



Conference Report to Accompany S. 2943 - National Defense Authorization Act for FY2017 (Sen. McCain, R-AZ)

CONTACT: [Nicholas Rodman](mailto:Nicholas.Rodman@hsc.house.gov), 202-226-8576

FLOOR SCHEDULE:

Scheduled for consideration on December 2, 2016, under a closed [rule](#)

TOPLINE SUMMARY:

The [conference report to accompany S. 2943](#) would authorize \$551.7 billion in spending for base national defense requirements and an additional \$59.5 billion for Global War on Terror/Overseas Contingency Operations (OCO) for a total of \$619 billion. Within the total amount, an additional \$7.8 billion is allocated for activities outside of the House Armed Services Committee jurisdiction. The conference agreement would authorize the \$5.8 billion supplemental request received in November for operations in Iraq, Afghanistan, and Europe, and a further \$3.2 billion for Readiness Stabilization Funding above the president's budget request for \$615.8 billion in defense discretionary spending. Within the OCO budget account, \$8.3 billion is allocated to operations and maintenance activities in support of base budget requirements. A Joint Explanatory Statement on the NDAA can be found [here](#).

TABLE 1: FY17 NDAA FUNDING LEVELS

Purpose	Amount (in billions)
DOD Discretionary Base Budget	\$523.7
DOE Discretionary Base Budget	\$19.4
Defense-Related Activities	\$0.3
FY17 Base Budget NDAA Topline	\$543.4
Overseas Contingency Operations for Base Requirements	\$8.3
FY17 Funded Base Budget Requirements	\$551.7
Overseas Contingency Operations	\$59.5
FY17 Discretionary NDAA Topline	\$611.2
Authorizations Not Within HASC Jurisdiction	\$7.8
FY17 National Defense Topline	\$619

Table provided courtesy of the House Armed Services Committee

COST:

The Congressional Budget Office (CBO) estimate for the House-passed NDAA (H.R. 4909) can be found [here](#). The CBO estimate for the Senate Armed Services Committee produced version of the NDAA (S. 2943) can be found [here](#). The CBO estimate for the conference report for S. 2943 can be found [here](#).

CONSERVATIVE CONCERNS:

Some conservatives may be concerned that the conference agreement would authorize cap-exempt Overseas Contingency Account funding to supplement base defense spending in violation of the intent of the statutory budget caps established under the Budget Control Act. Other conservatives may believe that such funding is essential to meet minimum military readiness and national security operational needs.

- **Expand the Size and Scope of the Federal Government?** No.
- **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.

DETAILED SUMMARY AND ANALYSIS:

A Fact Sheet on the both House and Senate versions of the FY 2017 NDAA from the Congressional Research Service can be found [here](#). The committee's summary for the FY 2017 NDAA conference report can be found [here](#).

Highlights of the major provisions of note are included below:

Personnel:

- **Troop Pay:** The bill would support a 2.1 percent military pay raise for Fiscal Year (FY) 2017, in accordance with current law ([section 1009 of title 37, United States Code](#)), to ensure that military pay increases to keep pace with the pay increases in the private sector, as measured by the [Employment Cost Index \(ECI\)](#). The NDAA removed the ability for the President to provide less than the ECI. The Senate version of the NDAA only authorized a 1.6 percent pay raise.
- **Compensation and Benefits:**
 - The NDAA would extend the authority of the Secretary of Defense for one year to temporarily increase the rates of basic allowance for housing in areas impacted by natural disasters or experiencing a sudden influx of personnel. The conference report would require the Department of Defense to report to Congress with revised pay tables and a plan to transition to a salary system in order to reform basic allowance for housing (BAH) benefit by no later than January 1, 2018.
 - Title VI of the bill would extend certain bonus and special pay authorities for reserve forces, health care professionals, and nuclear officers.
 - The bill would authorize the Department of Defense the flexibility to pay continuation pay at any point between the time the member completes 8 years of service and before the member reaches 12 years of service, in exchange for an agreement to continue serving for a period of not less than 3 additional years.
 - Section 671 would direct the Secretary of Defense to conduct a review of all bonus pays, special pays, student loan repayments, and similar special payments paid to members of the California National Guard between January 1, 2004 and December 31, 2015. The review is required to be completed by July 30, 2017. The provision requires a board of review designated by the Secretary of Defense to determine whether the special pay to these members and former members was unwarranted and, if so, to recommend to the secretary concerned whether to recoup the payment, waive the recoupment, or in the case of

recoupments that were previously collected but were unwarranted by the evidence, to recommend whether the payments should be repaid to the member or former member. According to the House Armed Services Committee, the provision would provide relief for these Guardsmen by directing a process for the fair adjudication of cases. Unlike current policy, the Department will be responsible for reaching out to each impacted Soldier and notifying credit reporting agencies when a Soldier's debts have been forgiven. More information on the California National Guard bonus recoupment issue can be found [here](#).

- **TRICARE:** The FY 2017 NDAA conference report would authorize a series of reforms regarding the military health system and TRICARE.
 - Title VII of the bill would simplify TRICARE options by providing two comprehensive options designed to meet the health care needs of service members, families and retirees: a managed care option (TRICARE Prime) and a no-referral network option (TRICARE Select). Section 701 would establish TRICARE Select as the self-managed, preferred provider option that would replace TRICARE Standard and Extra. Title VII of the bill would also establish annual enrollment fees and fixed-dollar copayments for Active Duty family members and retirees who join the armed services on or after January 1, 2018, and enroll in TRICARE Select or in TRICARE Prime, the managed care option. The Secretary of Defense would be authorized to establish an annual enrollment fee for TRICARE Select for beneficiaries who were in the Active Duty or retired categories prior to January 1, 2018. The conference report would require the Secretary of Defense to: establish an open enrollment period, with a grace period during the first year of open enrollment, and to allow enrollment for qualifying events for annual participation in either TRICARE Prime or TRICARE Select; prescribe certain requirements for pre-authorization for referrals under TRICARE Prime; and require a pilot program on incorporation of value-based health care methodology in the purchased care component of the TRICARE program.
 - Title VII would eliminate referral requirements for urgent care and ensure urgent care access for military families through 11:00PM; and would extend care at Military Treatment Facilities (MTF) primary care clinics beyond normal business hours. The conference report would expand public-private partnerships to increase and complement MTF services provided to beneficiaries, and enable retirees to purchase durable medical equipment at Department of Defense (DOD) level cost. Section 709 would require the Secretary of Defense to: implement a standardized appointment system in the military health system by January 1, 2018, and implement standards for productivity of health care providers at MTFs. Section 728 would require the Secretary of Defense to adopt core quality performance measures agreed upon by a collaborative group of Federal agencies, health plans, national physician organizations, employers, and consumers. The core quality measures would be used to evaluate performance of the Military Health System and the TRICARE network.
 - The bill would further require the Department to establish new Joint Trauma Education and Training Centers at military medical centers in areas with unmet demand, and would establish additional partnerships to enable military trauma specialists and support staff to work in civilian trauma centers for training purposes.
 - Title VII would authorize an increase in training opportunities by concentrating military provider resources at MTFs in locations with a high volume of active duty members, families and retirees. Section 702 would require the Director of the Defense Health Agency, beginning October 1, 2018, to take responsibility for the administration of each MTF, including all matters with respect to: budget; information technology; health care administration and management; administrative policy and procedure; and military medical construction. The section would require the establishment of a professional staff within the Defense Health

Agency to provide policy, oversight, and direction of all matters related to the administration of MTFs.

- **Commissaries:** The FY 2017 NDAA would to authorize the Secretary of Defense to develop and implement a comprehensive strategy to optimize practices across the defense commissary and exchange system that reduces the reliance of the system on appropriated funds without reducing the benefits to the patrons of the system, the revenue generated by non-appropriated fund entities, or instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the Armed Forces. The conference report would require the Secretary of Defense to ensure that commissary stores accept the Military Star Card as payment for goods and services. Under this provision, the Army and Air Force Exchange Service would assume any financial liability of the United States relating to acceptance of the Military Star Card as payment for goods and services at commissary stores. Senate-passed NDAA provisions on commissaries were not adopted.
- **Combatting Sexual Assault in the Military:** The NDAA would require the Sexual Assault Prevention and Response Office of the Department of Defense to establish and issue metrics to be used by the military departments to evaluate the efforts of the Armed Forces to prevent and respond to retaliation in connection with reports of sexual assault. The conference report would require that a member of the Armed Forces who was sexually assaulted within 24 months prior to a proposed administrative separation under conditions other than honorable, including an administrative separation in lieu of court-martial, and who is diagnosed with post-traumatic stress disorder or traumatic brain injury by a physician, clinical psychologist, psychiatrist, licensed clinical social worker, or psychiatric advanced practice registered nurse as experiencing post-traumatic stress disorder or traumatic brain injury or who otherwise reasonably alleges, based on the service of the member sexually assaulted, the influence of such a condition, may not be separated until the results of the medical examination have been reviewed by appropriate authorities responsible for evaluating, reviewing, and approving the separation case, as determined by the Secretary concerned.
- **Uniform Code of Military Justice Reform:** Section 5105 of the NDAA would make a series of reforms to the Uniform Code of Military Justice (UCMJ), including clarifying the procedure for an appointment of individuals to assume the rights of a victim who is under 18 years of age, incompetent, incapacitated, or deceased; and clarifying the relationship between the rights provided to victims under the UCMJ and the exercise of disposition discretion under [articles 30 and 34](#), regarding pre-trial procedures. The conference report would establish new offenses regarding concealing stolen property, prohibiting certain actions directed at U.S. government computers and U.S. government protected information, bribery, and other types of fraud.
- **Deferred Action for Childhood Arrivals:** No provisions or language on Deferred Action for Childhood Arrivals was included in the conference report to the FY 2017 NDAA.
- **Selective Service:** The NDAA would require a report on the current and future need for a centralized registration system for military selective service. The report would include: (1) a detailed analysis of the current benefits derived, both directly and indirectly, from the Military Selective Service System; (2) an analysis of the functions currently performed by the Selective Service System that would be assumed by the Department in the absence of a national registration capability; (3) an analysis of the systems, manpower, and facilities that would be needed by the Department to physically mobilize inductees in the absence of the Selective Service System; (4) a detailed analysis of the Department's manpower needs in the event of an emergency requiring mass mobilization; and (5) a list of the assumptions used by the Department when conducting their analysis.

During the markup of H.R. 4909, an amendment [was adopted](#) by the committee that would require both male and female United States citizens, and every other male or female citizen residing in the

United States, between the ages of 18 and 26, to register with the Selective Service. However, this provision was not included in the conference report.

- **Force Structure:** The FY 2017 NDAA increases active duty force structure by preserving Army levels at 476,000 personnel, adding 3,000 Marines, and 4,000 Airmen, all above FY2016 enacted levels.

Readiness:

- **Readiness, Operations and Maintenance:** The FY 2017 NDAA increases overall funding for readiness and maintenance accounts. These increases comes in response to a series of military readiness shortfalls. According to the House Armed Services Committee, “in the Marine Corps, [Class A Mishaps](#), accidents that result in fatalities or the loss of aircraft, are 84% above their 10-year average, and have increased 50% since sequestration took hold”. The bill would authorize funding of over \$450 million in unfunded ground and aviation training, as well as essential depot maintenance, which were unfunded in the President’s Budget Request.
- The NDAA would increase accounts above the president’s request for ship and aircraft depot maintenance; aviation training and readiness; and long-neglected facilities sustainment, restoration, and modernization accounts—all of which were identified as unfunded requirements by the military services. The bill would direct several assessments on the military departments’ plans to rebuild readiness, enhance exercises, and modernize training requirement.
 - The bill would increase Navy Ship and Aircraft depot maintenance and afloat readiness by \$351 million and Air Force depot maintenance by \$276 million, while also including \$71 million for Navy Cruiser modernization and \$21 million for Marine Corps logistics.
 - Section 1101 would provide direct-hire authority for Department of Defense industrial base facilities, including depots located in the United States, as well as the Major Range and Test Facilities Base, for 2 years.
 - The conference report would reduce the minimum number of carrier air wings to be maintained to nine until additional deployable aircraft carriers can fully support a tenth carrier air wing, or October 1, 2025, whichever comes first, at which time the Secretary of the Navy shall maintain a minimum of ten carrier air wings.
 - The NDAA would also restore 11 additional F-35s and 14 F-18E/Fs to address a critical strike fighter shortage. The bill would also provide for the procurement of three additional C-130Js, four C-40s, two V-22 aircraft, 36 UH-60 Blackhawks, and five AH-64 Apaches.
 - The NDAA would also invest \$631 million to address war reserve [shortfalls](#) in critical munitions.
- **Facilities:** NDAA funding would be used to restore and maintain real property, ranging from barracks to hangars, to runways. The NDAA’s division B would authorize appropriations in the amount of \$7.7 billion for military construction.
- **Overseas Contingency Operations:** The NDAA further authorizes \$59.5 billion for Global War on Terror/Overseas Contingency Operations (OCO) to cover contingency operations abroad and base requirements not funded within the BCA caps. Of the \$59.5 billion OCO authorization, \$8.3 billion would be for base requirements. The OCO total authorization of \$67.8billion is exempt from the statutory spending caps.
- **Intelligence:** The House-passed FY2017 NDAA would direct the Commander of U.S. Central Command (CENTCOM), which covers the Middle East, to formally review and document all necessary processes, policies, and procedures to ensure the effective implementation of Intelligence Community tradecraft requirements and best practices, in order to document the command’s intelligence processes. The conference report noted that the conferees urge the Inspector General of the Department of Defense to finalize its investigation into the Directorate for Intelligence at United

States Central Command and, if related allegations are substantiated, provide recommendations on any corrective measures that should be undertaken. The conference report would also direct the Secretary of Defense to provide the appropriate congressional committees a briefing on the Department's views of the final IG report within 60 days of the report's completion. This proposal relates to an ongoing investigation by the House Committee on Armed Services, the House Permanent Select Committee on Intelligence, and the House Appropriations Subcommittee on Defense, which established a Joint Task Force to investigate [allegations](#) that senior intelligence leaders at U.S. Central Command (CENTCOM) improperly influenced intelligence analysis.

▪ **Cybersecurity:**

- Section 923 would establish a unified combatant command for cyber operations with the primary function to prepare cyber operations forces to carry out assigned missions.
- Section 1641 would provide special procurement authority to facilitate recovery from a cyber-attack, as well as to increase resiliency for DOD networks, weapons systems, and capabilities.
- Section 951 would require the Secretary of Defense to take actions to allow the Defense Security Service to conduct all personnel background and security investigations adjudicated by the Consolidated Adjudication Facility of the Department of Defense. This provision would also strengthen insider threat detection programs by streamlining requirements for the collection, storage, and retention of information and would allow the Department to seek solutions from commercial companies and improve the process for the reciprocity of security clearances.

- **BRAC:** The NDAA would not authorize an additional Base Realignment and Closure (BRAC) round. Section 2702 would state that nothing in the bill would be construed to authorize an additional Base Realignment and Closure (BRAC) round, affirming congressional intent to reject the president's budget request to authorize another BRAC round in 2019.

Procurement:

- **Weapon Systems:** The FY 2017 NDAA would:

- Restore funding for the A-10 and prohibits its retirement.
- Reverse the administration's proposal to terminate Tomahawk cruise missile production. The NDAA would increase the Weapons Procurement, Navy account by \$84.2 million above the president's request, for the procurement of 100 Tomahawk missiles and to reduce risk to the Tomahawk missile industrial base.
- Fund additional 36 UH-60M Blackhawks in order to help accelerate rotorcraft modernization for the Army National Guard.
- Fund five AH-64E Apache gunship helicopters. The NDAA would support the National Commission of the Future of the Army's recommendation to retain 4 Apache attack helicopter battalions in the National Guard and an 11th combat aviation brigade in the Regular Army.

Clarify policies in the [FY2015 NDAA](#) that prohibit the modification of the Evolved Expendable Launch Vehicle ([EELV](#)) block buy to ensure that additional launches cannot be added into the block buy without competition. Section 1602 would state that the prohibition on contracting with Russian suppliers of rocket engines for EELV program would not apply until December 31, 2022 to the placement of orders that include the use of a total of 18 rocket engines designed or manufactured in the Russian Federation in addition to the Russian-designed or manufactured engines.

- **Strategic Deterrence Forces:** The FY 2017 NDAA would authorize the first year of ship construction for the [Ohio-class replacement](#), a program that is scheduled to carry 70% of our nation's strategic weapons. The Navy's 14 current *Ohio*-class ballistic submarines are slated to be taken out of service in the 2020s. According to the [Congressional Research Service](#):

“The first of the 14 Ohio-class SSBNs (SSBN-730) will reach the end of its 42-year service life in 2027. The remaining 13 will reach the ends of their service lives at a rate of roughly one ship per year thereafter, with the 14th reaching the end of its service life in 2040.”

During debate on the FY 2016 NDAA and DOD appropriations act, some conservatives raised concerns with the funding of the *Ohio*-class replacement program outside of the Navy’s shipbuilding account. This large single procurement would consume nearly to the total of the average appropriation for this account, but some conservatives argued that the account should be increased to accommodate the higher spending needs rather than creating a new budgetary account that could lead to pressure for higher spending in the long run. Other conservatives argue that the National Sea-Based Deterrence Fund, which funds the *Ohio*-replacement program is essential to ensuring the modernization of the United States’ most survivable leg of the nuclear triad while as the same time preventing the Navy’s shipbuilding account from being crowded out by the program.

The NDAA would fully authorize the research, development, test and evaluation of the new B-21 stealth bomber program intended to recapitalize the aging B-1 and B-52 fleets.

- **Nuclear weapons:** The NDAA would provide \$13.13 billion for the National Nuclear Security Administration’s (NNSA) nuclear weapons activities, including critical programs to modernize the nuclear weapons stockpile, an increase of \$250.0 million to the budget request. The NDAA would begin to address the \$3.7 billion backlog of deferred maintenance at NNSA that is threatening worker safety and mission performance. Section 1697 would provide enhanced authority for the Department of Energy to mitigate threats from unmanned aircraft at its most sensitive nuclear facilities. The conference report would prohibit funding for the retirement of nuclear weapons under the [New Start Treaty](#) unless the Chairman of the Joint Chiefs of Staff submits a report to Congress and the Director of National Intelligence submits a National Intelligence Estimate regarding such retirement, and a period of 120 days has elapsed since the latest respective submission. Section 1666 would consolidate and strengthen the Air Force’s organizational structures to ensure the nation’s nuclear command and control and missile warning systems remain robust by requiring the Commander of the U.S. Strategic Command to certify that the Air Force is organized, staffed, trained and equipped to carry out the portions of the integrated tactical warning and attack assessment (ITW/AA) system that are survivable and enduring.
- **Missile Defense:** Section 1693 would require the Director of the Missile Defense Agency to issue a request for proposals for a medium-range discrimination radar by not later than October 1, 2017. This section would also require the director to plan to procure a medium-range discrimination radar or equivalent sensor to improve the ballistic missile defense of Hawaii, not later than December 31, 2021.

Defense Reforms:

- **Acquisition Reform:** The NDAA includes a series of provisions on DOD acquisition reform, requiring weapon systems to be designed with open architectures that can easily be upgraded as technology and threats evolve. The NDAA would further define the responsibilities for acquisition between DOD and the Services, and would give the Secretary of Defense more tools to manage and approve cost, schedule, and technological risk for major acquisition programs. It would also set upfront conditions for cost and schedule, and then hold the Services accountable.

Section 801 would amend section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 ([Public Law 107-314](#)) to better integrate and conform the provision to the Department of Defense rapid acquisition authorities. Section 806 would require a major defense acquisition program (MDAP) initiated after January 1, 2019 to include only technical

development that the milestone decision authority determines, with a high degree of confidence, would not delay the fielding target for the program. The provisions would require considerations for planning and conducting prototype projects include existing commercial technologies and opportunities to reduce operation and support costs of major weapon systems. This section would provide flexible funding to experiment with new technology, while simplifying the process and expanding the avenues of competition for suppliers. Section 807 would require the Secretary of Defense, or a designee, to assign program cost and fielding targets when major defense acquisition programs are initiated; and would clarify that cost and fielding targets should be established before funds are obligated for technology development, system. The NDAA grants Milestone Decision Authority for Joint Programs to Military Services after October 1, 2019. These reforms originated in H.R. 4741 The Acquisition Agility Act, introduced on March 15, 2016. A fact sheet on H.R. 4741 can be found [here](#).

In order to help preserve intellectual property, the NDAA would require that all components conform to well-defined interfaces in order to plug into the overall system. Privately-funded components “inside the black box” would remain the intellectual property of the developer, while jointly-funded capability would be subject to negotiation between the government and the developer. The Secretary of Defense to negotiate for rights other than government purpose rights for technical data relating to major system interfaces if it would be in the best interest of the United States. The provision would require the Department of Defense to identify major system interfaces in contract solicitations and contracts. The conference report would reform the office of the Under Secretary of Defense for Acquisition, Technology, and Logistics by dividing certain functions like research and engineering from the acquisition process.

The conference report would require the Secretary of Defense to ensure that the Army and the Marine Corps are using in combat one standard type of enhanced 5.56mm rifle ammunition within one year of the NDAA’s enactment.

- **Institutional Reform:** The FY 2017 NDAA would initiate a series of institutional reforms regarding the responsibilities of the Chairman of the Joint Chiefs (CJCS). The current role and function of the Joint Chiefs and the combatant commands was established in the Goldwater-Nichols Department of Defense Reorganization Act of 1986 ([Public Law 99-433](#)), which instituted a series of sweeping organizational reforms to the Department of Defense including: (1) improving military advice to the president and the Secretary of Defense; (2) improving joint officer management; (3) placing clear responsibility on the commanders of the combatant commands; and (4) increasing attention to the formulation of strategy and to contingency planning.

Section 942 would establish a commission to be known as the “Commission on National Defense Strategy for the United States” to examine and make recommendations with respect to national defense strategy for the United States, replacing the National Defense Panel and precede the development of the National Defense Strategy required in the NDAA. Section 943 would require the Chairman of the Joint Chiefs of Staff to prepare a new National Military Strategy, or to update a previous one in conjunction with the other members of the Joint Chiefs of Staff and the commanders of the unified and specified combatant commands. Section 501 would require a reduction of 110 general and flag officers on active duty by not later than December 31, 2022, and to redistribute authorized general and flag officers across the military departments and the joint pool.

Section 923 would elevate US. Cyber Command (CYBERCOM) to a unified command and would direct GAO to study the CYBERCOM Commander’s dual-hat responsibility as the

Director of the National Security Agency. The Secretary of Defense, in conjunction with the relevant agencies and entities within the Department of Defense, would be required to establish formal procedures for notification to Congress of significant operations in cyberspace on a timely basis.

Section 1085 would streamline the statutory requirements for the National Security Council (NSC) and limit the size of the NSC's professional staff to 200, to include detailees and assignees from other agencies and Departments and contractors. Under the Obama administration, the NSC has ballooned to over 400 staff and failed to maintain appropriate focus on defense and security issues.

- **Religious Freedom:** During the markup of H.R. 4909, an amendment was [adopted](#) by the committee (section 1094) that would require that religious organizations that are recipients of or offerors for a Federal Government contract be provided the protections and exemptions for religious organizations under the Civil Rights Act and the Americans with Disabilities Act. This provision was not included in the conference report.
- **Footwear:** Section 817 would require the Secretary of Defense to furnish athletic footwear needed by members of the Army, Navy, Air Force, or Marine Corps upon their initial entry into the armed forces directly to the members instead of providing a cash allowance to the members to purchase footwear. The provision would require the Department of Defense to adhere to the requirements of [section 2533a of title 10, United States Code](#), and issue 100 percent American-made athletic shoes to new recruits upon entrance to basic training. This section would also allow waivers to be granted in cases of medical necessity and would allow for a two year phase in period. Some conservatives would argue that the initial provision in the House-passed NDAA requiring American-made athletic shoes would effectively force the Department of Defense to provide shoes from a single source, New Balance. However, others would argue that multiple companies would eventually be eligible to compete to include [Saucony](#) and that athletic shoes would constitute being part of a servicemember's uniform. Under current law most military clothing including boots must be made in America including all clothing item components under the [Berry Amendment](#). However military branches have the option of giving recruits a cash allowance to purchase athletic shoes. Purchases under \$150,000 would be exempt from the Berry Amendment. Some conservatives have argued that requiring recruits to use certain types of running shoes would restrict choice and would make recruits more susceptible to injury if the shoe is not properly comfortable and fitted to the recruit's foot. Two articles from the Charleston Post and Courier can be found [here](#) and [here](#) on the footwear provision and amendment to strike it. An op-ed from Heritage Action in opposition to the provision can be found [here](#).
- **Biodefense and Countering Weapons of Mass Destruction:** The NDAA would implement a quality control and quality assurance program regarding biodefense, studying the DOD select agent enterprise structure, and require annual reporting on the select agent program. Section 1086 would direct a National Biodefense Strategy to be submitted jointly by the Secretary of Defense and the Secretaries of Homeland Security, Health and Human Services, and Agriculture.
- **Afghanistan:** The FY 2017 NDAA would include the resources to sustain at least 9,800 U.S. troops in Afghanistan, to preserve options and provide time for the next president to assess the security environment and U.S. military missions in Afghanistan. The NDAA would extend the Commander's Emergency Response Program (CERP) during FY 2017 for two years, and authorize the acquisition of goods on the routes of supply and continuing support for the Afghanistan National Security Forces (ANSF) to sustain stability and security in the country. Section 1218 would limit the overall amount available for reimbursement to \$1.10 billion, of which \$900.0 million would be available for

reimbursement to Pakistan, pending a review of the reimbursements made to Pakistan and how it comports with the future of U.S. policy, including key counterterrorism and security objectives, in the region.

- **Iran:** Section 1225 would amend current law by adding two reporting requirements to the [Annual Report on the Military Power of Iran](#) on: (1) Iran’s cyber capabilities, and (2) Iranian military and security organizations responsible for detaining U.S. Armed Forces or interfering in U.S. military operations.
- **Israel:** Section 1690 of the conference report for the FY17 NDAA would provide \$600 million for Israeli cooperative missile defense, including \$62 million for Iron Dome, \$150 million for David’s Sling coproduction, and \$120 million for Arrow 3 coproduction, totaling \$460 million above the president’s request.
- **Islamic State of Iraq and the Levant (ISIL):** Section 1221 would extend the “Syria train and equip” program through December 31, 2017, and would extend the reprogramming requirement, requiring House Armed Services Committee approval, through December 31, 2018. More information on the Syria train and equip program can be found in the RSC’s 2014 [legislative bulletin](#) on the McKeon amendment to the 2015 Continuing Resolution (CR).

The FY 2017 NDAA would support the president’s request for funds to train and equip Iraqi Security Forces as part of Operation Inherent Resolve, and support provided directly to Kurdish, Sunni, and other local forces in the fight against ISIL. The NDAA would require a briefing on the campaign to liberate Mosul, Iraq from the control of ISIL, to contain the plan to hold Mosul after liberation and include a detailed blueprint on how humanitarian, reconstruction, and stabilization assistance will be provided to support a follow on governance structure. Section 1222 would also authorize the Secretary of Defense, in coordination with the Secretary of State, to provide \$630.0 million in assistance in FY 2017 to the military and other security forces of, or associated with, the Government of the Republic of Iraq, including Kurdish and Sunni tribal security forces or other local security forces with a national security mission, through December 31, 2017. Section 1223 would extend the Secretary of Defense’s authority to support the operations and activities of the Office of Security Cooperation in Iraq by authorizing \$70 million for FY2017.

- **Counterterrorism:** The FY 2017 NDAA would extend DOD authorities utilized by Special Operations Forces (SOF), including Non-Conventional Assisted Recovery, which is utilized to rescue isolated servicemen and women and U.S. citizens. Section 1203 would also extend the 1208 counterterrorism authority utilized by SOF to work with indigenous or surrogate forces in support of ongoing U.S. counterterrorism objectives. To improve congressional oversight, the NDAA would require additional reporting of Sensitive Military Activities, and would increase the frequency of the statutory requirement for counterterrorism operational briefs to Congress from quarterly to monthly.
- **Security Cooperation:** Section 1205 would modify and codify certain reports to Congress for programs carried out by the Department of Defense to provide training, equipment, or other assistance or reimbursement relating to security cooperation authorities. The NDAA would streamline and consolidate authorities scattered throughout various sections of current law, and create a single, comprehensive chapter in Title 10 of U.S. Code entitled, “Security Cooperation,” which combines certain authorities, while at the same time codifying others and placing them into this new chapter. The NDAA would narrow the scope of the authority for the Department to provide assistance to build the capacity of a friendly foreign nation to conduct specified military operations, modify the availability of funds for such purposes, and change notification requirements. A fact sheet from the Congressional Research Service on comparing proposed provisions on security cooperation can be found [here](#).

- **Ukraine, Russia, and Europe:** To counter the growing threat posed by an expansionist Russia, the FY 2017 NDAA would increase funding to the European Deterrence Initiative in order to begin the transition from an assurance posture to deterrence against Russian aggression. These resources would be allocated to specific requirements, including heel-to-toe rotations of U.S. presence in the region, the pre-positioning of an Armored Brigade Combat Team's worth of equipment in Europe, and additional training and exercises. The NDAA would also provide increased funding for U.S. intelligence and warning capabilities, technologies supporting U.S. information operations and strategic communications activities, the Javelin missile system, vehicle active protection systems, aircraft survivability equipment, and recommended at the Army's request, a realignment of funds within the initiative for the procurement of upgraded Abrams tanks and Bradley fighting vehicles. The NDAA would increase funding for cyber multi-national information sharing and international cyber exercises and engagements. Increased Special Operations Forces funding for partnership activities in Central/Eastern Europe, as well as SOF funding for presence, activities, and training ranges and Information Operations in U.S. European Command (EUCOM) would additionally be included.

The NDAA would prohibit funding related to presidential approval of advanced Russian sensors under the [Open Skies Treaty](#) while Russia is in violation of the treaty and until the DOD and the Intelligence Community state Russia no longer poses a threat to U.S. national security. The NDAA would additionally require a quarterly report by certain government officials evaluating Open Skies Treaty overflights of the United States by the Russian Federation, and would further state that not more than 65-percent of the funds authorized for fiscal year 2017 may be used to carry out any activities to implement the Open Skies Treaty until the Director of National Intelligence and the Director of the National Geospatial-Intelligence Agency submit an evaluation of whether it is possible, consistent with U.S. national security interests, to substitute commercial imagery or other phenomenologies for such data generated by Treaty overflights. The provision would further limit funding until the Secretary of State submits a report on cost of implementing the Open Skies Treaty and on impact on participation and contributions by covered state parties and relationships among covered state parties.

Section 1231 of the conference report to the NDAA would also withhold DOD funding to support the Executive Office of the President until the White House ceases preventing the implementation of the Chairman of the Joint Chiefs of Staff's military options to respond to Russia's violation of the Intermediate-range Nuclear Forces (INF) treaty.

Section 1237 of the NDAA would authorize \$350 million for FY2017 for the Ukraine Security Assistance Initiative to help train, equip, and assist the Ukrainian military, National Guard, and security services. Section 1236 would prohibit the use of fiscal year 2017 funds to implement any activity that recognizes the sovereignty of the Russian Federation over Crimea. The section would also allow the Secretary of Defense, in concurrence with the Secretary of State, to waive the prohibition if the Secretary certifies that doing so would be in the national security interest of the United States. The NDAA would further require the Secretary of Defense to provide a briefing to Congress on how efforts, inherent to the Department of Defense's European Reassurance Initiative and the Ukraine Security Assistance Initiative, including any plans to preposition military weapons, munitions, and equipment in Europe, may facilitate the Department of Defense's capacity to respond to the potential need for additional military assistance to the Government of Ukraine.

- **Guantanamo Bay Detention Center:** Sections 1032 and 1033 of the conference report to the NDAA would reauthorize the prohibition against transferring detainees to the United States and against building detention facilities within the U.S. for the purpose of housing them. Section 1034 would prohibit the use of funds by DOD to transfer, release, or assist in the transfer or release of any individual detained at Guantanamo Bay to Libya, Somalia, Syria, or Yemen. Section 1035 would prohibit the use of funds to the Department of Defense for fiscal year 2017 to close or transfer

Guantanamo Bay to Cuba. Specifically, the provision would prohibit funds for the closure or abandonment of United States Naval Station, Guantanamo Bay, Cuba, the relinquishment of control of Guantanamo Bay to the Republic of Cuba, or the implementation of a material modification to the Treaty Between the United States of America and Cuba signed in the District of Columbia on May 29, 1934, that constructively closes United States Naval Station, Guantanamo Bay.

- **Asia Rebalance:** Section 1271 would require a summary of the order of battle of the People's Liberation Army, including anti-ship ballistic missiles, theater ballistic missiles, and land attack cruise missile inventory and a description of the People's Republic of China's military and nonmilitary activities in the South China Sea to be added to the Annual Report on Military and Security Developments Involving the People's Republic of China. Section 1303 would require that the Secretary of Defense obligate and expend funds on Cooperative Threat Reduction (CTR) activities in the People's Republic of China on a semiannual basis. This section would further require that the Secretary of Defense not obligate or expend funds for CTR activities in China until the Secretary submits a certification regarding certain nonproliferation benchmarks (including the arrest of [Li Fangwei, also known as "Karl Lee"](#)) with respect to China.
- **Plan Central America:** The bill would require the Secretary of Defense and the Secretary of State to jointly submit a report to Congress on the military units that have been assigned to policing or citizen security responsibilities in the Republic of Guatemala, the Republic of Honduras, and the Republic of El Salvador.
- **Authorizations for End Strengths as of September 30, 2017** (from the House Armed Services Committee Report):
 - *Active Duty Personnel:* 476,000 (Army), 323,900 (Navy), 185,000 (Marine Corps), 321,000 (Air Force). The House-passed NDAA authorized 480,000 (Army), 324,615 (Navy) active duty personnel.
 - *Selected Reserves:* 343,000 (Army National Guard), 199,000 (Army Reserve), 58,000 (Navy Reserve), 38,500 (Marine Corps Reserve), 105,700 (Air National Guard), 69,000 (Air Force Reserve). The House-passed NDAA authorized 350,000 (Army National Guard), 205,000 (Army Reserve) personnel.
 - *Military Technicians:* 25,507 (Army National Guard), 7,570 (Army Reserve), 22,103 (Air National Guard), 10,061 (Air Force Reserve).

The National Defense Authorization Act has been signed into law for fifty-four consecutive years. The RSC's Legislative Bulletin for the House-passed version of the NDAA (H.R. 4909) can be found [here](#). A fact sheet from the House Armed Services Committee can be found [here](#).

COMMITTEE ACTION:

H.R. 4909 was introduced on April 12, 2016 and was referred to the House Armed Services Committee. The House versions of the NDAA was ordered to be reported (amended) by the yeas and nays: [60 – 2](#), in committee on April 28, 2016. On May 18, 2016, the NDAA passed the House by recorded vote: [277 – 147](#). S. 2943 was introduced on May 18, 2016 and referred to the Senate Armed Services Committee. On June 14, 2016, S. 2943 passed the Senate with amendments by yea-nay vote: [85 – 13](#).

ADMINISTRATION POSITION:

No statement of administration policy is available. However the statements of administration policy for both the House (H.R. 4909) and Senate (S. 2943) versions are available [here](#) and [here](#) respectively. In both cases, if the NDAA were presented to the President, "the President's senior advisors would recommend to the President that he veto it."

CONSTITUTIONAL AUTHORITY:

Bills originating in the Senate are not required to have a Constitutional Authority Statement.

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.*

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