

The Final Version of the FY 2023 National Defense Authorization Act

THE ISSUE

The final text of the fiscal year 2023 National Defense Authorization Act (NDAA) was released on December 6, 2022. The bill, delayed through wholesale mis-prioritization of the legislative process, ultimately accomplishes its core task of authorizing funding and providing a policy framework to make the military stronger. The bill increases authorizations for a stronger U.S. national defense, eliminates several left-wing requests, and improves readiness, but some bad policies remain.

WINS

Increased Topline for Defense Spending. The NDAA includes a topline of \$858 billion for military and national security programs, correcting President Joe Biden's earlier anemic request for \$813 billion, which did not even account for the full impact of inflation. As described in The Heritage Foundation's 2023 *Index of U.S. Military Strength*, this additional funding will be vital as the U.S. finally begins to counter the growing global threat of the Chinese Communist Party and as Russia wages its immoral war against Ukraine. Heritage's plans to reduce overall federal and defense spending can be found in the [Blueprint for Balance](#).

Military Readiness. The bill contains numerous provisions that enhance military readiness by, among other things, prohibiting the early retirement of combat platforms, such as the F-22 fighter; calling for procuring 11 Navy ships; restoring funding for the sea-launched nuclear cruise missile; acquiring a twelfth Coast Guard National Security Cutter;

and reforming the National Defense Stockpile. The munitions industrial base is strengthened by additional funding as well as the authority to enter into multi-year contracts. These are actions that Heritage has advocated.

Vaccine Mandate Lifted. The NDAA includes a provision lifting the COVID-19 vaccine mandate for service members. This is prudent when military recruiting is facing historic challenges. It does not help those who were already dismissed for refusing the vaccine.

Removal of "Diversity, Equity, and Inclusion" (DEI) and "Sexual Orientation and Sexual Identity" (SOGI) Language.

Earlier versions of the NDAA included several provisions requiring reports on personal characteristics unrelated to professional competence. Most of these "woke" initiatives have been removed.

DC National Guard Not Transferred to the Mayor of the District of Columbia. The House version of the NDAA transferred control of the DC National Guard to the DC mayor, which would be highly impractical.

No Draft for Women. The final NDAA does not include the Senate provision expanding the Selective Service to require that women register for it. This is a conservative win. Requiring women to register for the draft would be a misguided expansion.

No Prohibiting Service Members from Providing Public Testimony. The House NDAA contained an amendment prohibiting the admission of any information obtained by, or with the assistance of, a member of the Armed Forces that violates the Posse

Comitatus Act into evidence in virtually any judicial proceeding.

Better Cooperation with Taiwan Against China. The Taiwan Enhanced Resilience Act will enhance U.S.–Taiwanese relations in the face of Chinese aggression. The act authorizes \$10 billion over five years to strengthen security cooperation, makes Taiwan eligible for a regional contingency munition stockpile, combats Chinese coercive activities, advocates Taiwan’s participation in international organizations, and supports stronger economic and cultural ties.

Increased Accountability for Ukraine Aid. The bill requires the Defense Department’s (DOD’s), the State Department’s, and the U.S. Agency for International Development’s Inspectors General to carry out regular comprehensive reviews and audits of assistance provided to Ukraine.

Exclusion of Some Extraneous Legislation. Lawmakers should be commended for resisting last-minute attempts to insert extraneous legislation into the final bill that have nothing to do with national security or defense, such as Senator Joe Manchin’s (D–WV) misguided permitting reform legislation, the Safe Banking Act, and the Pregnancy Fairness Act.

LOSSES

No Prohibition on Funding for Abortion Travel. Secretary of Defense Lloyd Austin issued a new policy shortly before the midterm elections that vastly expanded DOD support for abortion by providing allowances for travel for abortions, authorization for administrative absence, and indemnification of DOD health care providers who may provide illegal abortions. Taxpayer funds should never facilitate abortion. Yet, the final NDAA does not prohibit the use of appropriated funds for these purposes.

Remaining DEI and SOGI Language. There remains a significant and untoward focus on immutable characteristics, such as race, ethnicity, and sex, with numerous requirements for reports, plans, and personnel makeup throughout the legislation. This divisive and

unseemly obsession with the most ideologically left-wing interpretations of diversity divides the federal workforce and military—and it distracts from mission and warfighting in the midst of a recruiting crisis and unprecedented global threat environment. Examples of this language can be found in sections 11249, 6817, 9401, 9402, and 10103.

Watered-Down Bans on Chinese Technology. Original language requiring federal agencies and contractors to stop using semiconductors manufactured by China’s Semiconductor Manufacturing International Corporation (SMIC), Yangtze Memory Technologies Corp (YMTC), and ChangXin Memory Technologies (CXMT) was watered down to a five-year implementation deadline with wide-ranging waiver authority by the Administration. Some agencies have abused these waiver authorities. The 2019 NDAA barred agencies and contractors from using Huawei, ZTE, Dahua, Hytera, or Hikvision telecoms and video surveillance equipment, and implementation has been consistently delayed via waiver authorities.

Enhancements to Funding Nonprofit Security Grant Program in the Department of Homeland Security (DHS). Section 7101 creates and codifies a larger bureaucracy to administer \$360 million for nongovernmental organizations (NGOs). This increases the ever-growing grant programs and money the federal government doles out to friends and allies, while departing from the original intent of the DHS. This bill even allocates money for outreach and technical assistance to generate more grant applications if there is not enough NGO interest and applications for such grant money.

Establishment of DHS Economic Security Council. Section 7116 creates yet another government council in the DHS when the Homeland Security Council already exists and should continue to be used to address economic security issues. The bill also creates another DHS Policy Assistant Secretary position to be responsible for this new council. This needlessly increases DHS bureaucratic bloat without improving mission accomplishment.