from regulatory requirements (section 1402), provide a process for congressional disapproval of cooperative agreements (section 1403), require export licenses for all technologies covered by the Militarily Critical Technologies List (section 1404), and restrict U.S. exports to countries making certain shipments to China (section 1405). These requirements are contrary to the President's policy to refine U.S. export controls to protect truly critical technologies while facilitating legitimate trade. Further, the elimination of the President's ability to authorize International Traffic in Arms Regulations exemptions would impose a costly additional administrative burden without any corresponding improvement in U.S. export control of sensitive technology. If enacted, these provisions would directly undermine the Administration's work to increase interoperability with the military forces of our friends and allies in traditional military conflicts as well as the global war on terrorism. They

also would damage severely our ability to administer export control programs for munitions and dual-use goods and technologies in a manner that protects U.S. national security interests while allowing U.S. companies to effectively compete in the international market. The Administration also has concerns with section 1412, which would authorize the Secretary of Defense to establish a fellowship program that duplicates the Department of State's International Military Education and Training (IMET) program and provides authorities to DOD that are within the purview of the Department of State.

Train and Equip. The Administration is very concerned that H.R. 4200 does not grant DOD the authority to provide assistance to Iraq and Afghanistan military and security forces, and does not extend this authority to other friendly in the region. This authority is necessary to provide indigenous security capabilities to Iraq and Afghanistan that will ease the operational demands on American forces and to give DOD the flexibility to provide training and equipment to key countries in response to time-sensitive requirements that may emerge in the global war on terrorism.

Global Peace Operations Initiative. The Administration strongly urges inclusion of the President's proposal to authorize DOD, subject to the concurrence of the Secretary of State, to conduct (or transfer funds for the Department of State to conduct) train and equip activities for the purpose of increasing the capacity of other countries to conduct peace operations. At a time of increasing instability in many parts of the world, the global capacity to conduct peace operations, particularly peace enforcement, is not keeping pace with demand. The Administration's proposal would address this shortfall by permitting the United States to improve both the quality and quantity of other nations' peacekeepers. This initiative also would ensure that there is a reliable cadre of global peacekeepers that will lessen the peacekeeping burden on U.S. personnel.

Mandatory End Strength Increases. The Administration opposes the mandatory end strength increases contained in the bill. We continue to believe that current law provides sufficient flexibility to increase end strength temporarily when needed. A mandatory increase would lack flexibility and could leave troop levels higher than needed, especially after several DOD initiatives to reduce demand on the force have had time to work. Mandatory increases require more time and money to recruit, train, and equip those troops compared to current, more responsive practices.

Contingent Emergency Reserve. The Administration requested \$25 billion in a contingent reserve which the President could activate upon determination that the resources were essential to Iraq and Afghanistan and the funds were designated as an emergency. The request provided flexibility to assure the availability of resources if needed. While the overall amount has been authorized, the Administration is opposed to the specific limitations by account the Committee has directed. The Administration will work with the Congress to ensure sufficient flexibility in the use of the funds.

Restrictions on Transfer of Funds. The Administration is concerned about restrictions on DOD's ability to transfer a limited amount of money to respond to unanticipated events or to address changes in program execution. Further, the bill does not fully support the Administration's request for \$4 billion in general transfer authority. Instead it provides only \$3 billion and further hurts flexibility by restricting \$500 million of that authority to transfers only between active and

reserve accounts.

Colombia. While noting that any numerical limit on military personnel deployments is inconsistent with the authority committed by the Constitution to the President to conduct the Nation's foreign affairs and command the armed forces, the Administration is concerned that section 1032 does not provide fully the requested increase in the number of U.S. military and civilian personnel deployable in support of Plan Colombia at one time. The Administration needs the flexibility to employ up to 800 military members and 600 contractors if it is to accelerate its support to President Uribe's campaign to defeat the narcoterrorists in Colombia. We are also concerned that the provision interferes with the President's powers and responsibilities as Commander-in-Chief by specifying that the exception to the 500 service member cap for specified rescue-or-retrieve operations may not exceed 30 days unless expressly authorized by law. This restriction could prevent the President from completing needed military operations. The Administration is pleased, however, that the bill extends through FY 2006 the expanded authorities which eliminated artificial distinctions between narcotics traffickers and terrorists in Colombia.

Survivor Benefit Plan. The Administration shares your concerns about the welfare of survivors of military retirees, but is concerned about the phase out over four years of the current age 62 reduction in the Survivor Benefit Plan annuities. The current program provides the survivor with a constant 55 percent of the retiree's retired pay, and these provisions that would enhance these benefits would cost nearly \$5 billion over the next 10 years. We are concerned that these resources are otherwise needed to maintain and enhance the readiness of the armed forces.

Expanded Personnel Benefits for Reservists. The Administration is concerned about several provisions that blur the line between active and reserve service members and which could result in significant unintended consequences for both active and reserve component recruiting and retention. For example, section 605 requires the Secretary of Defense to pay certain involuntarily mobilized reservists the amount necessary, on a monthly basis, to replace the income differential between their military compensation and their average civilian income. The Administration has significant equity concerns with paying this type of income replacement. The Administration has similar concerns about section 615, which provides DOD with new authority to offer enlistment and reenlistment bonuses to reservists that were formerly reserved for active component members.

Information Systems. The Administration has concerns with the bill's \$750 million reduction to the Information Technology (IT) budget. While this is a small fraction of DOD's IT budget, it will directly hurt warfighting capabilities. Over 80 percent of the Department's IT budget is spent in direct or indirect support of the warfighter -- through investments in national security systems, telecommunications systems, and information assurance activities to protect those systems. Each of these investments is critical to combat operations, navigation and geo-positioning, surveillance, weapons support, force protection and application, information operations, and logistics support. The Administration is also concerned about changes to defense business system management contained in section 332. These changes would impede ongoing efforts to transform business processes and systems by establishing impractical and unduly burdensome acquisition, operation, and oversight mechanisms.

Transformation Programs. The Administration urges restoration of cuts of \$221 million for the

initial DD(X) destroyer and \$107 million for the Littoral Combat Ship so that each of these ships can start construction in FY 2005 as planned. We are also concerned about the \$245 million reduction to the Future Combat Systems programs, which will result in schedule delays and shift the initial operation capability from 2010 to 2011, as well as the \$75 million cut of the Kinetic Energy Inceptors, a key element of the Ballistic Missile Defense System. These programs are critical elements of the Administration's effort to prepare the military for future threats.

Presidential Helicopters. The Administration is concerned about the \$220 million reduction to the VXX program, which would delay Initial Operational Capability for the critical Presidential helicopter one year from FY 2009 to FY 2010.

Trade Provision. The Administration opposes section 811, which would prohibit DOD from entering into contracts or subcontracts to procure defense items or services from a foreign firm, if the nation within which that firm is located requires offsets when procuring defense material from U.S. suppliers. Precluding DOD contracts or subcontracts to European firms and denying U.S. forces access to many "best value" products would negatively impact U.S. and coalition warfighting capabilities. It also would negatively impact sales of U.S. military equipment to friends and allies and seriously undermine the foreign policy and national security objectives of the Foreign Military Sales program. Moreover, concerns over the use of offsets are best addressed within the framework of our existing international government procurement agreements, which already impose discipline on the use of offsets. Finally, by imposing an independent set of rules governing the use of offsets, section 811 could prompt U.S. trading partners to question U.S. compliance with these international agreements.

Amendment to Domestic Source Requirements. The Administration opposes section 812(a), which applies a notification requirement to subsection (e) of 10 U.S.C. 2533a. Delaying purchases of chemical warfare protective clothing for such notification would severely impact the warfighter in situations of unusual and compelling urgency. The notification would create the appearance that an opportunity exists to unduly influence the contract award. Instead of having a special waiting period, the Administration strongly recommends allowing notifications to be done in conjunction with the synopses for contract award required by Federal Acquisition Regulation section 5.301. This notification would let us retain the integrity of the competitive source selection process, and would help mitigate any delay on suppliers and their workers. The Administration also opposes language in section 812(b) that expands the broad statutory domestic preference for textile products already provided under subsection (b)(1)(D) of 10 U.S.C. 2533a to non-textile materials and components that may be incidentally incorporated into clothing. The provision would create confusion as to the scope of the domestic preference coverage for clothing.

Defense Acquisition Workforce Limitation and Reports. The Administration strongly opposes any reduction in the defense acquisition workforce, such as that proposed by section 823(a)(1). The acquisition workload has been increasing as the workforce has been declining for several years. Reducing personnel or constraining employment would lead to insufficient staff to manage requirements, an increased backlog in closing out completed contracts, reduced scrutiny and timeliness in reviewing acquisition actions, and skill imbalances. Especially now with our troops in Afghanistan, Iraq, and elsewhere in the world, any reduction in DOD's acquisition workforce would jeopardize DOD's ability to support our fighting force.

Transfer of Nebraska Avenue Complex. The Administration strongly urges expedited passage of free-standing legislation to transfer ownership of the Nebraska Avenue Complex (NAC) from the Navy to the General Services Administration to allow for the consolidation of the Department of Homeland Security (DHS) headquarters operations at the NAC. We are concerned that delaying the transfer would hamper DHS' mission to ensure our Nation's security, and we will continue to work with the Committee to resolve any outstanding concerns with pending transfer language.

Constitutional Concerns. Provisions contravening the President's authority to supervise the unitary executive branch and act as the Commander-in-Chief should be deleted or modified. These provisions include section 907, which would establish strict time requirements for Federal officials to respond to questions from Congress. If these requirements were construed to apply to military officials, including officials deployed in combat operations, the strict and unqualified written response requirements could impose excessive burdens on military officials in the field, and thus interfere with, or undermine, the President's powers and responsibilities as Commander-in-Chief. Section 3131, which would vest an inferior officer within DOE with "sole jurisdiction" to submit notices and requests to Congress for transfer or reprogramming of funds, would likewise interfere with the Executive's ability to supervise the Executive branch. Provisions that would inject congressional officials into the operations and functioning of the Executive branch and thus violate constitutional separation of powers principles also should be deleted. Such provisions include section 1074, which would require the Secretary of Defense to consult with specified congressional members in appointing members of a specified commission, and section 2841, which would require the President to consult with specified members of Congress in executing his responsibilities under the law. Further, provisions requiring the President or members of the Executive branch to submit legislative recommendations (e.g., sections 571, 1002, and 1531(c)) are inconsistent with the Recommendations Clause and should be modified or removed. Finally, to the extent that section 2823(a)(5) would assert a right for Congress to modify or invalidate the Secretary of Defense's final BRAC selection criteria without complying with the bicameral passage and presentment requirements of Article I, Section 7 of the Constitution, it would be constitutionally objectionable.

Inclusion of Additional Administration Proposals. We will work with Congress to secure enactment of other Administration proposals, such as the Readiness and Range Preservation Initiative and transfer authority for the U.S. Air Force to upgrade the air traffic control systems through the Caucasus and Central Asia into the Operation Enduring Freedom theater of operations. We also will work to enact the authority requested in the President's budget for \$200 million to train and equip forces solely in Afghanistan as part of the Afghan Freedom Support Act. Other Administration proposals we would like to see included in the bill would allow the Secretary of Energy to consolidate the counterintelligence programs within the Department of Energy (DOE) into one program that reports directly to the Secretary of Energy, as well as our proposal to clarify DOE's authority to address the management and disposal of high-level radioactive wastes safely and cost-effectively.

The Administration appreciates inclusion of the following provisions:

Requested Authorities for Global War on Terrorism. The Administration appreciates the Committee's support of military operations to combat terrorism in section 1202 of the bill, and the Commander's Emergency Response Program (CERP) in section 1203. By providing

resources to our field commanders, CERP is critical to Iraq's future and the safety of our troops. We urge the inclusion of CERP and the support of military operations to combat terrorism in the final bill in the form requested by the Administration, including the requirement for the concurrence of the Secretary of State with respect to section 1202.

Civilian Personnel. The Administration appreciates the Committee's support for many of its personnel-related legislative proposals that help provide further support in the global war on terrorism. These provisions include the request for paying up to two years of Federal Employee Health Benefit premiums for Federal employees who are called up to active duty in the armed forces. Although we proposed a March 1, 2003, retroactive date for this proposal, the Administration will work with Congress to ensure adequate funding is provided to pay for this benefit from September 14th, 2001.

Military Housing Privatization. The Administration appreciates the Committee's support in providing relief from the cap on budget authority for Military Housing Privatization Initiative projects. The Department expects to reach the current \$850 million cap on family housing in November 2004. Thus, the Administration would recommend that the provision take effect in FY 2005 rather than FY 2006.

Expanded Health and Personnel Benefits/TRICARE. The Administration supports the provision of a demonstration program to determine the interest in and impact of expanding health care benefits to non-mobilized Reservists who are unemployed or uninsured. In addition, the Administration will work with Congress to ensure the continuing availability through FY 2005 of important benefits provided before and after mobilization.

Budget Estimates and Enforcement

This bill would affect direct spending and receipts. It is critical to exercise responsible restraint over Federal spending in a manner that ensures deficit reduction and the Administration looks forward to working with Congress to control the cost of this bill. The Budget Enforcement Act's pay-as-you-go requirements and discretionary spending caps expired on September 30, 2002. The President's FY 2005 Budget includes a proposal to extend the discretionary caps through 2009, a pay-as-you-go requirement that would be limited to direct spending, and a new mechanism to control the expansion of long-term unfunded obligations. OMB's cost estimate of this bill currently is under development.

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