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

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(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 1585 – National Defense Authorization Act for Fiscal Year 2008

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

The Administration appreciates the House Armed Services Committee's continued strong support of our national defense. However, the Administration has a number of significant concerns with H.R. 1585, which the Administration looks forward to addressing with Congress as the bill moves through the legislative process.

Modifications to the National Security Personnel System: The Administration strongly opposes section 1106, which would significantly change the National Security Personnel System (NSPS).

These changes eviscerate our effort to make civilians equal partners in a Department at war by removing most NSPS flexibilities and completely revoking the adverse actions, appeals, and labor relations portions of NSPS. They also back away from pay for performance. The Department of Defense's (DoD) phased approach to implementation is designed to allow DoD to assess and make periodic enhancements to ensure the system is achieving its goals. DoD already has made some adjustments based on employee feedback. Flexibility is needed given the Department's role in preparing for and responding to ever-changing national security threats. By retaining the meet and confer and continuing collaboration provisions, while also requiring establishment of a limited pay for performance system under select chapter 47 procedures and imposing chapter 71 obligations on the Department, the process becomes so administratively burdensome to design and operate that the effect of the bill is in essence a total revocation of the flexibilities Congress granted the Department. If the President is presented a bill that includes such provisions, his senior advisors will recommend that he veto the bill.

Buy American Provisions: The Administration strongly opposes legislative provisions that would undermine the longstanding U.S. policy – repeatedly affirmed by Congress – to open U.S. defense procurements to commercial suppliers and to suppliers from allied and friendly countries that open their defense procurements to U.S. suppliers. Sections 804, 809, 845, and 846 could jeopardize our military readiness when our objective should be to enhance our ability to get the best capability for the warfighter at the best value for the taxpayer. Such provisions would impose unrealistically arduous requirements on commercial suppliers; decrease competition; jeopardize U.S. suppliers' access to our civil-military procurements and to foreign defense markets; increase costs for U.S. taxpayers; and unnecessarily add red tape to the procurement process. If the President is presented a bill that includes such provisions, his senior advisors will recommend that he veto the bill.

Competitive Sourcing: The Administration strongly opposes language that unnecessarily delays, complicates, and restricts use of public-private competition in determining the most efficient performance of critical functions of DoD. The Department has saved taxpayers over \$5 billion

as a result of competitions completed between FY2001 - FY2006 and expects these savings to grow to over \$9 billion after the completion of all planned competitions initiated in FY 2007. Particularly onerous are the restrictions on the Secretary's ability to effectively balance the use of competition and other management tools in the Military Departments, the creation of uneven protests rights, intrusive data requirements concerning the provision of retirement benefits, and limitations that would be applied across government to marginalize the consideration of quality in determining the best source for the taxpayer.

Building Global Partnerships Act: The Administration encourages the House to adopt the requested Building Global Partnerships Act, recently transmitted to provide critical authorities for Combatant Commanders to address security priorities and support allies, coalition partners, and others in the War on Terror. These proposals seek authorities to enhance partners' capacity for effective operations and develop greater commonality by expanding professional training and education for partner nations.

National Guard Empowerment Act: The Administration strongly opposes sections 1612, 1621, and 1624 and urges their exclusion. These provisions would impinge on the authority of the Secretary of Defense and the Secretaries of the Army and Air Force, and would fundamentally disrupt existing command authority. Section 1612 would effectively specify in law that the National Guard Bureau (NGB) now works for the Secretary of Defense, rather than the Secretaries of the Army and the Air Force; further challenge the Secretaries of the Army and Air Force in exercising their Title 10 responsibilities for their forces; and effectively would place the NGB at a level above the Military Departments. Section 1621 also would raise significant constitutional issues by turning over command and control of Federal forces to a state elected official.

Reserve Montgomery GI Bill Transfer: The Administration strongly opposes section 525, which would move the Reserve Montgomery GI Bill and the Reserve Educational Assistance Program under Title 38. This would remove critical incentive programs for recruiting and retention from the control of the Secretary of Defense and improperly place them with the Secretary of Veterans Affairs. It would also violate the principle of budgeting for the full cost of benefits when they are earned and result in significantly higher costs to the government.

Special Survivor Indemnity Allowance: The Administration opposes section 644, which would pay a monthly special survivor indemnity allowance of \$40 from the DoD Military Retirement Fund. The current benefit programs for survivors, DoD's Survivor Benefit Plan (SBP) and Department of Veterans Affairs' Dependency Indemnity Compensation (DIC), provide sufficient benefits and avoid duplication of two complementary federal benefits programs established for the same purpose -- providing a lifetime annuity for the survivor of an active, retired or former servicemember. This offset policy is consistent with private sector benefits. The provision is estimated to cost \$27 million in the first year and about \$160 million through FY 2013. It appears to be the first step toward eliminating the offset between SBP and DIC; full elimination of this offset would cost the Military Retirement Fund between \$6 and \$8 billion over 10 years.

Military Pay: The Administration strongly opposes sections 601 and 606. The additional 0.5 percent increase above the President's proposed 3.0 percent across-the-board pay increase is unnecessary. When combined with the overall military benefit package, the President's proposal provides a good quality of life for servicemembers and their families. While we agree military

pay must be kept competitive, the three percent raise, equal to the increase in the Employment Cost Index, will do that. The cost of increasing the FY 2008 military pay raise by an additional 0.5 percent is \$265 million in FY 2008 and \$7.3 billion from FY 2008 to FY 2013.

Defense Health Program (TRICARE): The Administration is disappointed that the Committee language would not allow DoD to adjust TRICARE health fees and payments for retired military beneficiaries under age 65 and would not allow the implementation of any similar recommendations by the Task Force on the Future of Military Health Care. The Administration's suggested cost adjustments would make high-quality military health care more sustainable in the future by largely capturing the inflation increases that have occurred since cost sharing was first established in 1996. Not allowing the DoD to proceed with these changes will add over \$1.86 billion in cost in FY 2008 and \$19.28 billion in cost from FY 2008 to FY 2013.

The Administration strongly opposes section 703, which would impose price controls on prescription drugs when they are dispensed to enrollees in TRICARE through community pharmacies. The Administration believes market competition is the most effective way to promote discounts in the community setting. Government price-setting at community pharmacies will eliminate retail competition; it could also have an adverse impact on other markets, which could limit access to life-saving drugs, reduce convenience for beneficiaries, and ultimately increase costs. Drugs dispensed directly by DoD in its hospitals, clinics, and mail order facilities are already purchased at government purchasing schedules and DOD is working to encourage beneficiaries to take advantage of the lowest prescription drug prices available whenever possible.

Conscience Protections for Medical Personnel: The Administration is disappointed the Rules Committee did not accept an amendment for consideration that would have provided appropriate conscience protections to medical personnel affected by changes to the DoD formulary.

Military to Civilian Conversions: The Administration strongly opposes section 704, which would prohibit military to civilian conversions in the medical care system. This will eliminate the flexibility of the Secretary of Defense to use civilian medical personnel for jobs away from the battlefield and at the same time use the converted military billets to enhance the strength of operating units. DoD needs to determine the right mix of its total force to provide increased combat effectiveness critical to winning the Global War on Terror.

Death Gratuity for Federal Civilian Employees: The Administration strongly opposes section 1105, which would amend the Federal Employees' Compensation Act (FECA) to provide an additional \$100,000 death benefit for surviving family members of civilian employees who died supporting U.S. forces in a contingency operation. This provision would raise equity concerns by eroding the uniformity of benefits provided by FECA.

Expansion of Combat Related Special Compensation Eligibility: The Administration strongly opposes piecemeal changes to portions of disability compensation contained in section 645. Several commissions and review groups are reconsidering the country's responsibilities to those medically separated prior to completing a full military career and the Administration will consider comprehensive reform once these reviews are completed.

Acquisition Policy: While the Administration supports the underlying interests of section 806,

821, 822, 824, and 843, the Administration urges their deletion because each of these provisions is either duplicative of recently-enacted laws and implementing regulations or would be counterproductive and not of practical help in strengthening the acquisition process. Section 824, in particular, which imposes exhaustive reporting on contract deficiencies, will interfere with agencies' ability to address and resolve contract performance problems in a timely manner. In addition, section 326(b) would impose on the Department's contractors unmanageable and costly reporting requirements with questionable benefit.

Reductions and Requirements for Weapons Systems: A number of provisions negatively impact weapons systems. Selected examples include:

- Future Combat Systems (FCS): The Administration strongly opposes the Committee's \$867 million reduction to the FCS program, which would severely impact or stop development of the Army's top, long-term modernization program. It will force the Army to retain its Cold War hardware (developed in the 1970s and fielded in the 1980s) well beyond 2040, preventing our soldiers from fielding the best available equipment in the future.
- Space and Global Position System (GPS): The Administration is concerned about a number of cuts to the position navigation and timing (PNT) programs -- Air Force and Special Operations Command funding for the Integrated Global Positioning System (GPS) test, and the GPS III satellite program. These reductions will cause significant delays in fielding critical new capabilities and force the continued use of aging or obsolete equipment. Assured continuity of key space capabilities for position, navigation, and timing is critically important to DoD and the Nation's civilian economy.
- B-52 Force Reduction: The Administration urges repeal of section 131, which prohibits the reduction of the B-52H fleet to 56 aircraft -- a number sufficient to meet current and future warfighting requirements. Reducing the size of the B-52 fleet will free up critical resources to develop new systems.
- Littoral Combat Ship (LCS): The Administration is concerned about the Committee's \$200 million reduction to the Navy's LCS program. The cut will prevent the procurement of two ships in FY 2008 and delay the fielding of this urgent warfighting capability.
- Reliable Replacement Warhead: The Administration urges full funding for the Reliable Replacement Warhead (RRW) Program. The proposed reduction in funding is likely to delay this program, which is designed to develop and deploy safer, more secure, and more reliable weapons to replace aging Cold War-era weapons in the stockpile.

Missile Defense: The Administration strongly opposes the significant reductions (totaling \$764 million) for the Missile Defense Agency, particularly the reductions of \$160 million for construction of a third European Missile Defense Site and \$250 million for the Transformational Airborne Laser Program.

Repeal of Modification to Insurrection Act: The Administration strongly opposes section 1054,

which could be perceived as significantly restricting a congressionally-granted authority for the President to direct the Secretary of Defense to preserve life and property and by limiting the President's authority to call upon the Reserves. Such a result would be detrimental to the President's ability to employ the Armed Forces effectively to respond to the major public emergencies contemplated by the statute.

Unrequested Procurement Funding and Acquisition Restrictions: The Administration opposes the addition of \$2.4 billion for 10 additional C-17 aircraft, \$1.7 billion for an additional LPD-17 amphibious ship, and \$456 million for a T-AKE cargo ship. These and other similar unrequested additions divert funds from higher priority acquisitions.

Military Medical Treatment Facilities: The Administration endorses the goals of Title XIV of H.R. 1585 but believes that this legislation is premature; the Administration continues to oppose a broad one-year moratorium on the initiation of new public-private competitions involving any function at any military medical facility.

Leasing of Foreign-Built Vessels: The Administration opposes this provision, which would limit DoD's ability to competitively lease needed vessels regardless of where they were constructed. All vessels currently under charter for more than six months are U.S.-flagged, U.S.-crewed, and U.S.-owned or leased. Restricting the maximum lease period of foreign built ships would not increase the number of U.S.-built, militarily useful ships.

Naval Base Guam Kilo Wharf Extension: The Administration opposes the House provision to incrementally fund a military construction project in Guam while permitting full funding on other equally costly construction projects. The Administration position is that all military construction projects should be fully funded except for compelling national security reasons.

Study on Global Climate Change: The Administration opposes section 951, which would mandate the inclusion of a study on global climate change in the next National Security Strategy, National Defense Strategy, and Quadrennial Defense Review. This section sets a harmful precedent. The content of these products should not be reflected in law, particularly in a manner that impinges on the flexibility of national security professionals and policy officials to determine the most appropriate subjects for these strategy documents.

Potential Amendments:

Amendments on Iran: The Administration strongly opposes amendments to the bill to restrict the ability of the United States to deal effectively with the threats to regional security posed by the conduct of Iran, including Iran's efforts to develop nuclear weapons. The Administration also notes that provisions of law that purport to direct or prohibit international negotiations, covert action, or use of the armed forces are inconsistent with the Constitution's commitment exclusively to the presidency of the executive power, the function of Commander in Chief, and the authority to conduct the Nation's foreign policy. If the bill were presented to the President with provisions that would prevent the President from protecting America and allied and cooperating nations from threats posed by Iran, the President's senior advisers would recommend that he veto the bill.

Guantanamo-Related Amendments: The Administration opposes amendments that would

micromanage the detention of enemy combatants by the United States in the war on terror. Current laws and treaties already address the subject of enemy combatants and preserve appropriate flexibility for the President as Commander in Chief to conduct the war effectively within the law. If a bill were presented to the President that prevented him from detaining enemy combatants or collecting from them in accordance with current law intelligence on past and future terrorist activities, the President's senior advisers would recommend that he veto the bill.

Constitutional Concerns: H.R. 1585 raises a number of constitutional concerns including ones regarding the President's authority as Commander-in-Chief to supervise the Executive Branch, and to control the disclosure and dissemination of classified information.

Other requested authorities not included in HR 1585:

Flexible Management of Deployments of Members: The Administration is disappointed that the Committee did not include its proposals providing DoD with more flexible tools to manage the deployment and compensation of servicemembers. The proposed changes would allow DoD to balance operational tempo and compensate servicemembers who deploy more frequently or for longer periods than normal.

Aircraft Carriers: The Administration strongly urges Congress to authorize Navy to maintain 10 operational carriers between the decommissioning of USS ENTERPRISE (CVN 65) and the commissioning of USS GERALD R. FORD (CVN 78). The Navy can meet Combatant Commander surge and presence requirements using a 10-carrier fleet during this time with acceptable risk.

Strategic Airlift Capability Partnership in NATO: The Administration strongly supports the initiative providing authority to participate in and transfer C-17 Globemaster III aircraft to the Strategic Airlift Capability Partnership in NATO. This initiative will allow the U.S. to retain use of C-17 aircraft provided to NATO while gaining surge capacity with two additional aircraft; will provide a critical Strategic Airlift Capability to NATO; will promote interoperability; will strengthen our partnerships with Allies; and will enhance C-17 global sustainment capability.

Foreign Currency Fluctuation Adjustments for Family Housing in Korea: The Administration urges the inclusion of this requested authority to update foreign currency fluctuation adjustments for certain housing leases in Korea. The omission of this authority jeopardizes U.S. ability to successfully execute the Yongsan Relocation Plan.

The Administration is ready to work with Congress on a national defense authorization bill that would strengthen the Nation's Defense capabilities and support priorities in the Global War on Terror, so that the President can sign such a bill into law.

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