



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

May 25, 2005  
(House)

## STATEMENT OF ADMINISTRATION POLICY

### H.R. 1815 - National Defense Authorization Act for Fiscal Year 2006

(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 supports House passage of H.R. 1815. The Committee's strong support for the President's priorities is critical to the continued successful prosecution of the Global War on Terror.

The Administration thanks the Committee for providing the requested 3.1-percent military pay raise, the maximum Hardship Duty Pay rate increase, and the reauthorization of needed special pays and bonuses. We appreciate the Committee's support for many programs, including Defense Health, Cooperative Threat Reduction, military construction, family housing, extension of important counter-drug authorities through FY 2011, and many high priority procurement efforts. Finally, we thank the Committee for providing needed budgetary flexibility through an increase in general transfer authority of \$2.69 billion for FY 2005 and a total of \$7 billion for FY 2006.

The Administration also thanks Congress for providing the vital funds in the recently enacted FY 2005 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief. The Administration appreciates Congress' strong commitment to our troops and the Global War on Terror and notes that the supplemental funding will be sufficient to pay for our efforts through the end of the current fiscal year. While the nearly \$50-billion bridge fund included in this bill is not needed for the remainder of FY 2005, the Administration looks forward to working with Congress to ensure that there is no interruption of resources for the Global War on Terror in FY 2006 and that funding is allocated in the most effective way to meet the needs of commanders in the field.

The Administration encourages the House to include the requested Administration priorities, including:

Security Partnerships with Other Nations: We strongly urge Congress to provide the Administration with the full set of authorities requested to build security partnerships to fight the Global War on Terror. The requested authorities include the Commander's Emergency Response (CERP) Fund, authority to train and equip foreign military or security forces, reimbursement for coalition support forces, logistics support to other nations, and support for emergency stabilization and reconstruction activities. Flexible authorities provided by Congress have proven extremely useful in responding to needs in Afghanistan and Iraq. The requested authorities build upon this success but also would enable a broader range of responses to address the Global War on Terror, including new tools to ensure that foreign states do not become terrorist havens. The Administration appreciates the Committee's authorization of reimbursement for coalition support forces and the \$500 million in the CERP in Iraq and Afghanistan, and urges Congress to extend the CERP authority for use anywhere it is needed, make it permanent, and include the concurrence of the Secretary of State.

Death Benefit: The Administration will continue to work with the appropriate committees in Congress to increase the Servicemembers Group Life Insurance (SGLI) from the current level of \$250,000 to the President's request of \$400,000. The SGLI program is a key component of the death benefit available to surviving family members of our fallen warriors, and we strongly urge that this benefit be increased.

The Administration has a number of concerns, including:

Aircraft Carrier Force Structure: The Administration strongly opposes the requirements of section 128 to maintain no less than 12 aircraft carriers, as well as any further delay in the retirement of the carrier *USS John F. Kennedy*. We urge Congress to eliminate this provision and any other requirement to spend funds to maintain a ship that the Navy believes is no longer essential. In configuring the fleet for 11 carriers, the Navy will ensure that it makes effective use of existing carrier ports.

Base Realignment and Closure: The Administration strongly opposes the \$310-million funding reduction for implementing recommendations of the 2005 Base Realignment and Closure (BRAC) Commission. This reduction would slow BRAC implementation and thus delay achievement of the mission improvements provided by BRAC changes, costing the DOD more money over the long-term. Delaying the completion of base closures and realignments also would hinder community efforts to quickly reuse DOD facilities and mitigate the economic impact of BRAC actions.

The Administration would strongly oppose any amendment to weaken, delay, or repeal the authority for the 2005 BRAC round. 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.

End Strength: The Administration strongly opposes increases in minimum Army and Marine Corps end-strength (sections 1521-1522). The President already has sufficient authority to adjust the size of the Army and Marine Corps as necessary for the current national emergency. No changes to end-strength authorizations are needed at this time. The Administration looks forward to working with Congress as DOD conducts its Quadrennial Defense Review, which will determine the future force-structure needs for the military services.

Procurement from Foreign Persons who Trade with China: The Administration strongly opposes section 1212, which would require that the Secretary of Defense determine, for the purpose of implementing DOD procurement sanctions, any and all foreign persons who have exported or transferred certain items linked to the United States Munitions List to the People's Republic of China. This provision would cause irreparable damage to DOD efforts to implement a strategy of world-wide engagement with allies and friendly nations, is contrary to the President's policy to refine export controls to truly protect critical technologies while facilitating legitimate defense trade, and raises concerns regarding U.S. international obligations.

Prohibition on Procurement From Beneficiaries of Foreign Subsidies: The Administration opposes section 817, as currently drafted, which would require DOD to prohibit procurements from certain

entities based on possible foreign country subsidies to those entities. While we share concerns about WTO-prohibited subsidies, including in the aerospace sector, the section raises a number of concerns in terms of its scope and applicability to U.S. companies. We believe this provision would adversely affect our national defense by reducing competition for DOD acquisitions and negatively impacting U.S. firms that team, partner, subcontract or form joint ventures with foreign entities, thereby discouraging the formation of such arrangements.

Acquisition Restrictions: The Administration opposes sections 801-803 concerning the acquisition of Major Defense Acquisition Programs and believes they constitute counterproductive congressional micromanagement of DOD's acquisition system. The Committee's bill would add to acquisition timelines, costs, and procedures that are already too long and too costly to responsively deliver new weapons systems to the war fighters, and would be counter-productive to reforming DOD's acquisition and procurement system. Similarly, the Administration opposes the creation of a specialized Contingency Contracting Corps in section 813. These provisions add complexity without improving the speed or cost-effectiveness of DOD's acquisition system.

Navy Shipbuilding: As the DOD conducts its Quadrennial Defense Review, it should be free to balance force structure, platform capability, and program costs in the most effective manner. The Committee's addition of two new DDG-51 destroyers, acceleration of selected surface ship procurements, direction to procure a new surface combatant by FY 2011, and other limitations on Navy shipbuilding would preempt that process. Finally, while the Administration understands the Committee's concerns about ship cost growth, H.R. 1815 may set caps that do not reflect the appropriate balance between capability and cost.

Reductions and Limitations on Acquisition Programs: The Administration is concerned with the numerous restrictions and guidelines for specific acquisition programs. We oppose the elimination of \$152 million in advanced procurement for the Joint Strike Fighter, which will likely delay the fielding of this joint service program and increase costs. We are concerned with limitations in section 227 on the VXX program that would delay procurement unnecessarily during the test program. We also are concerned with major reductions to transformational programs, particularly the Army's Future Combat System, the Navy's DD(X) destroyer, the Transformational Satellite communications system, and Space Radar. These large cuts will cause significant delays or cancellation of these programs, which are key to DOD's transformation strategy. The Administration urges restoration of these reductions. Finally, we oppose the authorization of continued C-17 cargo aircraft production, which will divert resources from higher-priority efforts and constrain the Secretary of Defense's ability to efficiently modernize the armed services.

Operations and Maintenance Funding: The Administration opposes the large cuts to Operations and Maintenance funds – over \$2.5 billion from the active military services' requests. These funds are needed to ensure the high readiness rates that the Administration and Congress expect from the services.

Civilian Salary Differential for Mobilized Reservists: The Administration opposes section 608, which would require the Federal government to provide certain mobilized reservists the difference between their civilian salary and their military pay. This provision would be costly and would have a negative

impact on morale and unit cohesion because activated reservists would earn more than other active duty personnel of the same rank, based solely on their civilian jobs.

Use of National Guard for State Antiterrorism Activities: The Administration strongly opposes section 515, which would allow State governors to bypass the Secretary of Defense and the President in the decision to use Federal National Guard assets in support of domestic counterterrorism activities.

Intelligence-Related Activities: The Administration is concerned that a number of provisions in the Committee's bill would conflict with authorities recently granted to the Director of National Intelligence (DNI) in the Intelligence Reform and Terrorism Prevention Act of 2004. Although these provisions are problematic for a number of reasons, to the extent that sections 801-803, 825, 911, 932, and 1044 affect National Intelligence Program funded activities, they should uphold the authority of the DNI over these provisions. With regard to Section 931, which concerns the DOD strategy for open-source intelligence, the Administration believes that the DNI should play a key role in developing any open-source strategy, given the importance of this intelligence to the entire Intelligence Community. In addition, the Administration is disappointed that the Committee did not include the Administration's proposal to increase the number of Defense Intelligence Senior Executive Service positions. These additional positions are essential to meeting the increased demands for intelligence support. Finally, because existing law and understandings provide the proper arrangements for ensuring that appropriate congressional committees are informed of DOD intelligence and intelligence-related programs, the Administration opposes enactment of section 932, which relates to an intelligence program/project inventory.

Fissile Material Disposition Program: The Administration is concerned that the \$250-million reduction in the Fissile Material Disposition program would prevent the start of construction of a mixed oxide (MOX) fuel-fabrication facility in South Carolina in FY 2006, and result in a two- to three-year delay in the project. While there have been delays in reaching an agreement with the Russian government, the Administration remains committed to this project and has recently made significant progress with Russia towards resolving the question of liability protections. Reduction of funding for the U.S. facility could undermine Russian confidence in the MOX approach and put at risk international support and funding for the Russian MOX facility.

China/Taiwan-Related Issues: Section 1203, relating to U.S. exchanges with Taiwan officials, and section 1213, prohibiting in all circumstances certain purchases from China, inappropriately interfere with the President's authority to conduct diplomatic, intelligence, and military activities and should be stricken from the bill. Section 1203 raises foreign and national security concerns in this region of the world. Section 1213 raises concerns regarding U.S. international obligations.

Prohibition on Competitive Sourcing for Commissary Operations: The Administration opposes section 662, which would impose a moratorium on competitive sourcing for commissary operations through December 31, 2010. Competition between Federal Government operations and the private sector has been proven to provide the most efficient and least costly performance of commercial functions, and is a key initiative in the President's Management Agenda. On a Government-wide basis, competitions completed in FY 2004 are estimated to generate savings, or cost avoidances, for the taxpayer of more than \$1.4 billion over the next three to five years. The best way to protect commissary benefits for

military families is to encourage open competition, not prevent it.

Competitive Sourcing: The Administration opposes sections 322 and 323, which establish Department-specific statutory requirements for competitive sourcing. OMB Circular A-76 already ensures that competition processes are fair and transparent and further ensures such processes are applied consistently across agencies. These procedures are helping agencies, including DOD, to save billions of dollars and significantly improve mission performance.

Suspension of Utilities Systems Conveyance Authority: The Administration opposes section 2812, which would require a suspension of the military utilities conveyance authority, used since 1997 to take advantage of industry innovations, economies of scale, and efficiencies. Open solicitations for over 500 systems would be suspended for over a year, or more likely canceled, resulting in significant re-solicitation costs for both the Government and the utility industry. Barring this proposed delay, the effort to evaluate all military systems will essentially be completed in FY 2006.

Capital Security Cost Sharing: The Committee's bill decreases DOD's contribution to the Capital Security Cost Sharing Program in FY 2006 by \$61.3 million. The Administration opposes the reduction because it could prevent the Department from contributing to overseas cost sharing for critical security improvements under the Capital Security Cost Sharing program that is administered by the Department of State. This program requires all Federal agencies with authorized positions overseas to budget for and contribute to the construction of new secure embassy compounds.

Contract Dispute Settlement: The Administration strongly supports the principles of consolidation of the civilian agency boards of contract appeals. The Administration has concerns with this title, such as provisions relating to appointments of board judges that do not conform to the Appointments Clause of the Constitution. We would like to work with Congress to address these constitutional and other implementation concerns.

Contractors on the Battlefield: While the Administration recognizes the importance of protection for defense contractor personnel in combat zones, Title XVI purports to require the Secretary of Defense to issue certain orders to combatant commanders, which conflicts with the Constitution's commitment exclusively to the President of authority to command the armed forces. Further, this title is objectionable because it is unnecessary and may conflict with DOD actions currently underway. The draft DOD Directive and DOD Instruction, entitled Contractor Personnel Supporting Contingency Operations, is the first step in this effort.

Tank Vessel Construction Assistance: The Administration opposes section 3504, which would provide additional direction for administering Tank Vessel Construction Assistance. The President's Budget proposes to terminate this program, which is similar to a costly and ineffective ship-construction program that was previously terminated.

Global Posture Review Issues: Section 1222 purports to impose detailed regulations and standards governing the President's authority to negotiate with foreign states respecting the placement or maintenance of U.S. facilities in such foreign states. The provision would impermissibly infringe on the President's Constitutional authority to conduct foreign affairs and decide whether to conduct

negotiations with foreign states.

Military Legal Assistance Counsel: To protect individuals receiving military legal assistance, section 1044(e)(1) of title 10, United States Code, as contained in section 551 of the bill – which grants the right to practice law anywhere in the United States to judge advocates or civilian attorneys authorized to provide military legal assistance – should be amended to provide that a judge advocate or civilian attorney must be a "member of the bar of the highest court in at least one State or Territory or the District of Columbia."

Small Business Innovation Research (SBIR) Acceleration: Section 223 would support unwarranted extension of SBIR pilot projects into the commercialization stage of the SBIR program, lengthening the period during which these projects receive favorable treatment with Federal funding when they should be competing on the open market.

Ground Combat Exclusion: The Administration supports a manager's amendment to improve oversight of the utilization of women in uniform, without inappropriately restricting the quality and scope of opportunities available to them in winning the Global War on Terror.

The Administration looks forward to working with the Congress to address other concerns, including constitutional ones, such as concern with section 1522(d), which purports to mandate the submission to Congress of funding requests. The Administration also will work with Congress to eliminate the unintended and potentially discriminatory effects of section 561, which may affect the eligibility of U.S.-citizen children of non-citizen DOD employees living abroad to enroll in DOD schools, and of section 1202(c), which could be misconstrued to prevent Iraq government employees from receiving relief and reconstruction benefits on the same basis as other Iraqi citizens.

#### Budget Estimates and Enforcement

This bill would affect direct spending and receipts. To sustain the economy's expansion, it is critical to exercise responsible restraint over Federal spending. The Budget Enforcement Act's pay-as-you-go requirements and discretionary spending caps expired on September 30, 2002. The President's FY 2006 Budget includes a proposal to extend the discretionary caps through 2010, a pay-as-you-go requirement for direct spending, and a new mechanism to control the expansion of long-term unfunded obligations. OMB's cost estimate of this bill is currently under development.

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