

INFO MEMO

13 May 2016

FOR: SECRETARY OF DEFENSE
DEPUTY SECRETARY OF DEFENSE

FROM: Mr. Mike McCord, Under Secretary of Defense for Comptroller ^{OC}
Mr. Stephen Hedger, Assistant Secretary of Defense for Legislative Affairs ^{SCA}

SUBJECT: House Overseas Contingency Operations Funding Gimmick ("OCO Gimmick")

This memo discusses the atmospherics of the OCO gimmick and lays out a series of steps the Department can pursue in furtherance of the Department's objection to its use by the HASC and HAC-D.

BLUF: The principal weapon at our disposal is the veto, which can and should be deployed against both authorization and appropriations if they include the OCO gimmick. The strength of the veto threat is dependent on the House and Senate Democratic Leadership and their ability to garner sufficient opposition to make it relevant. Ultimately, DoD and the White House need to support Congressional allies by continuing public and private pressure against the gimmick. If House and Senate Democratic Leadership decide not to take a firm line, however, we may need to reevaluate our posture and the intensity of our effort. Finally, engaging sympathetic Republican leaders, including SAC-D Chairman Cochran and HAC-D Chairman Frelinghuysen will be vital.

PROCESS / TIMELINE:

The OCO gimmick included in the HASC-reported NDAA and the HAC-D defense appropriations bill violates the framework of the Bipartisan Budget Act (BBA) adopted last year to provide budget certainty in FY 2017. The Senate will not follow the House on the OCO gimmick, setting this up as a fundamental conference issue. While there are key differences from last year that could keep Democrats from opposing the gimmick (Congress is now in an election cycle and doesn't need a new budget agreement to avoid sequestration), we still believe we should follow last year's successful blueprint. In short, we should attack the OCO gimmick and be prepared to play hardball opposing it. The veto threat is our primary weapon. However, a veto threat only works if it is supported by the Democratic Leadership and their caucuses. Our job is to encourage and support those efforts.

At this point we have little opportunity to affect any change in the House's OCO gimmick prior to the House passing either of their two defense bills (FY17 NDAA and FY17 defense appropriations bill). Speaker Ryan supports the gimmick and House Republicans will vote for it. Like last year, we need to help House Democrats justify their voting against both bills on the House Floor.

Conference negotiations are expected to occur at the earliest in June and July for the authorizing bill and likely later for an appropriations measure (but both are realistically expected to drag into the fall and potentially the lame duck session). Opposition to the authorization bill

on the floor last year helped galvanize opposition to the appropriations bill. Meanwhile, Speaker Ryan has directed HAC-D to follow the HASC gimmick and they have. OGC has indicated that the HASC spending restrictions on using OCO funds past April would hold up if included in an authorization bill that is enacted after an appropriations bill. Therefore, we must establish a consistent message which clearly opposes the gimmick in both authorizations and appropriations bills. Importantly, we believe HAC-D Chairman Frelinghuysen may be less enthused about following the OCO gimmick format from the HASC bill, but has been directed to do so by the Speaker. Capitalizing on his discomfort could help prevent the gimmick from surviving.¹

KEY PLAYERS:

The first key players in the debate going forward will be the Chairmen and Ranking Members of the four congressional defense committees.

- **Chairmen:** The two Senate Chairmen, McCain and Cochran, are important players because they have already chosen not to follow the approach of the House committees. The two House Chairmen, Thornberry and Frelinghuysen, having developed the existing approach and advanced it respectively, are unlikely to be particularly responsive to direct critiques (as is already evidenced by Thornberry's sharp media rebuttals to his approach). Therefore, we should primarily seek to critique the narratives they offer in support of their proposal, rather than trying to convince them directly.
 - We believe that Chairman Thornberry is still smarting from the veto sustaining vote that the FY2016 NDAA received the first time it was on the floor last year and has vowed to do everything in his power to ensure he gets a strong vote this year. Cautious behavior driven by the electoral cycle, combined with Thornberry's savvy inclusion of enough Democrat Member high-interest items (e.g., New Balance shoes, submarines, etc.) included in the bill means he will probably achieve that strong vote (we don't have any indications that there will be a strong pushback next week on the floor from the House Democrats). This additional factor that suggests we should target most of our efforts on the appropriations process. Nonetheless, the House Democrats rallied last year on the floor in opposition to the NDAA, even after there had been a strong Democratic vote in committee.

¹ The presence of the gimmick in an authorizing measure, if it were to survive, is not dispositive because the ultimate appropriated amount controls the final outcome. Preserving DoD equities in the appropriations forum is therefore most critical. Members of Congress also recognize this, and often fight less vigorously against a problematic authorizing bill (particularly in an election year when they dislike opposing national security measures) while drawing battle lines in the appropriations process. However, having a consistent message of strong opposition from the Department sets the basis for opposition overall.

- o We believe that Representative Frelinghuysen does not support the OCO gimmick personally, however Speaker Ryan directed HAC-D to follow suit with the HASC and they did. Opposing the gimmick hard helps the HAC do what we and they want which is to get a bill inside the BBA. That's why we have to attack the NDAA gimmick and be prepared to play hardball.
- **Ranking Members:** All four Ranking Members provide opportunities for positive engagement with the Department. Many Democratic lawmakers will look to their Ranking Members for a signal of how to vote. For example, Ranking Member Smith supported the HASC NDAA at markup and the majority of his fellow Democrats followed suit. Securing the opposition of Ranking Member Durbin (SAC-D) and Visclosky (HAC-D) to any OCO gimmick will be especially crucial. Early indications are that both are prepared to lead opposition to an OCO gimmick, but their efforts will take place in the broader political context of their chambers in an election year.

The second key set of players will be Leadership.

- **Republican Leadership:** Republican Leadership will gauge both what they believe can achieve passage and the political aspects of a debate. That said, Speaker Ryan directed the HAC-D to follow the HASC gimmick and they have. He is therefore an active participant with the gimmick.
- **Democratic Leadership:** Democratic Leadership are significant players because opposition to the gimmick will inherently reside with the minority. Ensuring Democratic Leadership is prepared to organize their caucuses in opposition to the gimmick, particularly on the appropriations measure, is vital. In the Senate, Democrats can block forward movement of a defense bill with 41 votes. In the House and Senate, Democrats can signal that a bill with an OCO gimmick, if sent to the President, lacks adequate votes to overcome a veto (requiring 34 opponents in the Senate and 146 opponents in the House).

Also of significance will be the reception of the gimmick by former Department leaders, and think tank and media elites who will further frame public narratives about whether an OCO gimmick is an odious approach, whether narratives supporting the gimmick are valid (particularly Thornberry's readiness crisis narrative), and whether the Department's arguments in opposition are valid (particularly the risks of hollow force structure and of gambling with war funding).

COURSES OF ACTION: The Department can launch a series of steps in furtherance of its opposition to an OCO gimmick. We will evaluate the best timing for each as the congressional process advances with this debate likely to continue well into the fall.

- **Support for a Veto if the OCO Gimmick is included:** The Department has supported a strong veto message against both the HASC and HAC-D bills because of the OCO Gimmick and the April 2017 cut-off. Strong language already included in the House NDAA SAP should be included in the House Defense Appropriations SAP.
- **Detailed Fact Sheets Supporting the Department's Opposition:** The Department should crystalize the factual underpinning of its opposition to the gimmick. Testimony given at SAC-D and the Statement of Administration Policy (SAP) on the HASC NDAA lay out the broad outlines of the Department's opposition. Going further to more clearly communicate how the additional base funding risks hollow force structure, doesn't represent the highest joint priorities, gambles with war funding, and otherwise harms the Department is vital. These fact sheets then serve to rally others to the Department's position and signal to them the narrative to use in furtherance of the position.
 - An analysis of the factual underpinnings of our opposition may lead us to conclude that of the three or four aspects of opposition the Department has already communicated, the idea that the gimmick gambles with war funding might resonate the loudest in Congress and the public. If that is the case, then the various courses of action described below should include significant senior military leader involvement.
- **Op-Eds and Speeches by Senior Department Leaders:** In furtherance of building depth to the Department's opposition narrative, the Secretary should seek to publish an op-ed decrying the gimmick in a major newspaper focusing on the key themes from the SAC-D testimony and HASC NDAA SAP. The Secretary and/or Deputy Secretary, as well as other Department leaders can then layer this message with significant policy speeches in Washington, DC, and should also seek to repeat the message as frequently as possible in other speeches and on travel, where appropriate.
- **Calls/Meetings with Key Congressional Leaders:**
 - **Defense Committee Ranking Members:** The Secretary should host a meeting with the four Ranking Members of the defense committees to underscore his opposition to the gimmick and explain his reasoning further, while encouraging them to rally opposition to bills with the gimmick in it. If a meeting isn't feasible, the Secretary should place calls to each leader to underscore his position and the importance of standing against the gimmick.

- **Democratic Leadership:** The Secretary should also engage directly with Leader Reid and Leader Pelosi to underscore the importance of their leading their respective caucuses to oppose the gimmick. These two individuals are central in determining whether to press their membership to oppose the OCO gimmick approach. In the case of Reid, the Secretary can discuss this at the long-delayed meeting now scheduled for May 19th. In the case of Pelosi, we can pursue a call or meeting in the near future.
- **Republican Leadership:** The Secretary should also meet with or call Senators McCain and Cochran who have both said they would not include the OCO gimmick in their bills and urge them to hold firm in conference. This is ultimately the most likely place for the gimmick to be rejected, and the veto threat will strengthen their hands. In light of our understanding that HAC-D Chairman Frelinghuysen is only reluctantly supporting the gimmick, a call or meeting with him would also be valuable.
- **House and Senate Democratic Caucus Meetings:** As we experienced last year, Democratic leaders may ask for the Secretary to appear at a caucus meeting to enable Democratic members to hear directly from the Secretary in explaining the importance of opposing the OCO gimmick. This engagement can be crucial in convincing Democratic members, particularly in an election year, to take a politically difficult vote in opposition to a defense bill. Appearing at these meetings does impact votes, but also risks the appearance of partisanship. Furthermore, if Democrats nonetheless support the bills, it can generate an appearance of weakness. As a general matter, avoiding this risk is advisable, but in an "all in" approach to opposing the gimmick, the risk would be worth taking. Republicans will not welcome the Secretary to their conference meetings to oppose a Republican legislative approach.
- **Small Group Briefings for Democratic Members:** The Department can also seek to host small groups of key Senators and House Members for briefings on the flaws of the OCO gimmick to rally opposition.
- **Informing Outside Stakeholders:**
 - The Department can also ensure outside influencers, such as former Secretaries, former senior military leaders, think tank leaders, and media commentators are fully informed about the Department's concerns. The Department cannot advocate that such individuals take any specific actions, however.