

ISSUE BRIEF

No. 4869 | JUNE 25, 2018

House and Senate Make Strong Start Toward the 2019 NDAA

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Both Houses of Congress have completed their versions of the 2019 National Defense Authorization Act (NDAA). With wide bipartisan support (351 to 66) the House passed their version on May 24, 2018. On June 18, 2018, the Senate adopted their version of the NDAA by an even wider margin of 85–10.¹ Now, Congress will conference the differences between the two bills in order to produce the final legislation, and optimally have the bill signed into law by the end of July, clearing the way for the appropriations bills to follow. House Armed Services Committee (HASC) Chairman Mac Thornberry (R–TX) has said he hopes the bill is on the President’s desk in July.² The impending NDAA conference provides an opportunity to improve the bill. At over 1,000 pages each, the two versions of the NDAA are extraordinarily detailed. This *Issue Brief* reviews the highlights and makes recommendations.

Both Bills Make Progress Rebuilding the DOD

Funding. There is much to like in both versions of the bills. For starters, both authorize a 2019 base budget of \$639.1 billion for the Department of Defense (DOD) and the national security programs of the Department of Energy, matching the amounts

allocated in the Bipartisan Budget Act (BBA) signed into law in February.³ It is a significant and needed increase over the appropriated amount for 2018 of \$626.4 billion, which in turn was a significant increase over the 2017 funding of \$543.4 billion.⁴ This funding will go a long way toward the rebuilding of the U.S. military, which Defense Secretary James Mattis has said is desperately needed, warning: “America can afford survival.”⁵ This additional funding will resource much-needed training, spare parts, facility sustainment, and purchases of critically needed equipment.

Pay. Both versions of the bill authorize a pay raise of 2.6 percent, matching the Bureau of Labor Statistics’ estimated Employment Cost Index (ECI) increase. This complies with federal law requiring military pay raises to equal the ECI unless the President requests an exception. This pay raise is absolutely necessary for the military to continue to attract qualified talent in the face of toughening labor conditions. Only 29 percent of Americans between the ages of 19–24 meet⁶ the qualifications for military service, with most being disqualified on the basis of obesity and poor physical health. Of those 29 percent, because U.S. unemployment is at a record low (3.8 percent in May),⁷ the competition recruiters face for talented, willing young people is intense. Thus, a full pay raise is both justified and needed.

Nukes. The Senate and the House both support the findings of the recently concluded Nuclear Posture Review by investing in the development of a low-yield, submarine-launched ballistic missile, as well as the continued modernization of the U.S. nuclear deterrent.

This paper, in its entirety, can be found at <http://report.heritage.org/ib4869>

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New Roles and Missions Report

The Senate version of the bill calls⁸ for an extensive report by the Secretary of Defense on the roles and missions of the DOD and how these should shift under the new National Defense Strategy released in January. By and large, the list of questions, not confined to roles and missions, is well considered and thoughtful. For example, the Pentagon is required to specify the “force sizing construct used to determine the end strength requirements” for the services, the “year-by-year” plan for achieving such requirements, the “force posture assumptions,” and the military personnel costs of such plans. Other interesting questions ask whether the DOD should assign responsibility for “low intensity” missions to a single service. Unfortunately, the Senate bill, in Sections 221 and 412, imposes draconian requirements that would stop the Pentagon from spending any funds to increase the size of the military force, which is desperately needed, until this lengthy report has been completed and submitted.

Other restrictions are also imposed, including on the continued development of the Marine Corps’ amphibious combat vehicle, until this report is delivered. While the roles and missions report is arguably needed, the restrictions imposed until the time it has been delivered will only serve to rush an important report and will harm the Department’s ability to grow in size and to modernize aging and/or obsolescing forces. Congress

should amend this requirement so that the reporting deadline does not materially harm the department.

Foreign Investment Review

Included in the Senate’s version, but ruled out of order for the House version, is an amendment that would change how the U.S. reviews foreign investment for national security concerns. Foreign investment review through the Committee on Foreign Investment in the U.S. (CFIUS)⁹ is an important but delicate process that balances U.S. interests to maintain national security with foreign desires to invest in U.S. industries that may relate to national security. Congress has been debating CFIUS reform for over one year now. Any significant changes could both render the Committee overburdened, potentially harming national interests, and stymie foreign investment that is important for jobs, economic growth, and innovation. Because of the importance of getting this legislation right, Congress should continue to pursue a reasonable reform of CFIUS on its own time—and avoid rushing amendments through the current NDAA.

A Tale of Two ZTEs

Both the House and Senate version of the NDAA include provisions that would restrict the Secretary of Defense from purchasing equipment, systems, or ser-

1. Leo Shane and Joe Gould, “Can Congress Finish the Defense Authorization Bill by August?” June 18, 2018, *Military Times*, <https://www.militarytimes.com/news/pentagon-congress/2018/06/18/can-congress-finish-the-defense-authorization-bill-by-august/> (accessed June 18, 2018).
2. Tony Bertuca, “Thornberry Wants Final Defense Authorization Bill Complete by End of July,” June 13, 2018, *Inside Defense*, <https://insidedefense.com/daily-news/thornberry-wants-final-defense-authorization-bill-complete-end-july> (accessed June 14, 2018).
3. Armed Services Committee, U.S. House of Representatives, “Reform and Rebuild: National Defense Authorization Act for FY2019,” 2018, https://armedservices.house.gov/sites/republicans.armedservices.house.gov/files/wysiwyg_uploaded/Chairman%27s%20Mark%20Summary%20FY19%20NDAA.pdf (accessed June 11, 2018).
4. Armed Services Committee, U.S. House of Representatives, “Reform and Rebuild: National Defense Authorization Act for FY18,” 2017, https://armedservices.house.gov/sites/republicans.armedservices.house.gov/files/wysiwyg_uploaded/FY18%20NDAA%20Floor%20Summary%20vFinal.pdf (accessed June 21, 2018), and Armed Services Committee, U.S. House of Representatives, “S. 2934: The National Defense Authorization Act for Fiscal Year 2017,” 2016, https://armedservices.house.gov/sites/republicans.armedservices.house.gov/files/wysiwyg_uploaded/NDAA%20final%20passage%20Summary%20FINAL_0.pdf (accessed June 11, 2018).
5. Rebecca Kheel, “Mattis on Defense Budget Boost: ‘America Can Afford Survival,’” *The Hill*, March 22, 2017, <http://thehill.com/policy/defense/325210-mattis-argues-for-defense-budget-boost-america-can-afford-survival> (accessed June 18, 2018).
6. Thomas Spoehr and Bridget Handy, “The Looming National Security Crisis: Young Americans Unable to Serve in the Military,” Heritage Foundation *Backgrounder* No. 3282, February 13, 2018, <https://www.heritage.org/defense/report/the-looming-national-security-crisis-young-americans-unable-serve-the-military> (accessed June 11, 2018).
7. Lucia Mutikani, “U.S. Job Growth Surges, Unemployment Rate Falls to 3.8 Percent,” Reuters, May 31, 2018, <https://www.reuters.com/article/us-usa-economy/u-s-job-growth-surges-unemployment-rate-falls-to-3-8-percent-idUSKCN11W1NX> (accessed June 11, 2018).
8. The John S. McCain National Defense Authorization Act for Fiscal Year 2019, S. 2987, 115th Congress, 2nd Sess.
9. Riley Walters, “Congress Needs to Give CFIUS Flexibility, Guidance, and Resources, Not Regulations,” Heritage Foundation *Issue Brief* No. 4857, May 21, 2018, <https://www.heritage.org/international-economies/report/congress-needs-give-cfius-flexibility-guidance-and-resources-not>.

vices that use goods from the Chinese telecommunications companies ZTE and Huawei. Both companies have been recognized as posing a threat to U.S. supply chain security. These restrictions are reasonable as they would apply solely to government procurement and not private individuals who may have less concern for cybersecurity. Separately, the Senate's NDAA included a rider that would block implementation of the Commerce Department's compromise settlement with ZTE unless it can show that ZTE has fully complied with any investigations undertaken by the U.S. government and that it has not violated any U.S. laws for at least one year. Concern over the deal reached by the Trump Administration in the ZTE case should be part of a broader debate regarding congressional oversight of sanctions and export controls, not something to be taken up in the NDAA.

Organizational Change

The Senate bill re-organizes the Under Secretary of Defense for Personnel and Readiness (USD P&R), removing the function of readiness from its portfolio. This is overdue. USD P&R dysfunction is legendary among Pentagon veterans. Based on this track record, some have even called for it to be completely abolished,¹⁰ believing it unsalvageable. The challenge with the current construct is that the functions of personnel management and military readiness are so distinct and disparate that it is impossible to find a senior official with experience in both. Thus, either personnel or readiness typically suffers. Therefore, the Senate's proposal to remove readiness from this organization and focus it on the crucial business of personnel and talent management is on the mark and should be fully supported.

The House bill provides new authorities for the Chief Management Officer, the position currently held by the Honorable John H. Gibson II, to find efficiencies in the huge number of defense agencies and activities collectively known as the "4th Estate." These organizations have heretofore proven to be virtually immune from critical examination and review, and thus this new authority is appropriate and worthy of Congress' support.

Officer Personnel Management

The Senate bill contains a number of overdue changes to military officer personnel management laws for active, reserve component, and warrant officers. Among other things, the proposed changes give the DOD more flexibility to manage officers by including provisions to allow officers to opt out of promotion, allowing the DOD to declare an officer fully qualified for promotion, and providing an ability to bring in officers at a higher rank for special skills and circumstances. Service Secretaries would have the option to use these new authorities as they see fit. These new authorities would help the Services employ more modern talent management techniques for their officer populations, and the House should accede to the Senate's proposals in this area.

New Equipment

With the additional funding made available in 2019 by the BBA, both versions of the NDAA increase the amount of equipment to be procured. By and large, most of these provisions are welcome.

Ships. Shipbuilding accounts receive welcome additions, with the House bill accelerating construction of the fourth Ford-class carrier and two additional Virginia-class submarines in 2022 and 2023. The Senate also accelerates shipbuilding by adding funds to the DDG-51 destroyer, Virginia-class submarine, and San Antonio-class LPD lines, but is silent on accelerating carrier procurement.

Unfortunately, the House added two additional Littoral Combat Ships (LCS) above the Navy's request and one more than is needed to sufficiently maintain the shipbuilding industrial base in preparation for the fiscal year (FY) 2020 future frigate contract award. The LCS has disturbingly limited capabilities against a near-peer adversary. The Senate version of the bill did not add any additional LCS; however, it should add one additional LCS to properly maintain both LCS shipyards until the FY 2020 frigate award. Conferees should be open to considering allowing the Navy to contract for a two-carrier buy, which some estimate¹¹ could save \$1.6 billion over

10. Mackenzie Eaglen and Todd Harrison, "To Better Serve Personnel and Readiness, the Pentagon Should Shutter Its Personnel and Readiness Shop," *War on the Rocks*, November 3, 2017, <https://warontherocks.com/2017/11/to-better-serve-personnel-and-readiness-the-pentagon-should-shutter-its-personnel-and-readiness-shop/> (accessed June 11, 2018).

11. Megan Eckstein, "Newport News Would Save \$1.6 Billion, Maintain Stable Workforce of 25,000 Under 2 Proposed Carrier Buy," *U.S. Naval Institute News*, April 16, 2018, <https://news.usni.org/2018/04/16/newport-news-save-1-6-billion-maintain-stable-workforce-25000-2-proposed-carrier-buy> (accessed June 11, 2018).

the long haul. The Navy should be required to prove the economic value of a two-carrier buy before being provided the authority.

Aircraft. The Administration requested authority to buy 77 F-35 Joint Strike Fighters (JSF). The House authorized that amount, while the Senate only authorized 75. Given the availability of resources and an uncertain future in 2020 and beyond, Heritage Foundation experts recommended¹² in February a buy of over 100 JSF in 2019. The F-35 is the best fighter in the world, and the U.S. should be taking full advantage of this dominant capability. Congress should authorize no fewer than 77 JSF in 2019—and optimally, more. Interestingly, the House Appropriations Committee, Defense (HAC-D), in their draft defense appropriations bill funded 93 F-35. The HAC-D’s proposal should help guide the NDAA in this case.

JSTARS. In its 2019 budget request, the Pentagon proposed to divest its legacy fleet of Air Force E-8C JSTARS aircraft, having come to the conclusion that the platform was not survivable in a fight with a near-peer adversary, which the new National Defense Strategy mandates should be the DOD’s focus. Neither the House nor the Senate, however, fully supported that request. Not only did the House not support the request, but they added \$623 million for JSTARS recapitalization. The Senate did not go so far, and merely prohibited the retirement of the E-8C. The Senate version is close to the answer but did not go far enough: The Air Force should be allowed to begin the retirement of the E-8C and to accelerate its replacement, the Advanced Battle Management System.

Hypersonic Capabilities. Both versions of the NDAA provide welcome support for the development of hypersonic capabilities. Section 1683 of the House bill, however, requires the Secretary of Defense to submit a “validated requirement for ground-, sea-, or air-launched (or a combination thereof) convention-

al prompt global strike (CPGS) hypersonic capabilities.” Requiring the Pentagon to produce a validated requirement inappropriately intrudes on the responsibilities of the Chairman and Joint Chiefs of Staff to perform their statutory responsibilities to independently advise the Secretary of Defense on capability development. It presumes there is a validated requirement before the department performs the due diligence necessary to make that determination. Congress should remove this requirement.

End Strength

The President requested the authority and funds to re-grow the military, reversing years of budget-driven cuts made under the Obama Administration. Given the importance that the new National Security and Defense Strategies place on great power competition, a sufficiently large military force is absolutely essential for America’s defense. As the National Defense Strategy states, “[T]he size of our force matters.”¹³ The Administration requested¹⁴ to re-grow the force by 24,100 active personnel. The House fully supported the Administration’s request. The Senate, on the other hand, only authorized a growth of 15,461—a reduction of 8,639 from the Administration’s request.

The Senate may be proceeding cautiously regarding growing the size of the military force pending the results of the previously mentioned required roles and missions report. But the precipitous cuts to the size of the military made since 2011, combined with the new thrust of the National Defense Strategy toward great power competition and the lack of depth of our current force, all strongly argue in favor of immediately supporting the Administration’s request to grow the joint force by 24,100 in 2019. Each of the service chiefs have testified that their current force is too small. Getting people into the force matters; training them for specific jobs can be adjusted as insights from the roles and missions review emerge.

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12. Frederico Bartels, ed., “The 2019 NDAA Must Continue to Rebuild the Military and Make It More Efficient,” Heritage Foundation *Special Report* No. 198, February 9, 2018, <https://www.heritage.org/defense/report/the-2019-ndaa-must-continue-rebuild-the-military-and-make-it-more-efficient>.
 13. U.S. Department of Defense, “Summary of the 2018 National Defense Strategy of the United States of America: Sharpening the American Military’s Competitive Edge,” 2018, <https://www.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf> (accessed June 11, 2018).
 14. U.S. Department of Defense, Office of the Under Secretary Of Defense (Comptroller), “Defense Budget Overview: United States Department of Defense Fiscal Year 2019 Budget Request,” revised February 13, 2018, http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2019/FY2019_Budget_Request_Overview_Book.pdf (accessed June 11, 2018).
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Base Realignment and Closure (BRAC)

In 2017 the Pentagon identified BRAC as the single reform that carried the greatest potential for monetary savings. In October 2017, Secretary Mattis identified¹⁵ that BRAC “would save the Department \$2 billion or more annually.” Yet in their 2019 budget request, the Administration did not even request the authority. What changed in less than a year? Probably the Pentagon was discouraged after having their request for a BRAC roundly rejected by Congress seven years in a row.

The House version of the NDAA contains a provision to allow for small-base closures when state and local officials agree. It is unlikely that provision will ever be used, since local objections are almost a certainty. The Senate version of the NDAA is silent on BRAC, other than to prohibit it. For all the apparent congressional interest in Pentagon reform and accountability, there is seemingly little interest in providing the Pentagon with necessary authority to rationally manage their own real estate. Congress should, using the recommendations previously outlined¹⁶ by Heritage Foundation experts, authorize a limited BRAC round.

Recommendations

Congress should:

- **Modify** the restrictions prohibiting expenditure of funds to grow the size of the military and procurement of the Amphibious Combat Vehicle until Congress receives the roles and missions report. An inability to start the growth of the military is detrimental to the military’s ability to defend the country.
- **Support** the proposal to remove readiness from the portfolio of the Under Secretary of Defense for Personnel and Readiness.

- **Remove** the section dealing with CFIUS reform, and deal with that critical issue elsewhere.
- **Support** changes dealing with officer personnel management.
- **Limit** the procurement of the Littoral Combat Ship in 2019 to two. Increase the procurement of F-35 Joint Strike Fighters to at least 77. Authorize a two-carrier procurement authority if the Navy can demonstrate the economic benefit before the NDAA is finalized.
- **Allow** the Air Force to begin the retirement of the E-8C JSTARS and accelerate its replacement, the ABMS.
- **Support** the Administration’s full request to increase end strength in 2019 by 24,100 active service members.
- **Include** authority to begin another round of BRAC.

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15. Jane Edwards, “James Mattis Asks Congress to Authorize New BRAC Round,” Executive.gov, October 23, 2017, <http://www.executive.gov.com/2017/10/james-mattis-asks-congress-to-authorize-new-brac-round/> (accessed June 11, 2018).

16. Frederico Bartels, “Four Priorities for the New Round of Base Realignment and Closure (BRAC),” Heritage Foundation *Issue Brief* No. 4725, June 26, 2017, <https://www.heritage.org/defense/report/four-priorities-the-new-round-base-realignment-and-closure-brac>.