



H.R. 5293: Fiscal Year 2017 Defense Appropriations (Rep. Frelinghuysen, R-NJ)

CONTACT: [Matt Dickerson](mailto:Matt.Dickerson@rsc.house.gov), 202-226-9718

FLOOR SCHEDULE:

H.R. 5293 is expected to be considered beginning on June 14, 2016, under a [structured rule](#).

Amendments will be summarized in additional Legislative Bulletins as they become available.

TOPLINE SUMMARY:

H.R. 5293 would provide appropriations for the Department of Defense for Fiscal Year 2017.

A [consolidated summary of major non-spending policy provisions \(riders\)](#) is available at the end of the detailed summary below.

The Committee Report can be found [here](#), and the text of the legislation can be found [here](#).

COST:

The bill provides a net total of \$517.13 billion in Fiscal Year 2017 base discretionary budget authority that is subject to the Budget Control Act (BCA) discretionary spending caps (as increased by the Bipartisan Budget Act of 2015 (BBA15)).

The bill is written at a level that would technically comply with the higher \$1.070 trillion in discretionary spending allowed by BBA15.

In thousands of Dollars

	FY16 House Level	FY16 Enacted	FY17 President Request	FY17 House Level
Net Total Base Discretionary	490,235,000	514,148,000	516,543,169	517,130,000

Net Total Base Discretionary Budget Authority is:

- \$586.831 million below the President's budget request.
- \$2.982 billion above the enacted FY 2016 level.
- \$26.895 billion above the level originally proposed by the Appropriations Committee for FY 2016.

The bill includes \$58.626 billion in Overseas Contingency Operations (OCO/GWOT) funding that is exempt from the BCA spending caps. Within this total, the bill would provide \$42.95 billion for actual OCO/GWOT requirements, a level that is \$15.656 billion below the president’s budget request. According to the [Committee Report](#), this would support OCO/GOT requirements until the end of April 2017. At that time a supplemental appropriation would be required to further support ongoing OCO/GWOT operations.

The bill would also provide \$15.676 billion for base requirements that are designated as OCO.

CONSERVATIVE CONCERNS:

Some conservatives may be concerned that this appropriations bill is being considered by the House despite the fact that House has yet to consider a budget resolution.

Some conservatives may be concerned that, while potentially necessary to prevent severe readiness shortfalls, this bill shifts funding away from actual OCO purposes that are meant to support warfighters engaged in the Global War on Terror combat operations. Such diversion could result in a supplemental appropriations bill being required by April 2017. This potential funding cliff could also coincide with the termination of the suspension of the federal debt limit imposed by the [Bipartisan Budget Act of 2015, which](#) expires on March 15, 2017.

- **Expand the Size and Scope of the Federal Government?** Yes.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No, according to the [Committee Report](#).

DETAILED SUMMARY AND ANALYSIS:

Title I: Active, Reserve, And National Guard Military Personnel
Net Total Discretionary in Thousands of Dollars

FY16 House Level	FY16 Enacted	FY17 President Request	FY17 House Level	FY17 vs 16 House	FY17 vs 16 Enacted	FY17 vs President
122,727,607	129,228,658	128,902,332	128,168,468	+ 5,440,861	- 1,060,190	- 733,864

Military Personnel would be appropriated \$128.168 billion, a level that is \$734 million below the president’s budget request, \$1.06 billion below the FY16 enacted level, and \$5.44 billion above the level proposed by the House Appropriations Committee for FY16.

Base appropriations for Personnel would be supplemented with \$2.201 billion in Personnel OCO funding that is designated towards base purposes as well as \$2.199 billion that is for actual OCO/GWOT requirements. OCO funding is exempted from the BCA spending caps.

Military Pay Raise: The bill would provide funding to increase pay for all military personnel by 2.1 percent in 2017.

Suicide Prevention: The bill would require a report on the DOD’s efforts to establish a 24-hour suicide hotline.

Military Personnel End Strength: The bill would provide funding to support end-strength increases of 16,900 above their current levels and 53,715 above the president’s budget request. A summary of end-strength personnel levels is below and a more detailed table can be found in the [Committee Report](#):

End Strength	FY 2016 Authorized	FY17 Budget Request	FY17 Recommended in this bill	Change from Request	Change from FY16
Total, Active Forces	1,308,915	1,281,900	1,310,615	+ 28,715	+ 1,700
Total, Selected Reserve	811,000	801,200	826,200	+ 25,000	+ 15,200
Total, Military Personnel	2,119,915	2,083,100	2,136,815	+ 53,715	+ 16,900

Title II: Operation and Maintenance

Net Total Discretionary in Thousands of Dollars

FY16 House Level	FY16 Enacted	FY17 President Request	FY17 House Level	FY17 vs 16 House	FY17 vs 16 Enacted	FY17 vs President
162,286,489	167,485,170	171,318,488	173,680,060	+11,393,571	+ 6,194,890	+ 2,361,572

Operation and Maintenance (O&M) would be appropriated \$173.68 billion, a level that is \$2.362 billion above the president’s budget request, \$6.195 billion above the FY16 enacted level, and \$11.394 billion above the level proposed by the House Appropriations Committee for FY16.

Base appropriations for O&M would be supplemented with \$5.584 billion in O&M OCO funding that is designated towards base purposes as well as \$29.961 billion that is for actual OCO/GWOT requirements. OCO funding is exempted from the BCA spending caps.

A detailed table of O&M base appropriations can be found in the [Committee Report](#).

Title III: Procurement

Net Total Discretionary in Thousands of Dollars

FY16 House Level	FY16 Enacted	FY17 President Request	FY17 House Level	FY17 vs 16 House	FY17 vs 16 Enacted	FY17 vs President
98,559,445	110,841,627	101,916,357	104,200,570	+ 5,641,125	- 6,641,057	+ 2,284,213

Procurement would be appropriated \$104.201 billion, a level that is \$2.284 billion above the president’s budget request, \$6.641 billion below the FY16 enacted level, and \$5.641 billion above the level proposed by the House Appropriations Committee for FY16.

Base appropriations for Procurement would be supplemented with \$7.278 billion in Procurement OCO funding that is designated towards base purposes as well as \$9.358 billion that is for actual OCO/GWOT requirements. OCO funding is exempted from the BCA spending caps.

A detailed table of Procurement base appropriations can be found in the [Committee Report](#).

Apache Helicopters: The bill would provide \$881 million for the remanufacture of 52 AH-64 Apache helicopters as well as \$374,210,000 for the procurement of ten AH-64 Apache helicopters were not included in the president's budget request.

Blackhawk Helicopters: The bill would provide \$1.195 billion for the procurement of 72 UH-60 Blackhawk helicopters which is an increase of \$440,200,000 and 36 helicopters above the president's budget request.

F/A-18 Hornet: The bill would provide \$1.2 billion for the procurement of 14 F/A-18E/F Super Hornet aircraft which were not included in the president's budget request.

Poseidon: The bill would provide \$1.821 billion for the procurement of 11 P-8A Poseidon multimission aircraft.

F-35 Joint Strike Fighter: The bill would provide \$8.319 billion for the procurement of 74 F-35 Lightning aircraft which is an increase of \$988,200,000 and 11 aircraft above the president's budget request. This includes 18 short take-off and vertical landing variants for the Marine Corps, eight carrier variants for the Navy, and 48 conventional variants for the Air Force.

Navy Ships: The bill would provide a total of \$21.571 billion for the procurement of 15 Navy ships, including two DDG-51 guided missile destroyers, two SSN-774 attack submarines, three Littoral Combat Ships, one moored training ship, one LHA replacement, one amphibious ship replacement, and five ship to shore connectors.

Ohio-Class Replacement Submarine: The bill would provide \$773,138,000 for the initial procurement of the *Ohio* Replacement Submarine.

C-130 Hercules Variants: The bill would provide \$1,961,471,000 for the procurement of 24 C/HC/MC/KC-130J aircraft which is an increase of \$748 million and ten aircraft above the president's budget request.

Osprey: The bill would provide \$1.617 billion for the procurement of 21 MV/CV-22 aircraft which is an increase of five aircraft and \$353 million above the president's budget request.

KC-46 Tankers: The bill would provide \$2.802 billion for the procurement of 15 KC-46 tanker aircraft;

EELV: The bill would provide \$1.028 billion for the procurement of three Evolved Expendable Launch Vehicles.

Support for Israel: The bill would provide \$332 million for the Israeli Cooperative Programs under the Missile Defense Agency, an increase of \$290,000,000 above the president's budget request.

Title IV: Research, Development, Test and Evaluation

Net Total Discretionary in Thousands of Dollars

FY16 House Level	FY16 Enacted	FY17 President Request	FY17 House Level	FY17 vs 16 House	FY17 vs 16 Enacted	FY17 vs President
66,150,652	69,784,665	71,391,771	70,292,888	+ 4,142,236	+ 508,223	- 1,098,883

Research, Development, Test and Evaluation (RDT&E) would be appropriated \$70.293 billion, a level that is \$1.099 billion below the president’s budget request, \$508 billion above the FY16 enacted level, and \$4.142 billion above the level proposed by the House Appropriations Committee for FY16.

Base appropriations for RDT&E would be supplemented with \$163 million in RDT&E OCO funding that is designated towards base purposes as well as \$334 million that is for actual OCO/GWOT requirements. OCO funding is exempted from the BCA spending caps.

Ohio-Class Replacement Submarine: The bill would provide for \$701 million for the continued development of the replacement for the *Ohio*-class ballistic missile submarine.

F-35 Joint Strike Fighter: The bill would provide \$1.791 billion for the continued development of the F-35 Lightning Joint Strike Fighter aircraft.

Presidential Transportation: The bill would provide \$338 million for the continued development of the replacement for the Presidential helicopter program and \$351 million for the development of a Presidential Aircraft Replacement.

Bomber: The bill would provide \$1.358 billion for the continued development of a new penetrating bomber.

Alternative Space Engine: The bill would provide \$297 million for the development of an alternative rocket engine for space launch.

DARPA: The bill would provide \$2.923 billion for the Defense Advanced Research Projects Agency DARPA.

Support for Israel: The bill would provide \$269 million for the Israeli Cooperative Program under the Missile Defense Agency, which is an increase of \$164,900,000 above the president’s budget request.

Title VI: Other Department of Defense Programs

Net Total Discretionary in Thousands of Dollars

FY16 House Level	FY16 Enacted	FY17 President Request	FY17 House Level	FY17 vs 16 House	FY17 vs 16 Enacted	FY17 vs President
33,355,187	34,392,468	35,284,674	35,358,421	+ 2,003,234	+ 965,953	+ 73,747

Other DOD Programs would be appropriated \$35.358 billion, a level that is \$74 million above the president’s budget request, \$966 million above the FY16 enacted level, and \$2.003 billion below the level proposed by the House Appropriations Committee for FY15.

Base appropriations for Other DOD Programs would be supplemented with \$450 million in Other DOD Programs OCO funding that is designated towards base purposes as well as \$977 million that is for actual OCO/GWOT requirements. OCO funding is exempted from the BCA spending caps.

Defense Health Program: The bill provides \$33.577 billion for the Defense Health Program, a level that is \$109 million above the president’s budget request, \$1.247 billion above the FY16 enacted level, and \$2.137 billion above the level proposed by the House Appropriations Committee for FY16.

The primary mission of the Defense Health Program is to “provide for worldwide medical and dental services to active forces and other eligible beneficiaries.” Within this total, \$31.696 billion is for Operations and Maintenance, \$413 million is for Procurement, and \$1.467 billion is for Research, Development, Test, and Evaluation (RDT&E).

As part of RDT&E in this area, the Congressionally Directed Medical Research Program (CDMRP), and is funded at \$644 million above the president’s budget request. According to [CRS](#), “Members of Congress are frequently lobbied to support adding funding to the annual defense appropriation for medical research on a wide variety of diseases and topics.” While medical research is a laudable activity, some conservatives may be concerned that many of the programs funded within the CDMRP are not for military-specific conditions and are duplicative of the type of [research done](#) at the National Institutes of Health (NIH). According to [Taxpayers for Common Sense](#), “These programs are clearly earmarks and therefore take money away from other necessary Defense Department functions.” The bill provides research funding for: alcohol and substance abuse, ALS, Alzheimer, autism, breast cancer, other cancers (including bladder cancer, brain cancer, colorectal cancer, listeria vaccine for cancer, liver cancer, lymphoma, melanoma and other skin cancers, mesothelioma, pancreatic cancer, stomach cancer, and cancer in children, adolescents, and young adults), Duchenne muscular dystrophy, gulf war illness, hearing restoration, kidney cancer, lung cancer, lupus, multiple sclerosis, orthopedic, ovarian cancer, prostate cancer, spinal cord, reconstructive transplant, tickborne disease, traumatic brain injury and physiological health, tuberous sclerosis, vision, global HIV/AIDS prevention, the joint warfighter medical research program, and the trauma clinic research program.

Title VII: Related Agencies

Net Total Discretionary in Thousands of Dollars

FY16 House Level	FY16 Enacted	FY17 President Request	FY17 House Level	FY17 vs 16 House	FY17 vs 16 Enacted	FY17 vs President
1,021,923	1,019,206	1,047,596	997,596	- 24,327	- 21,610	- 50,000

The related agencies would be appropriated \$998 million, a level that is \$50 million below the president’s budget request, \$22 million below the FY16 enacted level, and \$24 million above the level proposed by the House Appropriations Committee for FY16.

Classified Programs: This title would provide for classified programs, including the Director of National Intelligence including the Intelligence Community Management staff, the Central Intelligence Agency (CIA), the Defense Intelligence Agency, the National Reconnaissance Office, the National Security Agency, the National Geospatial-Intelligence Agency, the intelligence services of the Departments of the Army, Navy, Air Force, and the CIA Retirement and Disability fund. This information is published in the classified annex.

Title IX: Global War on Terrorism (GWOT)/Overseas Contingency Operations (OCO)

Net Total Discretionary in Thousands of Dollars

FY16 House Level	FY16 Enacted	FY17 President Request	FY17 House Level	FY17 vs 16 House	FY17 vs 16 Enacted	FY17 vs President
88,421,000	58,638,000	58,625,551	58,626,000	- 29,795,000	- 12,000	+ 449

GWOT/OCO would be appropriated \$58.626 billion, a level that is \$449,000 above the president's budget request, \$12,000 million below the FY16 enacted level, and \$29.795 billion below the level proposed by the House Appropriations Committee for FY16.

Within this total, the bill would provide \$42.95 billion for actual OCO/GWOT requirements, a level that is \$15.656 billion below the president's budget request. According to the [Committee Report](#), this would support OCO/GOT requirements until the end of April 2017. At that time, a supplemental appropriation would be required to further support ongoing OCO/GWOT operations.

The bill would also provide \$15.676 billion for base requirements that are designated as OCO.

Personnel: The bill would provide a total of \$4.4 billion in OCO Military Personnel funding, a level that is \$838 million above the president's budget request. Within this total, \$2.199 billion is for actual OCO/GWOT requirements and \$2.201 billion is for base requirements. The level of actual OCO/GWOT requirements is \$1.363 billion below the president's budget request. A detailed table of funding can be found in the [Committee Report](#).

Operations and Maintenance (O&M): The bill would provide a total of \$35.545 billion in OCO military O&M funding, a level that is \$10.603 million below the president's budget request. Within this total, \$29.961 billion is for actual OCO/GWOT requirements and \$5.584 billion is for base requirements. The level of actual OCO/GWOT requirements is \$16.187 billion below the president's budget request. A detailed table of funding can be found in the [Committee Report](#).

Procurement: The bill would provide a total of \$16.635 billion in OCO military Procurement funding, a level that is \$7.529 billion above the president's budget request. Within this total, \$9.358 billion is for actual OCO/GWOT requirements and \$7.278 billion is for base requirements. The level of actual OCO/GWOT requirements is \$251 million above the president's budget request. A detailed table of funding can be found in the [Committee Report](#).

Research, Development, Test and Evaluation (RDT&E): The bill would provide a total of \$497 million in OCO RDT&E funding, a level that is \$123 million above the president's budget request. Within this total, \$334 million is for actual OCO/GWOT requirements and \$163 million is for base requirements. The level of actual OCO/GWOT requirements is \$40 million below the president's budget request. A detailed table of funding can be found in the [Committee Report](#).

Other Defense Programs: The bill would provide a total of \$1.427 billion in OCO Other Defense Programs funding, a level that is \$450 million above the president's budget request. Within this total, \$977 million is for actual OCO/GWOT requirements and \$450 million is for base requirements. The level of actual OCO/GWOT requirements is equal to the president's budget request. A detailed table of funding can be found in the [Committee Report](#).

Unauthorized Appropriations: Virtually the entire bill is [not authorized by law](#) in FY 2017. However, these programs would be reauthorized by the FY 2017 National Defense Authorization Act, which has already passed the House and is currently under consideration by the Senate.

MAJOR POLICY PROVISIONS:

Guantanamo Detainees: The bill would prohibit funds to transfer or release any detainee held at Guantanamo Bay into the U.S (Sec. 8097), modify any facility in the U.S. to house any Guantanamo detainee (Sec. 8098), prohibit funds in this to be used in contravention 1034 of the National Defense Authorization Act for Fiscal Year 2016 and section 1034 of the National Defense Authorization Act for Fiscal Year 2017, which requires the Administration to notify Congress 30 days in advance of a detainee transfer to a foreign country (Sec. 8099), and prohibit the use of funds to close or transfer the jurisdiction of the Naval Station Guantanamo Bay (Sec. 8130).

Sense of Congress Regarding The Use of Force Against ISIL: The bill includes findings that “the United States has been engaged in military operations against the Islamic State of Iraq and the Levant (ISIL) for more than 20 months; President Obama submitted an authorization for the use of military force against ISIL in February 2015; and under article 1, section 8 of the Constitution, Congress has the authority to “declare war”. Therefore, Congress has a constitutional duty to debate and determine whether or not to authorize the use of military force against ISIL.”

War Powers Resolution: The bill would prohibit the use of funds in contravention of the War Powers Resolution (Sec. 8100). The bill would also specifically prohibit the use of funds in contravention of the War Powers Resolution in Iraq (Sec. 8112).

FISA: The bill would prohibit the use of funds for the National Security Agency (NSA) to “conduct an acquisition pursuant to section 702 of the Foreign Intelligence Surveillance Act of 1978 for the purpose of targeting a United States person; or acquire, monitor, or store the contents of any electronic communication of a United States person from a provider of electronic communication services to the public pursuant to section 501 of the Foreign Intelligence Surveillance Act of 1978.” (Sec. 8108).

BRAC: The bill would prohibit the use of funds for Base Realignment and Closure (BRAC) (Sec. 8121).

Control of the Pacific Fleet: The bill would prohibit the use of funds to modify command and control relationships to give Fleet Forces Command operational and administrative control of United States Navy forces assigned to the Pacific fleet (Sec. 8055).

A-10: The bill would prohibit the use of funds to retire the [A-10 aircraft](#) (Sec. 8113).

KC-10: The bill would prohibit the use of funds to retire the KC-10 fleet (Sec. 8118).

EC-130H: The bill would prohibit the use of funds to retire the EC-130H aircraft (Sec. 8119).

Second Amendment Provisions: The bill would prohibit funding to implement the U.N. Arms Trade Treaty unless it is ratified by the Senate (Sec. 8109), and would prohibit the DOD from demilitarizing or disposing of M-1 Carbines, M-1 Garand rifles, M-14 rifles, .22 caliber rifles, .30 caliber rifles, or M-1911 pistols or to destroy small arms ammunition that is not otherwise prohibited for commercial sale by federal law (Sec. 8017).

Coal at U.S. Bases in Germany: The bill would allow the Department of Defense to “implement cost-effective agreements for required heating facility modernization” in Kaiserslautern, Germany. The agreements in the City of Kaiserslautern and at the Rhine Ordnance Barracks area are required to include

the use of energy sourced domestically within the United States, while at Landstuhl Army Regional Medical Center and Ramstein Air Base, furnished heat may be obtained from private, regional or municipal services, if provisions are included for the consideration of domestically sourced United States energy sources (Sec. 8127).

Shipping Fruit and Vegetables to Commissaries in Asia and the Pacific: The bill includes a minimum \$48 million for shipping fresh fruits and vegetables to commissaries in Asia and the Pacific (Sec. 8128).

Zika Response: The bill would allow Operations and Maintenance funds for the Army, Navy, Marine Corps, and the Air Force to be transferred to any other account “for activities related to the Zika virus in order to provide health support for the full range of military operations and sustain the health of the members of the Armed Forces, civilian employees of the Department of Defense, and their families, to include: research and development, disease surveillance, vaccine development, rapid detection, vector controls and surveillance, training, and outbreak response” (Sec. 8133).

Rosoboronexport: The bill would prohibits funding for contracts, agreements, grants, loans, or other agreements with the Rosoboronexport company unless certain conditions are met, such as a prohibition on Rosoboronexport contracts with Syria and a requirement that the Russian Federation withdraws armed forces from Ukraine (Sec. 8102).

Section 526: The bill would prohibit funds to enforce Section 526 of the Energy Independence and Security Act (EISA) of 2007, which prohibits federal agencies from purchasing fuel from non-conventional sources such as coal-to-liquids, oil shale, and oil sands, if such fuels have higher lifecycle greenhouse gas emissions than traditional fuels (Sec. 8132).

Women in the Military Museums: The bill would allow up to \$5 million of Operations and Maintenance funding to be used for “financial support for military service memorials and museums in the acquisition, installation, and maintenance of exhibits, facilities, and programs that highlight the role of women in the military” (Sec. 8134).

Assistance to North Korea: The bill would prohibit funding from being obligated or expended for assistance to the Democratic People’s Republic of Korea unless specifically appropriated for that purpose (Sec. 8043).

Grants to the Red Cross and the USO: The bill would provide \$20 million for the United Service Organizations (USO) and \$24 million to the Red Cross (Sec. 8048).

Sale of Tobacco Products: The bill would prohibit the sale of tobacco products in military resale outlets below the most competitive price in the local community (Sec. 8032).

COMMITTEE ACTION:

The Appropriations Committee marked up H.R. 5923 on [May 17, 2016](#), and reported the bill by a voice vote. The Committee also held a number of [oversight hearings](#) on the agencies funded by the bill.

ADMINISTRATION POSITION:

According to the [Statement of Administration Policy](#), “If the President were presented with H.R. 5293, the President’s senior advisors would recommend that he veto the bill.”

CONSTITUTIONAL AUTHORITY:

“Congress has the power to enact this legislation pursuant to the following: Pursuant to clause 7(c) of rule XII of the Rules of the House of Representatives, the following statement is submitted regarding the specific powers granted to Congress in the Constitution to enact the accompanying bill or joint resolution. The

principal constitutional authority for this legislation is clause 7 of section 9 of article I of the Constitution of the United States (the appropriation power), which states: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law" In addition, clause 1 of section 8 of article I of the Constitution (the spending power) provides: "The Congress shall have the Power . . . to pay the Debts and provide for the common Defence and general Welfare of the United States" Together, these specific constitutional provisions establish the congressional power of the purse, granting Congress the authority to appropriate funds, to determine their purpose, amount, and period of availability, and to set forth terms and conditions governing their use."

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*

###