



## Conference Report to Accompany H.R. 1735 - National Defense Authorization Act for FY2016 (Rep. Thornberry, R-TX)

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### FLOOR SCHEDULE:

SCHEDULED FOR CONSIDERATION ON OCTOBER 1, 2015, UNDER A CLOSED [RULE](#)

### TOPLINE SUMMARY:

The [conference report to accompany H.R. 1735](#) would authorize \$515 billion in spending for base national defense and an additional \$89.2 billion for Global War on Terror/Overseas Contingency Operations (OCO) for a total of \$604.2 billion. An additional \$7.7 billion is allocated for activities outside of the House Armed Services Committee jurisdiction. This proposal is consistent with the President's budget request for \$611.9 billion in defense discretionary spending. Within the OCO budget account, \$38.3 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](#).

### COST:

The Congressional Budget Office (CBO) estimate for the House-passed NDAA (H.R.1735) can be found [here](#). The CBO estimate for the Senate Armed Services Committee produced version of the NDAA (S. 1376) can be found [here](#). No CBO estimate for the conference report for H.R. 1735 is available.

### CONSERVATIVE CONCERNS:

Some conservatives may be concerned that the NDAA authorizes the use of OCO funding, which is exempt from the Budget Control Act caps, to meet base defense spending needs. This was also included in the House-passed NDAA. Other conservatives argue that the military cannot fulfill its mission within the Budget Control Act caps, and that increasing OCO funding mitigates this challenge without increasing non-defense discretionary spending.

- **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:

- **Authorizations for End Strengths as of September 30, 2016** (from the conference report accompanying H.R. 1735; identical to the House-passed NDAA):
  - *Active Duty Personnel:* 475,000 (Army), 329,200 (Navy), 184,000 (Marine Corps), 320,715 (Air Force). These levels represent a decrease of 1,765 service members from the previous

- year's authorization. The FY2016 President's budget requested a minimum of 317,000 active duty Air Force personnel which was augmented by 3,715.
- *Selected Reserves:* 342,000 (Army National Guard), 198,000 (Army Reserve), 57,400 (Navy Reserve), 38,900 (Marine Corps Reserve), 105,500 (Air National Guard), 69,200 (Air Force Reserve). These levels represent a decrease of 9,800 service members from the previous year's authorization.
  - *Military Technicians:* 26,099 (Army National Guard), 7,395 (Army Reserve), 22,104 (Air National Guard), 9,814 (Air Force Reserve). These levels represent a decrease of 1,274 from the previous year's authorization.

Topical highlights of the major provisions of note are included below:

**Personnel:**

- **Troop Pay:** The bill would supports a 2.3% military pay raise for Fiscal Year (FY) 2016, in accordance with current law, to ensure that military pay raises to keep pace with the pay increases in the private sector, as measured by the [Employment Cost Index](#). A Senate amendment that would have lowered the pay raise to 1.3 percent for pay grades O-6 and below was stricken. The bill freezes the monthly basic pay for all general and flag officers. The President has exercised his authority under [37 U.S.C. 1009](#) and set the pay raise at 1.3%.
- **Compensation and Benefits Reform:** The FY2016 NDAA has adopted several recommendations included in the [recommendations](#) of the [Military Compensation and Retirement Modernization Commission](#). Section 631 would blend the current defined benefit plan with a defined contribution plan allowing service members to contribute to a portable **Thrift Savings Plan** (TSP) account with government matching. According to the committee, this program would allow the 83% of service members not eligible for current military retirement to participate in a retirement plan. Personnel with less than 12 years of service have the option of remaining grandfathered into the old system or choosing to participate in the new TSP option. The implementation of these reforms would be delayed until. The bill also would establish a **Job Training and Post-Service Replacement Executive Committee** within the DOD-VA [Joint Executive Committee](#) for the purpose of supporting members of the armed forces who transition out of the military.
- **Space Available Travel:** The Military Compensation Commission's findings indicated that current Space Available travel [regulations](#) only allow for spouses and children to visit troops on deployments longer than 120 days. The House-passed NDAA would have allowed dependents to visit troops on shorter deployments of 30 days or longer. The DOD has already implemented the 30-day travel regulations administratively as of June 9, 2015.
- **Basic Allowance for Housing:** The conference agreement would authorize the Secretary of Defense to reduce the basic allowance for housing (BAH) by 1%in 2015, 2%in 2016, 3%in 2017, 4%in 2018, and 5%in 2019 and each fiscal year thereafter. The agreement would preserve Basic Allowance for Housing for dual-military couples. According to the House Armed Services, "to help maintain the tax-free BAH benefit in the long-term, the Conference Agreement preserves payments to cover 95 percent of estimated housing expenses, which is a 1% annual reduction per year for four years."
- **TRICARE:** The bill would authorize the Secretary of Defense and the Secretary of Veterans Affairs to jointly establish a [joint uniform formulary](#) for both of their respective departments that would include pharmaceutical agents critical for an individual's transition from treatment furnished by DOD to treatment by the VA. The House-passed NDAA would have authorized the Secretary of Defense to conduct a pilot program starting in 2016 and terminating in 2018, to evaluate whether operating a network of preferred retail pharmacies would generate DOD cost savings. This provision was stricken from the bill because the DOD already operates a large preferred retail pharmacy network. The agreement would additionally authorize an eligible TRICARE beneficiary to make a one-time

election for TRICARE Prime if the beneficiary resides in a location in which TRICARE Prime is no longer available, and the beneficiary resided within 100 miles of a military medical treatment facility. Section 702 would slightly modify prescription drug co-pays beginning in 2016. According to the House Armed Services Committee, the agreement includes “modest adjustments to co-pays for brand name and generic medications, at the minimum amount necessary to offset the retirement program.”

- **Commissaries:** The bill would direct the Secretary of Defense to submit a report to Congress that provides a comprehensive plan to make delivery of commissary and exchange benefits budget neutral by October 1, 2018 and requires a GAO report to Congress assessing that plan. The agreement further authorizes the Secretary of Defense to conduct one or more pilot programs to evaluate processes and methods for achieving budget neutral commissary and exchange benefits.
- **Combatting Sexual Assault in the Military:** The agreement authorizes a victim of sexual assault to petition the Court of Criminal Appeals for a writ of mandamus ordering the military to protect the victim’s rights in Uniform Code of Military Justice (UCMJ) proceedings. The conference report would require service secretaries to ensure that the commander of each unit of the Senior Reserve Officers’ Training Corps and all Professors of Military Science, senior military instructors, and civilian employees detailed, assigned, or employed as administrators and instructors of the Senior Reserve Officers’ Training Corps (ROTC) receive regular sexual assault prevention and response training and education. Further, secretaries must also grant access to Special Victims Counsel for civilians who are victims of sexual assault, and require the DOD to enhance sexual assault prevention for male victims in the Armed Forces. The NDAA would further require the Secretary of Defense to establish a comprehensive strategy to prevent retaliation against members who report or intervene on behalf of sexual assault victims and to provide a briefing to Congress not later than 180 days after the bill’s enactment.
- **Personal Carry of Firearms:** The NDAA would authorize post commanders to permit a member of the Armed Forces to carry appropriate firearms, including personal firearms, at DOD installations, reserve centers, and recruiting centers. The Secretary of Defense would be required to implement a policy to so empower post commanders no later than December 31, 2015.

#### Readiness:

- **Readiness, Operations and Maintenance:** The bill would fully fund operations and maintenance (O&M) accounts for an [11<sup>th</sup> aircraft carrier](#) (USS *Gerald Ford*) and a 10<sup>th</sup> air wing. Aircraft carrier maintenance reset, and ship operations are also funded in the bill. The NDAA would authorize O&M for collective training exercises, which would allow for 19 Combat Training Center rotations for Army Brigade Combat Teams. It also would authorize additional Marine Corps resources to meet unfunded aviation readiness requirements, ensure adequate numbers of mission-capable aircraft, and provide additional Air Force training resources for high-demand areas such as unmanned systems pilots and joint terminal controllers. The bill fully funds Initial Entry Rotary training, and restores training funding to meet 100% of the flying hour program. Additionally, the NDAA would authorize \$ 8.23 billion for military construction; increasing funding above FY 2015 enacted levels for the purpose of addressing unfunded requirements and shortfalls cited by the DOD.
- **Overseas Contingency Operations:** The FY 2016 NDAA funds the president’s request of \$50.9 billion for GWOT/OCO plus an additional \$38.3 billion in OCO designated funds for base requirements. These base requirements funded by OCO include O&M for airlift operations, combat support forces, combat communications, training support combatant commanders core operations, Army prepositioned stocks, and equipment maintenance.
- **Intelligence:** The conference report would direct DOD to review the science and technology research and foreign material exploitation work being conducted by DOD intelligence elements and recommend any changes in order to identify redundancies. Section 1634 would prohibit the

obligation or expenditure of 25 percent of the funds authorized for FY 2016 for the Office of the Under Secretary of Defense for Intelligence until the Secretary of Defense develops a written policy governing the internal coordination and prioritization of the individual intelligence priorities of the Office of the Secretary of Defense, the Joint Staff, the combatant commands, and the military departments to improve identification of DOD's intelligence needs. This policy was required by the FY2014 NDAA ([Public Law 113-66](#)), but has not been produced. to

- **Cybersecurity:** The NDAA would authorize and provide additional resources to [U.S. Cyber Command](#) programs and activities, as well as all military service cyber programs and cyber science and technology initiatives in order to counter the growing threat of cyber-attacks. The bill also would improve the sharing of information on threats and DOD defensive measures with defense industrial base partners. The FY 2016 NDAA would direct the Secretary of Defense to identify and assess cyber vulnerabilities on of every major DOD weapons system by December 31, 2019. The Commander of CYBERCOM would additionally be granted limited acquisition authority to obligate and expend up to \$75.0 million of the funds made available for each fiscal year from 2016 through 2021. The agreement would additionally: create a new cyber personnel hiring authority for U.S. Cyber Command and the cyber commands of the military departments; codify cyber liability protections for certain covered contractors; designate an entity responsible for the acquisition of certain critical cyber capabilities; assess the capabilities of Cyber Command to defend the U.S. from cyber-attacks; and require a plan for biennial exercises for responding to cyber-attacks.
- **BRAC:** The NDAA would not authorize an additional Base Realignment and Closure (BRAC) round.

#### **Procurement:**

- **Weapon Systems:** The bill would authorize \$110.82 billion for procurement, an increase of \$3.85 billion from the FY 2016 president's request. The FY 2016 NDAA:
  - Restores funding for the [A-10](#) and prohibits its retirement and requires the Air Force to maintain a minimum of 171 A-10 aircraft in combat-ready status.
  - Authorizes 12 additional F-18 Super Hornets for the Navy and 6 additional F-35Bs for the Marine Corps. The bill supports the budget request for 57 total F-35 fighter aircraft, but recommends targeted adjustments based on contract savings and program oversight concerns regarding the F-35's F135 engine.
  - Prohibits the retirement or divestment of the KC-10 tanker aircraft in FY 2016 or 2017.
  - Funds the KC-46A tanker.
  - Fully restores the EC-130H Compass Call electronic warfare aircraft. (The Air Force proposed to retire half of the fleet)
  - Reverses the administration's proposal to terminate Tomahawk cruise missile production and supports the minimum sustainment production rate of 198 missiles.
  - Funds additional UH-60M Blackhawks in order to help accelerate rotorcraft modernization for the Army National Guard.
  - Funds AH-64 Apache survivability equipment modernization in order to fill the Army's unfunded requirement to procure and develop improved countermeasures to better protect deployed Apache helicopters.
  - Allocates additional funds for the National Guard and Reserve equipment account to address Guard and Reserve shortages in modernized equipment.
  - Fully resources U.S. Special Operations Command activities and programs, including investments in operations, readiness, procurement, and science and technology initiatives. The bill would extend critical authorities used by U.S. Special Forces, and includes additional authority and funding to counter adversarial propaganda efforts.
  - Authorizes the full amount for the Long-Range Strike Bomber (LRSB) the Air Force can execute in FY2016. The bill would direct the GAO to complete an assessment of the LRSB's technology challenges and cost implications.

- Clarifies 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, but allowing for a limited number of additional engines to ease an transition to a new U.S. engine. The bill would authorize \$184.4 million for the development of a new U.S. rocket propulsion system to end the Air Force's reliance on the Russian-made RD-180 rocket engine by 2019.
  - Authorizes an increase of \$350.0 million to the Unmanned Carrier-Launched Airborne Surveillance and Strike (UCLASS) program to conduct competitive air vehicle risk reduction activities that would lead to fielding penetrating, air-refuelable, vehicles capable of performing a broad range of missions in a non-permissive environment.
- **Ship Procurement and Retention:** The NDAA would require the modernization of two *Ticonderoga*-class cruisers to begin in FY 2016 only after sufficient materials are available to begin the modernization period, which would be limited to 2 years with the ability of the Secretary of the Navy to extend the period for another 6 months. The agreement would also limit funding for the retirement, inactivation, or storage of *Ticonderoga*-class cruisers and *Whidbey Island*-class amphibious ships except to allow the modernization and upgrades for those ships. The bill would also provide authority to the Secretary of the Navy to enter into a multiyear contract for an *Arleigh Burke*-class Flight III destroyer, and would allow one *Arleigh Burke*-class destroyer to be added to the FY 2013-2017 multiyear procurement contract or for one DDG-51 in fiscal year 2018.
- **Strategic Deterrence Forces:** The NDAA would expand the National Sea-Based Deterrence Fund to fund the [Ohio-class replacement program](#) (SSBN-X). This would prevent the program from crowding out all other Navy shipbuilding resources. The agreement would further expand the Fund to include the authorization of incremental funding authority, economic order quantity contract authority, advance construction authority, and transfer authority from any Department of Defense appropriation. The *Ohio*-class ballistic missile submarine replacement program would carry 70% of the United States' deployed strategic nuclear weapons. The Navy's 14 current Ohio-class ballistic submarines are slated to be taken out of service in the 2020s.
- **Nuclear weapons:** The NDAA includes \$150 million to address \$3.6 billion worth of budget shortfalls within the National Nuclear Security Administration's (NNSA) account, with the intent to alleviate the backlog of dilapidated infrastructure. To begin planning and initial recapitalization of the NNSA physical security infrastructure, the bill would authorize \$631.9 million, an increase of \$12.0 million to the budget request, for Defense Nuclear Security, Operations and Maintenance. The bill also would recommend the transfer of the NNSA's nonproliferation facilities to the Department of Energy's Office of Environmental Management.
- **Missile Defense:** The bill would authorize \$30 million for the planning and design for an East Coast missile defense site to deter the threat posed by development, proliferation and deployment of Iranian and Russian long-range ballistic missiles. The bill would also: accelerate the development of a next-generation missile defense interceptor, the Multiple-Object Kill Vehicle; modify the Aegis Ashore sites in Romania and Poland to provide both NATO member countries with Anti-Air Warfare capability; direct the deployment of a new advanced ballistic missile defense radar to defend against the threat of an Iranian intercontinental ballistic missile, as well as the potential relocation of the [sea-based X-band radar](#) by siting a new homeport on the East Coast.

#### **Defense Reforms:**

- Acquisition Reform: The NDAA includes provisions that seek to reform the DOD's acquisition strategies to include consolidating six separate reporting requirements into a single, living document that would be updated as a program moves through the acquisition life-cycle. Title VIII of the bill would: (1) make the [Defense Acquisition Workforce Development Fund](#) (established by Congress in 2008) permanent; (2) require training on the commercial

market, including on commercial market research; (3) improve the Defense Contract Audit Agency; (4) expand ethics training for the acquisition workforce; and (5) simplify the chain-of-command for acquisition decisions. Title VIII would reform the chain of command for acquisition decisions by enhancing the role of the Service Chiefs in acquisition decisions. A fact sheet on DOD reform efforts from the House Armed Services Committee can be found [here](#).

- **Institutional Reform:** According to the House Armed Services Committee, the NDAA would “require the Department of Defense to implement a plan to achieve not less than \$10 billion in cost savings between 2015 and 2019.” The agreement would allow for the Department to credit-forward cuts that it already has made in accordance with the Secretary’s December 2013 Directive. In doing so, the NDAA would require at least a 25 percent reduction to headquarters activities, which would count towards the \$10.0 billion savings, and require a comprehensive review of headquarters, administrative and support functions.

The bill would cut funding to the Foreign Currency Fluctuation, Defense (FCF, D) Account and the reserve account for fuel. The FCF, D account has been at its statutory limit of \$970million since 2012.

Additionally, the DOD continues to rely on rates calculated in 2009 for fuel, rather than estimated market prices for the upcoming fiscal year. The NDAA would redirect these funds to other budget priorities. The agreement would further require that all reports mandated by any NDAA prior to April 1, 2015, not in U.S. code, would expire in two years unless they are re-authorized.

- **Afghanistan:** The NDAA would extend the [Commander’s Emergency Response Program](#) (CERP) during FY 2016 not exceeding \$5 million, authorizing 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. The agreement would require the President to report on the risks associated with his planned drawdown of coalition forces from Afghanistan. The Conference agreement extends the Oversight of Sensitive Military Operations Section 1201, which would authorize the Secretary of Defense to provide supplies, services, transportation, and other logistical support to coalition forces supporting U.S. operations in Afghanistan during FY 2016. The bill would extend the [Oversight of Sensitive Military Operations](#) (OSMOA) reporting requirements on “lethal and capture” operations in Afghanistan. Section 1212 would specify that, of the total amount of reimbursements and support authorized for Pakistan during FY 2016, \$1.3 billion would be authorized and the authorization for reimbursement to Pakistan would be limited to \$900.0 million. Of the \$900.0 million, \$350.0 million would not be available unless the Secretary of Defense certifies that Pakistan is (1) conducting military operations against the [Haqqani Network](#) in North Waziristan; (2) has prevented the terrorist group from using North Waziristan as a safe haven; and (3) and is actively coordinating with the Government of Afghanistan to restrict the movement of militants along the Afghanistan-Pakistan border.
- **Iran:** H.R. 1735 would extend the [Iran military power report](#) for 10 years, the length of any Iranian nuclear agreement, and would add a reporting requirement that provides an assessment of transfers of cyber military equipment, technology, training, and information to Iran. Section 1232 would express a sense of Congress that Iran’s illicit pursuit, development, or acquisition of a nuclear weapons capability and its malign military activities constitute a grave threat to regional stability and the national security interests of the United States and its allies and partners. The section further states that the Iran continues to conduct malign activities and sponsor terrorism, and that the United States should continue to enhance the region’s security architecture, build partner capacity to respond to external aggression, and increase interoperability with regional security forces. Furthermore, the bill would require the Secretary of Defense to submit a report to Congress

regarding the military posture required in the Middle East to deter Iran from developing a nuclear weapon. The report would include a discussion of the military forces, bases, and capability required to maintain a military option to prevent Iran from achieving a nuclear weapon, counter Iran's military activities, and protect the U.S. military and other interests in the region. Additionally, DOD would be required to submit a strategy to counter unconventional warfare threats posed by Iran.

- **Islamic State of Iraq and the Levant (ISIL):** The NDAA would reauthorize the Office of Security Cooperation in Iraq at \$80 million, as well as other initiatives to support and reinforce the mission against the Islamic State of Iraq and the Levant (ISIL) and to support Operation Inherent Resolve, the U.S. military campaign against the radical Islamist terrorist organization. The Secretary of Defense is authorized to provide \$715 million in FY 2016 for assistance to the military and other security forces of, or associated with, the Government of the Republic of Iraq, including the Kurdish and tribal security forces or other local security forces with a national security mission.

In the House-passed NDAA, section 1223 would have required that not less than 25 percent of the FY 2016 funds be expended for direct assistance to the Kurdish Peshmerga, the Sunni tribal security forces with a national security mission, and the Iraqi Sunni National Guard. It would have further required that not less than half of such funds be obligated and expended for the Kurdish Peshmerga. The agreement authorizes the Secretary of Defense, in coordination with the Secretary of State to provide, in coordination with the Government of Iraq, assistance directly to the Kurdish Peshmerga, Sunni tribal security forces, or other local security forces with a national security mission for the purpose of supporting international coalition efforts against ISIL. The agreement clarifies that local security forces with a national security mission may include, in addition to Sunni tribal elements, local security forces that are committed to protecting highly vulnerable ethnic and religious minority communities, such as Yazidi, Christian, Assyrian and Turkoman communities, against the ISIL threat. Additionally, this section would prohibit assistance pursuant to the Iraq Train and Equip authority from being provided to the Government of Iraq unless the Secretary of Defense certifies that the Government of Iraq has taken actions to safeguard against such assistance being transferred to, or acquired by violent extremist organizations, including designated Foreign Terrorist Organizations (FTOs) or an organization that is known to be under the command and control of, or is associated with the Government of Iran.

Section 1225 of the NDAA would additionally authorize \$600 million to continue the train and equip program for vetted moderate Syrian opposition forces, which includes \$531.5 million for the Syria Train and Equip Fund, \$25.8 million for costs that would be incurred by the Army for such program, and \$42.8 million for costs that would be incurred by the Air Force. More information on the Syria train and equip program can be found in the [RSC's legislative bulletin](#) on the McKeon amendment to the 2015 Continuing Resolution (CR). Section 1226 would authorize \$300 million in support of Jordan's efforts to sustain security along its border with Syria and Iraq and enhance the kingdom's military capabilities. The section would further provide similar support to Lebanon (excluding Hezbollah) with funds not to exceed \$150.0 million for each country in any fiscal year. The agreement requires the Secretary of Defense to gain approval from Congress each time that he would like to increase financial support to this program.

Due to several concerns regarding troop cap limitations put in place by DOD for Operation Inherent Resolve (OIR), section 1224 would require the Secretary of Defense to submit a report to Congress on U.S. Armed Forces deployed in support of OIR, including the total number of U.S. Armed Forces conducting force protection and combat search and rescue; the authorities and limitations on such personnel; and any changes to U.S. policy. The NDAA would additionally require the Secretary of Defense to report on "boots on the ground" in support of Operation Inherent Resolve against ISIL, reflecting concerns on the arbitrary limitations and force protection associated with the counter-ISIL mission.

- **Counterterrorism:** The bill allocates \$1 billion to the Counter Terrorism Partnership Fund (CTPF) which can be used to support border security and capability enhancements for Jordan, military construction, and other counter-ISIL requirements. The conference report would give the Secretary of Defense the authority to establish a pilot program to counter adversarial propaganda efforts, as well as additional funding for U.S. Special Operations Command inform and influence activities, and increases the “1208 program” regarding the training of foreign military intelligence units to \$85 million to assist the global fight against terrorists.
- **Ukraine, Russia, and Europe:** The NDAA would not reauthorize the European Reassurance Initiative. Instead, the bill would allocate specific resources including: increased funding for U.S. intelligence and warning capabilities in the European theater; technologies supporting U.S. information operations and strategic communications; the [Javelin](#) missile system; and Stryker combat vehicle upgrades. DOD would also be required to submit a strategy to counter unconventional warfare threats posed by Russia, and quarterly notifications on the testing, production, deployment, sale, or transfer to other states or non-state actors of the Russian-built [Club-K cruise missile](#) system. The bill would direct DOD’s Office of Net Assessment to undertake a study exploring various strategies for deterring external efforts to interfere with the internal workings of NATO member states by Russia, or any other actor utilizing tactics such as propaganda in media, economic warfare, cyber warfare, criminal acts, and intelligence operations, similar to those being used by Russia in Ukraine. The proposal would also direct the research and development of responses to Russia’s violations of the Intermediate-range Nuclear Forces (INF) treaty.

The NDAA would authorize \$300 million over two years to the Ukraine Security Assistance Initiative, of which \$50 million is intended for lethal assistance, unless the Secretary of Defense waives the requirement for such aid six months after enactment.

- **Guantanamo Bay Detention Center:** Sections 1031 and 1032 of 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. The prohibition would apply to the Department of Defense and would expire on December 31, 2016.

The House-passed version of the NDAA contained section 1042 which would have rescinded the president’s authority to unilaterally transfer detainees and applies restrictions put in place during the [FY2013 NDAA](#). However, the conference report authorizes transfers only when the Secretary of Defense can certify that the foreign country to which the detainee is being transferred takes steps to substantially mitigate any risk of the detainee threatening the United States or reengaging in terrorist activity. Detainees are prohibited from being transferred to Libya, Somalia, Syria, and Yemen.

According to the House Armed Services Committee, the administration has transferred 41 detainees to third countries since January 2014, including the unlawful transfer of five [senior Taliban detainees](#) from Guantanamo Bay, in violation of the FY 2014 NDAA’s requirement of a 30-day advance congressional notification. Section 1038 would require a report on former detainee attempts to communicate with other known terrorists. The conference agreement also includes provisions (section 1045) on interrogation, codifying existing executive orders. Consistent with the [2005 Detainee Treatment Act](#), the NDAA would restrict interrogation methods by the U.S. Military, and the intelligence community, to techniques listed in the Army Field Manual and restrict modifications to the field manual for the next three years. The provision would make the limitation on interrogation techniques inapplicable to law enforcement and would require an update to the Army Field Manual no sooner than three years after the date of enactment.

- **Asia Rebalance:** Section 1261 would require the president to develop an overall strategy to promote United States interests in the Indo-Asia-Pacific region that is informed by the U.S. National Security Strategy, and the Department of Defense strategy on prioritizing defense interests in the Asia-Pacific



region. The section would further require the president to issue a Presidential Policy Directive to relevant federal departments and agencies that implement the required strategy, and require that the annual budget request submission to Congress include a description of how the programs and projects funded in the request align with the required strategy. The bill would require an assessment from the Director of National Intelligence and the Chief of Naval Operations on the risk of civilian nuclear energy information being diverted to foreign nuclear naval propulsion programs, as well as development of a strategy for mitigating that risk.

- **Plan Central America:** The NDAA would allocate a total of \$50 million for DOD Central American programs within the Drug Interdiction & Counter-Drug Activities appropriation, of which \$30 million would be focused on aerial and maritime interdiction capabilities, building partnership capacity, and increasing detection and monitoring of illicit trafficking in Central America, in order to complement the Department of State's efforts in the region. Additionally, \$20 million of the total amount would be allocated for U.S. Southern Command's Intelligence, Surveillance, and Reconnaissance requirements.

The National Defense Authorization Act has been signed into law for fifty-three consecutive years. The RSC's Legislative Bulletin for the House-passed version of the NDAA (H.R. 1735) can be found [here](#). A fact sheet from the House Armed Services Committee can be found [here](#). A Heritage Foundation analysis of compensation issues in the NDAA can be found [here](#).

### **COMMITTEE ACTION:**

The legislation was introduced on April 13, 2015 and was referred to the House Committees on Armed Services, which held a markup on April 29, 2015. The committee ordered it to be reported (amended) by the yeas and nays: [60 - 02](#). The House Report (H. Rept. 114-102) accompanying H.R. 1735 can be found [here](#). On May 15, 2015, the bill was passed in the House by recorded vote: [269 - 151](#). H.R. 1735 was then passed in Senate with an amendment by Yea-Nay Vote: [71 - 25](#), on June 18, 2015.

### **ADMINISTRATION POSITION:**

No statement of administration policy is available. However the statements of administration policy for both the House (H.R. 1735) and Senate (S. 1376) 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." Secretary of Defense Carter reiterated this position in public comments on September 30, 2015.

### **CONSTITUTIONAL AUTHORITY:**

Congress has the power to enact this legislation pursuant to the following: the constitutional authority on which this bill rests is the power of Congress "to provide for the common Defense", "to raise and support Armies", "to provide and maintain a Navy" and "to make Rules for the Government and Regulation of the land and naval Forces" as enumerated in Article I, section 8 of the United States Constitution.

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